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ONTARIO ENERGY BOARD

Volume: MOTIONS DAY

12 OCTOBER 2004

BEFORE:

G. KAISER
PRESIDING MEMBER AND VICE CHAIR

P. SOMMERVILLE
MEMBER

C. CHAPLIN
MEMBER

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RP-2003-0249

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IN THE MATTER OF the Ontario Energy Board Act, 1998, S.O. 1998, c.15 (Schedule B); AND IN THE MATTER OF an Application pursuant to section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licences of electricity distributors.

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RP-2003-0249

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12 OCTOBER 2004

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HEARING HELD AT TORONTO, ONTARIO

6

APPEARANCES

7

JENNIFER LEA
Board Counsel

JUDITH FERNANDES
Board Staff

TOM BRETT
Canadian Cable Television Association

KELLY FRIEDMAN
The Electricity Distributors Association

PETER RUBY
Canadian Electricity Association

BRIAN DINGWALL
Energy Probe

ADELE PANTUSA
Hydro One

ANDREW LOKAN
Power Workers' Union

NORMAN SMITH
Quebecor/Videotron Telecom

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--- Upon commencing at 9:34 a.m.

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MR. KAISER: Good morning, ladies and gentlemen. This is, as you know, an application by the Canadian Cable Television Association filed on December 16th, 2003, to amend licenses of the electricity distributors, in particular with respect to pole access and access charges relating to that access. In particular, today's hearing relates to Procedural Order No. 4, which was issued by the Secretary on October 1st.

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My name is Gordon Kaiser. I'll be chairing this Panel. With me are Paul Sommerville and Cythnia Chaplin.

17

Before we proceed any further, could we have the appearances, please.

18

APPEARANCES:

19

MS. FRIEDMAN: Good morning. I'm Kelly Friedman for the Electricity Distributors Association, and with me is Maurice Tucci of the Electricity Distributors Association.

20
MR. RUBY: Peter Ruby for the Canadian Electricity Association, and with me is Helen Sam of the Canadian Electricity Association.

21
MR. BRETT: Good morning, Mr. Chairman, Panel. My name is Tom Brett. I represent the Canadian Cable Television Association, and with me is Mr. John Armstrong of Rogers Cable on my immediate right and Mr. Roy O'Brien of the Association on my far right.

22
MS. LEA: Jennifer Lea for the Board, Board counsel, and with me is Judith Fernandes Board Staff.

23
MR. DINGWALL: Good morning, Panel. My name is Brian Dingwall. I'm here as counsel to Energy Probe, together with David MacIntosh from Energy Probe.

24
MS. PANTUSA: Good morning. Adele Pantusa from Hydro One legal department, and John Boldt is here from Hydro One as well.

25
MR. LOKAN: Andrew Lokan, counsel for the Power Workers' Union.

26
MR. SMITH: Norman Smith from Quebecor-Videotron Telecom, Montreal.

27
MR. KAISER: I'm sorry, could you repeat that, please. Mr. Smith.

28
MR. SMITH: Norman Smith from Quebecor.

29
MR. KAISER: Thank you. Is that it? Anyone else?

30
PRELIMINARY MATTERS:

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MR. KAISER: As you know from the Procedural Order, there were five matters that we wished to address today. One of them is being rescinded, and that's the Board motion with respect to answers to certain interrogatories, the last one. So we will actually have four matters.

32
The first is this cost issue, which, in the motions day order, was described as whether or not the EDA and the CEA would be eligible for costs and who would bear the costs. That matter we'll hear first and we will come back to that in a moment.

33
The second matter is a motion by the EDA dated September 13th, 2004 to bifurcate these proceedings, to essentially leave into two issues and deal with the actual rates or specifics of the rates or charges in the second hearing.

34
The third motion is the motion of the CEA dated September 24th, and this relates to the disclosure of certain confidential information, certain interrogatories that were filed with the Board in confidence by the CCTA and MTS Allstream, and also the CEA seeking an order requiring the CCTA to answer certain interrogatories, namely Interrogatory No. 3(b). That's the third matter.

35
The fourth matter is a motion by the CCTA dated September 28th, seeking an order requiring the EDA to answer certain interrogatories, namely 4(a) to (j) and 6(a) to (g), of the EDA.

36
Dealing first with the cost matter, the Board has given some consideration to this issue, and in the course of your submissions, we'd like you to address two issues, amongst others of course. The first is, who here is representing the electricity distributors? Are some of them represented independently, or they represented through one association or the other? So that may be relevant to some of you, and if you could address that, it would be much appreciated.

37
The other is a matter of a proposal the Board would like you to consider. This is a bit of an unusual procedure. Typically, an applicant will pay the costs. In this situation, it's complicated somewhat because the telecom companies have intervened, and as I understand it, they're seeking relief similar to the cable companies. So in the strictest sense or in a broad sense it may be considered to be two applicants.

38
Then again, there are other cases where customers, or potential customers, which is really what we have here, are seeking relief or service from a regulated utility, it's the utility that pays. So an argument could be made that the electricity distributors would pay.

39
Then of course we have this cost issue which is complicated by the - in the first case, a Board prior decision, but in the second case with the subsequent application that was made in the -- I believe it was in the April 23rd letter of the EDA as to whether there is duplication or whether these associations should receive costs in the first instance. And as you know, the Board did make a ruling back in May, I think it was May 5th, and relied upon an exception in its rules, although I don't think reasons were given. That was before my time.

40

In any event, this is a somewhat unusual situation, to say the least. And the Board would like you to consider the following proposal. It is that all the parties would pay their own costs. The Board costs would be split between the cable companies and the telecom companies on the one hand and the electricity distributors on the other hand, or what Mr. Sommerville likes to call the polees and the polers.

41
And thirdly, we have the situation where one of the parties, in reliance of a Board ruling as to eligibility of costs, has gone out and incurred costs, although I believe those are being split between the two associations. And we would, for this purpose, add those costs, the costs of that evidence, to the Board costs.

42
So if you would consider that proposal in your submissions, as well as the submissions you might have intended to make in the first instance, we would be grateful.

43
I don't know who wants to go first. I will leave it up to the EDA, since it was their letter that triggered this cost matter.

44
MR. BRETT: Could I just ask, as a preliminary matter, Mr. Chairman, if you wouldn't mind. We're having a little difficulty picking up everything you're saying.

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MR. KAISER: All right.

46
MR. BRETT: Thank you very much.

47
MOTION BY THE CANADIAN ELECTRICITY ASSOCIATION AND THE ELECTRICITY DISTRIBUTORS ASSOCIATION RE COST ELIGIBILITY AND ALLOCATION:

48
SUBMISSIONS BY MR. RUBY:

49
MR. RUBY: If Mr. Brett has no objection, maybe I would go first for the CEA. Dealing, perhaps, first with the first issue, Mr. Chairman, that you raised in terms of who these associations are and who represents who. The Canadian Electricity Association, for the purpose of this proceeding and generally, deals only with questions of national interest. It is not representing the particular interests of specific utilities, in this case, Ontario electricity distributors. Of the 32 electricity distributor members of the CEA, only seven are located

in Ontario, and not all of them have participated in the CEA's efforts, in this particular proceeding.

50
And in the CEA's original letter of intervention, what it proposed to do was provide this Board with the national perspective on the joint-use issue. It won't come as any surprise to anyone here or to the Panel that this is an issue that has been confronted in nearly every province in Canada, as well as in the balance of North America. And the CEA has been involved for some years and dealing with this issue from a big-picture perspective, and that is what it hopes and is bringing to the table. And, in fact, the evidence that is adduced to date has been confined only to the big-picture issues. What are the correct economic principles to apply, fairness principles, competitive neutrality?

51
With respect, for example, to the issues list, the final issue was how to implement whatever the Board decides to impose, and the CEA explicitly said, We're not going to address that at all. That's a matter for individual electricity utilities in Ontario.

52
Another example deals with the non-financial conditions of access, the contracts that have been put forward. The CEA has offered, by way of example, some contracts in other parts of the country but does not propose there is any one right way to do it or any one contract that should apply. The individual utilities are the ones that will have to confront that issue.

53
So for the purpose of this proceeding, the CEA, more than anything, is acting as a source of information for the Board. It has a certain amount of expertise, it has information about how joint pole use is handled in the rest of Canada, and its evidence to date has been, and our intention -- it is our intention that it will continue to be confined to the national and, for that matter, international issues, that is, looking at the United States, as well as dealing with -- to the extent federal issues impinge, for example, issues of telecommunications, policy matters, before the CRTC, those are matters that the CEA has addressed in the past as a national organization, and can bring some evidence and submissions to bear.

54
So, to answer your question, Mr. Chair, it's our submission that the CEA is not here representing its Ontario members. Many of them, certainly the larger ones, have intervened directly in this proceeding, and the membership of its Ontario members is co-extensive with the membership of the EDA.

55
So as not to put too fine a point on it, for example, costing information has been a key issue, or will be a key issue today. The CEA proposes to address that only from a regulatory efficiency

point of view and
not from the point of view of who has information and who doesn't. That's not its role in this proceeding,
and it doesn't have a mandate to address that.

56
So hopefully that clarifies the role the CEA intends to play, and who it's representing here. And so it's my
submission that there is no overlap, and the EDA and the CEA have gone to considerable efforts to make
sure that, from an evidentiary point of view, the Board is not provided with overlapping evidence and
submissions. And a good example of that is the joint expert report that we've put forward together so that
there aren't two from industry organizations.

57
Dealing, if I may, with the broader question about costs for the CEA - and, Mr. Chairman, I will come to
your proposal - I've provided the Board Staff with a compendium of some of the matters that are filed
already before the Board. None of this is new evidence. I've just put it together in one place to try and
reduce the amount of flipping. I've given some to the other parties. There are more copies behind me in
this box for those of you who haven't received a copy.

58
MS. LEA: Can I just interject for a moment, please.

59
Mr. Chairman, although this is not new evidence, we often, in motions, do mark things for identification
so they're easy to refer to afterwards. Do you wish us to have an exhibit numbering system for materials
like this?

60
MR. KAISER: Yes. We'll mark it for identification.

61
MS. LEA: All right. Then we'll mark it for identification, Exhibit 1 on the motion. Exhibit 1 on the
motion, please.

62
EXHIBIT NO. 1 ON THE MOTION: COMPENDIUM OF DOCUMENTS PROVIDED BY THE
CANADIAN ELECTRICITY ASSOCIATION

63
MR. RUBY: And if the Panel would turn to tab A, you will see there are a number of tabs, 1 to 10,
and I propose just to run through them very quickly in the order they appear.

64
Under the first tab is CEA's original intervention letter which describes the CEA, points out who its
membership is. And, of course, it's not just electricity distributors; it also represents about 95 percent of
the installed generation capacity in Canada, as well as transmitters. But in this proceeding, it's largely

dealing with the distribution issue. And you will see in the third paragraph, towards the end, that what the
CEA intends to do is put right up front that it was to provide a national perspective and not necessarily to
go into individual circumstances of its Ontario utility members.

65
At the next tab is the letter from the Board that the CEA relies on with respect to costs. No objection was
taken to this, either to the CEA's request for costs, until August of this year. So my friend's objection, the
CCTA's objection, coming months after the CEA was granted costs and, in fact, acted on, as we'll get to a
little bit later, causes the CEA a great deal of concern, and --

66
MR. KAISER: Can I just stop you there. Is that the case, Mr. Brett?

67
MR. BRETT: Mr. Chairman, we did object to that. I think, in a letter that we sent in, we have reflected
on that subject a little more since then. And, in light of the fact that the -- let me put it
this way: Number 1, we accept your proposal for the treatment of the CEA's costs in the
circumstances; and number 2, given the fact that the Board had approved those costs
back in May, we would with draw our objection that we made in the letter.

68
MR. KAISER: Thank you very much.

69
Continue, then.

70
MR. RUBY: Well, that, Mr. Chairman, I'd suggest largely solves the CEA's problem.

71
MR. KAISER: I think so.

72
MR. RUBY: And maybe, in terms of dealing with how to split, generally, the costs in the proceedings,
if I may, I'll reserve my comments until after the other parties have had a chance to
address the general issue.

73
MR. KAISER: That's fine.

74
MR. RUBY: Thank you.

75
MR. KAISER: Who is next?

76
SUBMISSIONS BY MS. FRIEDMAN:

77
MS. FRIEDMAN: Good morning, Mr. Chairman. Kelly Friedman for the EDA.

78
As Mr. Brett has correctly pointed out in correspondence, the EDA has the onus to establish its cost eligibility, so what I'd like to do is briefly take you through the Practice Direction on Cost Awards and Practice Direction on Cost Awards explain why the EDA, in this case, ought to be given costs.

79
Just to follow up very briefly on Mr. Ruby's comments, it is the EDA that represents the Ontario electricity distributors in this proceeding. As is the case in all proceedings in which the EDA intervenes, we don't represent the interests of any one particular LDC, but through the EDA's democratic processes - it has a board of directors and many consultative mechanisms - we try to pull out the principles and the commonalities that our members have and present them to the Board. So I hope that clarifies the EDA's perspective.

80
But we are, and as I will get to when I talk about specifics as to why the EDA ought to be given costs, we try to coalesce the overall general principles that the LDCs have in the province, to present them to the Board so that the Board does not have to hear the evidence of over 90 distributors.

81
MR. KAISER: Can I just stop you there. In this case, have you been able to coalesce? Do all of the LDCs have the same position in this case?

82
MS. FRIEDMAN: The overall position of the EDA is that LDCs should be allowed to negotiate locally, and that is the consensus amongst the membership. So what we've done -- in this proceeding, there are, of course, individual LDCs who have intervened and we have regularly communicated with them, for example, with respect to the selection of an expert witness, what the experts have told us they are going to say to make sure they were comfortable. So in that sense, yes.

83
In addition to having board resolutions of the EDA, which in itself is representative of the overall membership, we've also had ongoing communications with individual LDCs, both intervenor LDCs and non-intervenor LDCs, on a regular basis to explain our strategy and make sure they're on side.

84
It is never possible for the EDA to ensure that every single member is content with the way that we are proceeding, but we let them know what we're doing so that if they are not content with it, they can come

forward and speak on their own behalf. And we have not had that situation in this proceeding.

85
MR. KAISER: So just to be clear, you will be speaking for them all?

86
MS. FRIEDMAN: That's right.

87
MR. KAISER: Thank you. Sorry I interrupted you.

88
MS. FRIEDMAN: No problem.

89
The Practice Direction on Cost Awards gives us guidance as to whether the EDA should be given cost eligibility. Section 3.03 says that:

90
"A party in a Board proceeding is eligible to apply for a cost award where the party (a), primarily represents the direct interests of consumers in relation to regulated services."

91
Now, the EDA said that, in this case, it does represent the direct interests of the ratepayers, albeit, not in a regulated service insofar as pole access rates go, because there hasn't been a decision to regulate, but with respect to distribution rates. In this proceeding, the cable companies are attempting to fix a rate for pole access. In my submission, a low rate which would minimize the contribution of cable companies to the revenue requirements of the LDCs. The EDA's opposition represents the interests of consumers, in other words, are not content to take a small contribution toward their revenue requirement, which would mean higher distribution rates in the province.

92
Sub (b) of the same section, 3.03, says that a party is eligible to apply for costs if it primarily represents a public interest relevant to the Board's mandate. The EDA points to two particular public interest elements relevant to the Board's mandate; protecting the interests of consumers with respect to prices, and that relates to what I just said. Again, the EDA's view is that the lower the contribution of the cable companies to pole costs, the more distribution customers will have to pay towards those costs, as well as the public interest to facilitate the maintenance of a financially viable electricity industry.

93
Section 3.04 tells the Board that in making the determination, a party is eligible -- the Board may also consider any other factors the Board considers relevant. And, in this case, we'd like the Board to consider the fact that the EDA has, as we just discussed, made attempts to gather the general principles of the overall membership instead of having the Board have to listen to arguments from

each and every LDC
that has the interests of their local ratepayers in mind. We think that it is crucial in this proceeding to get
a province-wide perspective in light of the fact that each and every distribution license in the province is
sought to be changed.

94
Now, we recognize, of course, that pursuant to section 3.05(b), groups of distributors are not generally
eligible for costs. But we submit further, that under 3.06, there are special circumstances in this case
which point to the EDA being eligible for a cost award.

95
First, is that there is a strong public interest -- a strong government policy with respect to electricity
prices for consumers. And we think that this proceeding fundamentally involves what prices consumers
are going to pay for their electricity. It has province-wide implications, as every license in the province is
sought to be changed.

96
The EDA has made great efforts to gather the views of a wide range of LDCs and pull out the general
principles of commonality, so as to shift the focus from local interests to more general provincial interest.
And as already discussed, the EDA thus far has been successful in consulting with its members and
gathering their views to present them to the Board, for example, with respect to one expert's report.

97
Before the expert was retained, and as Mr. Ruby said, jointly with the CEA, we had conference calls with
individual LDCs and their individual counsel who had originally contemplated retaining their own
experts. And through consultation, we were able to arrive at one expert to retain on behalf of all LDCs.

98
The CCTA has, and in correspondence will no doubt continue, to argue that the LDCs, as a group, have
prompted this proceeding through intransigence is one word that has been used or abuse of market
power. I submit that the evidence will reveal that that is simply incorrect, that there is no evidence of
widespread abuse of market power and, therefore, no reason not to negotiate individually with local cable
companies.

99
And in fact, the CCTA, the applicant's application has caused the breakdown of the negotiations that
were occurring locally in two respects. Firstly, it encouraged -- the application encouraged its
membership not to sign deals that were close to finalization.

100
MR. KAISER: Excuse me. How does all of this relate to costs?

101

MS. FRIEDMAN: It's the special circumstances, quite frankly, much of it was in reply. I'll take a step back.

102
Mr. Brett objected to the EDA's basis for costs on the basis that it was the EDA or the LDCs as a group who has caused the need for the application, even though it was brought by the applicant. And that need stems from LDCs abusing their market power, or more generally, not negotiating in good faith.

103
One of the main points, and the evidence that this Board will hear from our side of the table, is that's completely not the case. The LDCs have negotiated in good faith and it was, in fact, the fact of the application being brought by the CCTA that caused the breakdown in negotiations.

104
So it comes into the cost submissions in two ways: To reject Mr. Brett's opposition that we ought not to get costs because we are the fault of the entire proceeding and, secondly, that the applicant -- which I will get to -- should be the one to pay the costs in this proceeding. But I recognize it's difficult for the Panel to hear submissions on what the evidence will be when you have not heard the evidence. So I will keep that very brief.

105
Just let me point out one other point, that in -- the CCTA has been negotiating with a working group of LDCs known as the Mearie working group, which is a very small subset of the EDA's membership. And through those negotiations, we have been advised that insofar as discussion of rates or rate methodology are concerned, the CCTA has refused to negotiate further because of this application.

106
MR. KAISER: I don't think we should be getting into some kind of speculative evidence.

107
MS. FRIEDMAN: Thank you, Mr. Chair.

108
MR. KAISER: Mr. Brett's objection was based upon the rules. Your argument, as I understand it, is you rely on the exception.

109
MS. FRIEDMAN: That's right.

110
MR. KAISER: What about the Board's proposal? Do you have any view on that?

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MS. FRIEDMAN: I do. The EDA is not content to accept the Board's proposal, and again for the same reasons. The applicant has commenced this application and the

basis for
the application is the intransigence of the LDCs to negotiate. We submit that
unless the Board makes a finding of some individual LDC actually being
intransigent, or negotiating in bad faith, or abusing market power, no LDC ought
to have to pay the costs of this proceeding.

112
MR. KAISER: So your submission would be that we hear the evidence, and if we find out that your
people were dragging their feet, then we could award costs against you?

113
MS. FRIEDMAN: That's right.

114
MR. KAISER: All right.

115
Mr. Ruby, where are you on this issue, the Board's proposal? Mr. Brett says he's in. Where are you?

116
MR. RUBY: The CEA's position is that the applicant should bear the costs. This proceeding is
paralleled by others in the country. In this particular instance, the applicant has brought a
proceeding and I take note of -- and entirely agree with, Mr. Chair, your comments that
there are actually multiple applicants here; that is, the telecommunications companies as
well, although they're formally clothed as intervenors, they're seeking the same relief as
the CCTA, and, in my submission, should be treated the same way.

117
And the way they should be treated is as proponents. This is not an isolated proceeding. There are two
other provinces where joint-use proceedings have taken place before provincial regulators and in both
cases, it was the local power utilities that sought the regulation of joint-use rates by the authority, that is,
they were the applicant in that circumstance. They were the ones who sought regulatory intervention, and
in those cases, appropriately bear the costs.

118
The CCTA, it's also not its first attempt to have this dealt with by a regulator. As the Panel, no doubt,
knows, the CCTA, in 1997, I believe, approached the federal telecommunications regulator, the CRTC,
on this very issue in a case that ultimately went all the way to the Supreme Court of Canada before being
decided against the CCTA.

119
The point I am trying to make, Mr. Chair, is that, in the usual course, the proponent seeking the change to
the regulatory system - and, in Ontario, this would be a complete change as joint-use rates have never

been regulated in this province - should bear the cost of seeking a change for its benefit.

120
And in these circumstances, it's worth noting that the CCTA's members are entirely privately owned.
Some of them are public companies. But they are shareholder, profit-maximizing entities who are, in the
most direct sense, seeking a commercial benefit, that is, to lower their costs.

121
The power utilities, the electricity distributors in Ontario, none of them have taken the position that what
they are seeking are market-based rates, for example, for the use of power poles. Everybody is looking at
a cost solution, that is, to figure out what the appropriate costing level is of the poles, and that will
determine the fee.

122
And in that case, that is a matter that, as Ms. Friedman says, goes directly to distribution rates, ultimately
in the long term. Now, in a PBR regime, there may be sort of a bit of time before that occurs, but what
we're talking about is cost recovery, not market-based rates.

123
So on one hand, you have a proponent who's seeking a brand new type of regulation in Ontario that
reduces its cost so that it can make a profit or compete in a better way in the marketplace, however it
decides to deal with that issue, and the other side, price-regulated public utilities that have limits on what
they can do with cost recovery.

124
In my submission, in those circumstances, the most appropriate allocation of costs of this proceeding is
that they should be entirely borne by the proponents, the CCTA and, as I say, the telecommunications
companies that have the same position.

125
MR. KAISER: Thank you.

126
Mr. Smith, Videotron-Quebecor, do they have any position on this?

127
MR. SMITH: We have not really compared --

128
[Audio feedback]

129
MR. SMITH: I'm sorry. Our representative from Quebecor was held up in Montreal, and my purpose
here, for right now, would be just to be present and soak in what's coming out next. He
will be here tomorrow morning. His name is Dennis Berland.

130
MR. KAISER: Is he a lawyer?

131
MR. SMITH: Yes.

132
MR. RUBY: Mr. Chair, I don't mean to interrupt, but I don't know if Mr. Smith is aware, Videotron is listed as an observer in this proceeding and not an intervenor. Again, my remarks concerning telecommunications companies being treated the same way as the CCTA apply to intervenors; the two I was thinking of were 360 Networks and MTS Allstream.

133
MR. KAISER: Is anyone here from Allstream? Anyone else care to make any submissions on this cost issue?

134
MR. DINGWALL: Good morning, Mr. Chairman. My name is Brian Dingwall. I'm here representing Energy Probe.

135
I have a question of clarification which may provide some efficiencies and shorten the content of my submissions.

136
Energy Probe, as you may or may not be aware, is an intervenor with a long history before the Board representing consumer and environmental interests, and has been accepted as an intervenor eligible for costs in this process.

137
For the purpose of interpretation of the Board's proposal, is it the Board's intention, then, that Energy Probe be subsumed within what you've referred to, Mr. Chairman, as the Board's costs? Or are you suggesting that we speak to our own costs in this motions day today?

138
MR. KAISER: I think, Mr. Dingwall, our proposal was that each party bear their own costs, and the only thing that got lumped into the Board's costs were the costs of the evidence prepared jointly by the two associations. But we're quite happy to hear your submissions on this point.

139
SUBMISSIONS BY MR. DINGWALL:

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MR. DINGWALL: Energy Probe is a non-profit environmental and consumer organization which promotes economic efficiency in the use of resources. Energy Probe participates in national and provincial conferences and regulatory forums on energy issues which it believes to be in the public interest.

141
The foundation, which is Canada's third largest environmental policy organization and Canada's largest energy policy organization, has over 30,000 supporters, half of them in Ontario, of which most have tangibly expressed interest in energy issues. Energy Probe also has a strong consumer focus and is frequently acknowledged in the media as a consumer watchdog.

142
In recent years, Energy Probe has raised funds and acquired supporters on its strength as a consumer advocacy organization for many initiatives.

143
In this process, there is no consumer representation, apart from what the Electricity Distributors Association has referred to as its purported mandate as an exemption under the rules of eligibility for -- under the practice guideline for costs.

144
There are some significant issues on the table here which, frankly, require that there be some degree of consumer organization participation.

145
One of these is access to monopoly resources, which is certainly something, as a consumer organization, Energy Probe would not be comfortable with, the interests of consumers being represented by the monopolies.

146
An additional consideration is the recognition and treatment of revenue received from pole rentals under the revenue requirement of LDCs, which I understand is contested by many of the LDCs which are purporting to make that stand. Certainly, in the development of 2006 rate handbook, that does not seem like a settled issue; however, it's one that may come up with some determination in this process.

147
MR. KAISER: Can I just stop you there. What's your position on that? Does your association have a position on where that revenue should go?

148
MR. DINGWALL: Yes. It should clearly form part of the revenue requirement for LDCs. It is not money that should go back to the shareholder, because ratepayers paid for the assets.

149
MR. KAISER: Thank you.

150
MR. DINGWALL: Now, with respect to Energy Probe's costs, in context of the other applicants and the other parties to this process, Energy Probe is unique in that it

does not have a commercial interest in the outcome of this proceeding. Its interest is in the economic and social benefits to ratepayers of the determination of the proper treatment of the revenues and viable conditions for access to monopoly resources.

151
So to that extent, Energy Probe has no cost base upon which to fall back upon for the treatment of any costs that it might have incurred to date, or which it might incur in the future as an eligible intervenor, which was the previous determination.

152
I'm somewhat taken by surprise with the Board's suggestion this morning in that the Procedural Order did not suggest that Energy Probe, having previously been determined eligible for costs, was not named in the Procedural Order as a participant who should speak to its own relevance. So I am a little bit taken by surprise by that contention.

153
Now, with respect to costs in general in this process, since that's what you're also asking parties to speak to, it's our view that there are two basic elements to cost. One is the element of cost that relates to the conduct of the parties in the duration of the proceeding, whether they've come to the table with clean hands or not. And that's always a matter for consideration after the fact, after the hearing has taken place, and it's certainly open to the Board to determine if one or another party has come to this forum as an abuse of process or because there have been other abuses of monopoly power or bargaining in bad faith. So at this point in time, I don't think it's appropriate for the Board to make a determination as to who has come in with clean hands. That comes at the end of the day. But the balance of the cost process really relates to, where is there an economic benefit and where is there an economic burden? And in the ice of ratepayers, the economic benefit really flows into the clear establishment of a path of revenue which shouldn't be subsumed under the revenue requirements of the LDCs.

154
So if this process results in either a clear tariff or a generic rate for joint pole use, then there is an economic benefit to ratepayers in that determination. And if there is that economic benefit, certainly it would be appropriate for the ratepayers to undertake the economic burden. There certainly seems to be some history, I believe, from the processes around the formation of the previous rate handbook, where one or a number of associations have used a cost order to flow through costs to individual LDCs. And in our suggestion, that type of approach would be certainly appropriate in this case.

155
But given the absence of representatives, representing solely the ratepayer

interests, it's Energy Probe's
view that it should not assume its own cost, or bear its own cost, but that those costs really, in order to fit
in with the fluidity of the hearing that is conceived by the Board's proposal, should be subsumed within
the Board's costs. Those are my submissions.

156
MR. KAISER: Thank you, Mr. Dingwall.

157
MR. BRETT: Mr. Chairman, I do have a couple of comments.

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MR. KAISER: Certainly.

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SUBMISSIONS BY MR. BRETT:

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MR. BRETT: I thought I should explain briefly my one-liner, that we do support the Board's proposal.

161
First of all, on the question of who represents the distributors, I think that question has been answered.
I'm not going to get into that. We've heard from the EDA as to what they think their role is, and so I don't
wish to comment further on that.

162
With respect to the costs and the Board's proposal, just three or four brief points. First, we believe you
have the power to do that because the statute gives the Board broad powers to determine who pays whom
in a cost context, who pays what costs.

163
Second, as we stated in our earlier letter, we don't think the EDA should be eligible for costs based on the
rules. The rules are quite clear that distributors, both individually and as a group, are not eligible. And I
don't see very much difference between -- any difference between a group of distributors and the EDA,
which purports to represent all of the distributors.

164
And we don't think that they have -- we think that that section 3.05 is very specific. It says that if you're
one of those categories, you don't get costs. There is a provision whereby any party can make, can try and
elicit special circumstances, but the onus is on the party to elicit those circumstances and we don't think
that the EDA has done so.

165
And with respect to who should pay the costs, we believe this is different. This is a different sort of case
than a typical case. A typical case is where the utility is applying and there are a number of intervenors
and the utility is in a position where it conventionally pays costs to the intervenors. The utility's costs are
considered operating costs that would be passed through to its customers under

cost-of-service rate
making. So that this type of -- this case is quite different. I'm not going to get into all of the details of it,
because you've seen the correspondence and you've obviously thought about -- the Board Panel has
obviously thought about the circumstances as to how this has come about and the parties that are
involved.

166
So I would just reiterate that we're pretty well all commercial parties in this hearing. The LDCs are now
commercial entities, they've been asked to -- they get a return on capital. The other telecom providers are
commercial parties, we're clearly commercial parties.

167
So I think there is -- I think what you proposed is fair from our point of view. I will leave it at that. Thank
you very much.

168
MR. KAISER: You distinguish, Mr. Brett, between the CEA and EDA. You didn't object initially, as I
recall, to the CEA's --

169
MR. BRETT: No, I did not. And the other point I wanted to make, and I'm glad you reminded me of
that, was we did not object to Energy Probe either. An we never intended to object to
Energy Probe. So I have no objection to Energy Probe's costs being rolled into the base
that's going to be paid by the -- under your proposal by the group.

170
MR. KAISER: Thank you.

171
Any other comments?

172
MR. RUBY: Mr. Chair, if I may, just one small clarification. For the CEA, originally I had understood
that the proposal was to have the CEA's costs wrapped into the Board's costs because it
had been granted eligibility early in the proceeding.

173
MR. KAISER: Only the evidence.

174
MR. RUBY: The only clarification is whether it's the expert evidence or all of the evidence, because
obviously the CEA has put in a great deal of effort to accumulate data from all over the
country on certain issues that wouldn't otherwise be available to the Board. So I take it,
Mr. Chair, from your last comment, that it's all of the CEA's evidence and not just the
expert evidence.

175

MR. KAISER: Well, there may be some confusion in our own mind on that, Mr. Ruby. I think we were thinking of the expert evidence. I'm wondering if I could ask you -- we're going to reserve on this and rule after lunch -- but since I, at least, had not thought of two bodies of evidence as opposed to one, I wonder if you could, in confidence, tell us how much money we're talking about in the two pots as it were. Is that possible?

176
MR. RUBY: If -- maybe at a break later today I can take a look at that.

177
MR. KAISER: Yes. If you would make that available through Board counsel.

178
MR. RUBY: Thank you.

179
MR. KAISER: Any other comments? As I said, we'll reserve on this matter. Our intention, with respect to all of these motions is to deliver a decision from the bench, as it were, after lunch, if that is agreeable. We understand that there is a settlement conference proceeding tomorrow, and I realize that in the ordinary circumstances, we'd probably wait on a cost ruling until the end of the case and then we could get into who was the bad guy and who was the good guy. But there are certain demands that have been placed upon the Board to make a ruling in advance so parties know how they can conduct themselves for this proceeding. So to the extent we can, we're going to make that ruling today.

180
Let's proceed next, if we can, to the second motion. This is the EDA motion to bifurcate.

181
MOTION BY THE ELECTRICITY DISTRIBUTORS ASSOCIATION RE BIFURCATING THE CCTA PROCEEDING:

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SUBMISSIONS BY MS. FRIEDMAN:

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MS. FRIEDMAN: Thank you, Mr. Chair.

184
The EDA's position on this motion is based on two principles. One, is that if the Board is going to regulate joint pole use, it's incumbent upon the Board to ensure that it is armed with all relevant data in order to properly and effectively regulate the area. Only efficient charges will lead to appropriate sharing

of the poles, without cross subsidization.

185
The second principle is that if the Board is not going to regulate, or chooses to engage in a light-handed
form of regulation, the Board ought not to compel the gathering and filing of extensive data which it will
not ultimately use.

186
The relief sought by the EDA, at its simplest, is that the Board first consider issue number 1 on the issues
list. Should the Board set license conditions at all regarding joint pole use?

187
So to consider issue number 1 in phase one before data gathering analysis and filing, and then, if issue
number 1 is decided in the affirmative, move on to issues number 2 through 4 which should be
proceeded, we submit, by a motion to resolve an obvious dispute in the filings. The CCTA implies that
data is readily available and that the EDA LDCs are holding back from submitting the data for the Board,
and the EDA -- the LDCs tell the EDA that the CCTA is simply wrong. In other words, to avoid that
dispute and bifurcate, and decide issue number 1 first, and if the data becomes necessary, move on to
issues number 2 through 4.

188
I would like simply to make three points to sum up the EDA's position. A suggestion was made in written
correspondence by Mr. Brett that this motion is inconsistent with the issues list, and the EDA disagrees
with that. The EDA has not resiled from the issues list, but simply asks the Board to divide up the issues
list in a natural way, decide issue number 1 first. If it's decided in the affirmative, then move on to issues
2 through 4. If it's decided in the negative, then the proceeding ends there.

189
Secondly, the EDA submits that it is, indeed, a procedural motion only. It doesn't change the scope of the
proceeding. We recognize that all the issues on the issues list are, indeed, issues, but there is a hierarchy
of issues in that if issue number 1 is decided in the negative, the proceeding ends there.

190
Point number 3 is to, again, respond to a point made in correspondence by Mr. Brett about counsel
having discussed the issue of bifurcation at the issues conference. The EDA submits that there was never
a discussion about a bifurcation motion as such. What we do recall is that Mr. Brett did raise whether
non-financial terms could be dealt with separately from financial terms in some form of proceeding. The
EDA expressed an openness to discuss that and still believes that's a very good idea. But what we would
submit is that's appropriate for phase 2. If the Board decides to regulate, in other words issue number 1 is
decided in the affirmative, then we would be more than happy to discuss some kind of way to resolve

issues number 2 through 4 which separate out financial terms versus non-financial terms of the contract.

191
MR. KAISER: Can I just stop you there.

192
MS. FRIEDMAN: Yes.

193
MR. KAISER: Mr. Brett says in his letter of September 20th that there was extensive discussion of the desirability of having one or more stages to the proceeding at that time. Were you at this --

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MS. FRIEDMAN: I was, Mr. Chair. That's what I was speaking to.

195
MR. KAISER: And you say that's not correct?

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MS. FRIEDMAN: Well, what I recall that discussion being about was this very issue of dividing the proceedings between financial and non-financial issues. What counsel discussed was the fact that it might be appropriate to deal with non-financial terms of access by way of settlement or technical conference off-line somehow, and leave the bulk of the work to be done by the Board dealing with financial terms, rate-setting methodology. But it was not a discussion dealing with bifurcation in the sense of what I'm discussing, dealing with the principle of whether regulation should occur, first, and then moving on to the other terms.

197
MR. KAISER: Thank you.

198
MS. FRIEDMAN: Those are my submissions, Mr. Chair.

199
MR. KAISER: Mr. Ruby, do you have a position on this motion?

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SUBMISSIONS BY MR. RUBY:

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MR. RUBY: Yes, and I will state it very briefly.

202
The CEA is in support of the motion. The only thing I can add, I think, to Ms. Friedman's submissions is that, from a practical point of view, the CEA, in anticipation of perhaps assisting the Board with some of the types of costing information that the CCTA is now seeking in a different motion to be heard later today which it clearly feels is important to have this matter properly determined by the Board, in the

amount of time we've had in this proceeding, the CEA, even with its small number of members in
Ontario, had a lot of trouble figuring out how to put that type of information together in a way that would
be consistent and useful for the Board. That is, costing information can be sliced and diced, as the Board
Panel knows, many different ways. And the CEA, from a practical point of view, is having a lot of
trouble doing that even for its own uses, never mind to be used in the context of a regulatory proceeding.

203
So for what it's worth, for the limited number of Ontario distributors that are members of the CEA,
bifurcating the proceeding would allow for the practical considerations, that is, the Board can go on in a
timely manner to set policy guidelines; if Ms. Friedman's and the CEA's position holds, not regulate at
all, for example. And then if it becomes necessary, there will be enough time to get into the details of
what amounts to and is rate-making and price regulation, with all of the data that is necessary.

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MR. KAISER: Mr. Dingwall, do you have a position on this motion?

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SUBMISSIONS BY MR. DINGWALL:

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MR. DINGWALL: Yes. We believe bifurcation is not appropriate. Given the magnitude of issues
that have been on the table since the issues day and all of that, it would really
appear to provide an opportunity for delay that would undermine the integrity of
the process. So we don't believe that the issues should be severed at this point.
We think it would be most appropriate, with the ADR beginning tomorrow, to
soldier on with the whole of the issues list.

207
MR. KAISER: Thank you.

208
Mr. Brett?

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SUBMISSIONS BY MR. BRETT:

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MR. BRETT: Thank you, Mr. Chairman, Panel. Yes, we have some comments on this. We have
problems with the -- big problems with the proposal to bifurcate the hearing for four
reasons.

211
The first is, in our view, the real issue before the Board in this hearing, the most critical issue, really, is
not whether to regulate power attachment charges, pole attachment agreements, or not, but rather what

the level of charge should be and what the basis or formula -- underlying formula for deriving that charge
should be. That's what we think this hearing is about, in reality.

212
These utilities poles are, after all, monopoly facilities. They're essential facilities not only for the utilities
but also for the telecommunications industry and suppliers. There's no market for pole attachments. And
as a practical matter, the construction of alternative infrastructure is neither possible nor desirable.
Everybody knows that in this room, I think. Everybody has known it for a long time.

213
And there is, we will show, we think, in the hearing, a record of this monopoly position being abused,
and that can be found in the correspondence attached to our answers to the Board Staff Interrogatories 2
and 6, and at tabs 2 and tabs 9 of our volume that we submitted under letter of September 27th to submit
those responses, the CCTA's IR responses to everybody.

214
But the practice of asking -- so our members operate under a substantial disadvantage. The practice of
asking for substantially higher charges has been widespread, and our members have often signed
agreements essentially in order to preserve the ability to have access. Many have signed agreements,
interim agreements, because they have realized that if they didn't sign them, they wouldn't be allowed to
conduct -- to continue to conduct their business. All of this at the time that our industry is competing
directly with the telephone industry, as you know, in many of these areas, and in some cases, telephone --
in numerous cases, actually, telephone affiliates of the electric industries in Ontario in the provision of
high-speed data services and Internet access.

215
The telephone industry has its own, as you know, historical long-standing arrangement with Ontario
utilities, but the cable industry finds itself embroiled in a web of different negotiations against a backdrop
of threats.

216
Now, finally, the Supreme Court of Canada, as you all know, recently told the CRTC which had, after an
exhaustive and lengthy proceeding, decided on a new pole rental charge, I believe 15.82 -- 89, that the
CRTC did not, under the Telecommunications Act, as presently drafted, have the authority to set the
charge. So this Board is the logical regulator, and all parties to this agreement, to this proceeding, have
already agreed that it has the jurisdiction to do so.

217
Finally, every other regulator in both Canada and the United States, when asked, has agreed to regulate
pole rental charges. In Canada, the CRTC has, of course, long regulated the telephone industry pole
rental charges for cable television and related attachments, as you know.

Regulators in Nova Scotia and
Alberta have recently regulated pole charges. And in Saskatchewan, Manitoba, and Newfoundland, the
monopoly telephone companies have established charges in the same range, within one or two dollars of
the level set by the CRTC on a province-wide basis, and the same goes for Nova Scotia and Alberta.

218
In all of these various provinces, in several provinces - Ontario, B.C., and Quebec - the telephone
companies and the electric utilities have joint ownership of poles. And, of course, wherever there is a
joint grid, the cable company is renting space from the telephone company in one instance, that is, Bell in
Ontario, and 200 yards along -- they're paying the CRTC an established charge for renting that pole, and
200 yards along, they're trying to rent or put their attachment on an electric utility pole for which the
electric utilities are saying there should be no regulation, or local regulation, whatever that means.

219
The same pattern is true in the United States. Many of the states, including Michigan, New York,
California, and Vermont, have established uniform state rates for all electric utilities in the state and the
FCC administers a formula similar to the one being proposed by the CCTA, a usage base rate which
yields, incidentally, rental charges much lower than the ones now being proposed by the CCTA.

220
Finally, Mr. Chairman and Panel, this is not rocket science. I mean, this Board, every week of the year,
deals with matters more complicated than this whenever it deals with major rate cases. This ought not to
take a whole lot of time. There are issues, but it is not rocket science. It's a lot simpler than a major rate
case.

221
And so in summary, on this issue, we say that the -- this proceeding is really not about whether the Board
should regulate at all. Clearly, it should, and we are confident that it will once it sees all of the evidence
in the case. The real issue is, rather, the level of the charge and the formula that underpins that. And
therefore, from or point of view, it makes no sense at all to talk about splitting off an issue that is not the
central issue in the case. It's a sort of gratuitous move that doesn't accomplish very much.

222
I want to comment briefly on two other problems we have. We think that this motion invites -- and that
these next two points are procedural in nature. But we think that this motion invites the Board, in effect,
to misuse its powers under section 8, and to make a decision that would be very unfair to the CCTA. The
issues list for the proceeding was determined by this Board in Procedural Order No. 3, in July 7th of
2004.

223
As you know, the parties had recommended the proposed issues list to the Board following an issues conference on June 29th where the parties, including the EDA and the CEA, reached a unanimous agreement on the issues list for the proceeding.

224
The parties spent most of the day with Board Staff in attendance discussing and negotiating an acceptable issues list. There was debate and discussion of a multi-stage process or of whether or not one issue could be, sort of, set out as a priority issue, but there was no agreement on that point. All parties made compromises to avoid a contested issues list and move the process forward and expressed general satisfaction with the result. No party challenged the agreed list, and the Board was able to cancel the issues day and approve the issues list.

225
The parties have prepared their evidence, including interrogatory responses, on the basis of that list. In the CCTA's view, nothing has transpired between July 7th and today which calls into question the conclusions reached at the issues conference. Certainly, nothing to justify such a radical change to the scope of the proceeding.

226
If the Board were to accept the motion, it would call into question the fairness and integrity of the entire issues delineation process. Why have an issues conference and an issues day if a party can come along several months later on the eve of the settlement conference and propose a 360 degree change?

227
As we said in our letter of September 20th, the time for this matter to be raised by the EDA, and in the absence of agreement settled by the Board, was at the issues conference and the issues day respectively.
The CCTA, we would never have agreed to the inclusion of item 1 on the issues list, never, had we imagined for one moment that the EDA would try to make it, effectively, the sole issue of the first tranche of the hearing. We would never have agreed.

228
What the EDA is asking, in effect, is to change the subject matter of the hearing. They have stated that if it is successful in the proposed phase one, there will be no proposed phase two. That's a fundamental change in the hearing at the 11th hour.

229
Finally, section 8 we don't think is an appropriate basis to justify the Board ordering such a major change. The Board's traditionally used its motion powers to make decisions on motions in the course of a proceeding to rule on matters of a procedural nature, such as whether requiring parties to produce

specific information in response to interrogatories, dealing with claims of confidentiality and exceptions
to those claims, adjusting dates for the filing of evidence, IR responses, argument and the like, scheduling
of panels, decisions -- and then the decisions in the hour-to-hour conduct of the hearing, whether
witnesses must answer questions and so on. I think these are different questions.

230
I know what the rules say, but I think these are different questions. These are different questions than the
sort of -- than what you're being asked to do now, and I think there would be some significant procedural
unfairness in acceding to this motion at this time, given the lack of any change in anything new since the
issues day.

231
Finally, two points. We think it would be highly prejudicial to the CCTA for several reasons. First of all,
we have done a great deal of work in assembling evidence, including all and complete responses to many
interrogatories. We've hired expert witnesses to prepare material on all of these issues, what the
appropriate level of charge should be, what the regulatory practice is elsewhere, what the appropriate
formula should be. We provided a great deal of information to the Board in our interrogatory responses.

232
The EDA, by contrast, appears to have done little work and filed incomplete, in some cases, almost
perfunctory answers to several questions. So we have a situation where one party to the dispute has
provided much more information than the other.

233
Moreover, the EDA waited until the interrogatory process of the other parties were in to file its motion to
put the proceeding in two and have the Board consider only one of these issues, and delay the
consideration of the other issues until some indefinite time in the future.

234
Finally, on this point, the motion is prejudicial because if it were accepted, it would mean a substantial
delay in the proceeding. It's already been nine months since the CCTA filed its application in December
19th, 2003. Now, we appreciate the tremendous volume of work this Board has taken on, or has been
directed to take on by the government, at the same time the CCTA is entitled to a reasonably expeditious
treatment of its case.

235
Every month that passes exposes the cable companies to more uncertainty, to more pressure to pay rates
higher than it believes are justified by the monopoly utilities, more uncertainty about its right to attach
poles at a reasonable price. This while it is engaged in increasing competition with affiliates of the same
utilities, not to mention the telephone companies. The telephone companies have no such problem, given

their shared ownership of pole networks with electric utilities.

236
The Board, the CCTA, and the other parties concerned agreed at an issues conference where the parties
agreed on the issues for this proceeding. We agreed to allow the EDA an extra month to prepare their
evidence. It has now done so. We say there is no reason for a further delay.

237
Finally, a point from the point of view of public policy, if you like. We think these issues are all
interconnected. They don't stand in isolation from one another. To us, our submission would be the Board
needs to consider all of the evidence in the case, the cross-examination and the argument on all the issues
to make an appropriate argument -- to make an appropriate decision on each of the issues.

238
As an example, we hear, for example, that we're seeking heavy-handed regulation. On the other hand,
we're proposing a uniform rate and a formula that would support that uniform rate, and that both the
formula and the level of the charge, and whether it should be a uniform charge, are all subsequent issues
in this proceeding. What could be simpler from an administrative point of view than a uniform rate with a
uniform formula?

239
And so when the Board decides whether it's going to regulate, it's also at the same time going to take into
-- it's going to take into account how simple or difficult that regulation will be. That will be part of its
decision of whether to regulate or not. And so what I'm saying is, in order to make that part of the
decision, you need to have debate and discussion and a full review of the evidence on the question of
what kind of regulation we're talking about. Uniform, simple formula, what is being done elsewhere,
what other provinces have done, what other states have done, what the FCC has done, what the CRTC
has done. How telephone attachments are treated vis-a-vis attachments to electric utilities. All of these
issues come together.

240
You also need to understand the fact that we've, as I understand it, my colleagues or my clients have
virtually reached agreement with the group, the Mearie group representing 55 of 96 LDCs on all aspects
of the agreement, other than the charge.

241
So all of these things go into the fabric of your decision on how you're going to regulate and whether you
should regulate. And so the issues are intertwined, and that's why we agreed to the issues list as it was
and didn't wish to split off questions in some sort of a rigid hierarchy. We don't think there is a hierarchy
of issues. We've always said that. We think all of the issues are important.

242
And I can sit here and go on about what I think is the most important issue, and my colleagues have told
you what they think the hierarchy of issues is. But I think our real submission is they're all important,
they're all intertwined. So thank you.

243
In summary, for reasons of good public policy, in recognition of the fact that this hearing is, in large part,
in our view, about how the Board should regulate rather than whether, for reasons of procedural fairness
and avoiding extreme prejudice to the CCTA, I would urge the Board to deny the motion.

244
Thank you.

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MR. KAISER: Thank you, Mr. Brett.

246
Mr. Ruby, Ms. Friedman, Mr. Brett says that you are in agreement that this Board has jurisdiction on this
matter. Is that the case?

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MS. FRIEDMAN: That's correct.

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MR. RUBY: Yes, Mr. Chair.

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MR. KAISER: Mr. Dingwall, any views on that?

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MR. DINGWALL: We would support that same conclusion, sir.

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MR. KAISER: Thank you.

252
One question, Mr. Brett. You mentioned that it is the case that this was filed back in December of last
year. How long have your people been negotiating with the LDCs on these rates and charges?

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MR. BRETT: Well, Mr. Chairman, as I understand it, the negotiations actually started back -- as you
know, the previous agreements expired on December 31st, 1996, and so on the issue of --
there's two separate negotiations to speak of. There's the negotiation I alluded to in my
comments between the MEARIE group and the CCTA on the issue of the contract, the
model contract. Now, that negotiation has been going on for about four or five months, I
think. And our understanding is that they've reached -- the parties have reached
agreement on that agreement, except for the financial issue, the issue of the level of the
charge and the formula for the charge.

254
Now, that still represents a fairly substantial agreement, you know, accomplishment. But obviously the key -- I think both parties view the key points as the level of the charge and the formula. And on that side, negotiations have been going on between CCTA members, and these would be the various cable companies in the province. There's a number of them, as you know, with Rogers, Cogeco, and Shaw being the principal ones, but there are a number of others.

255
They've been negotiating with their counterpart LDCs in one fashion or another since 1997, and have been able to -- unable to reach agreement. And that is why they brought the motion -- they brought the case to the CRTC in 19 -- I guess it was decided in 1999, but it was brought in '97. So they started negotiations in '97, negotiated throughout '97, and then brought a case to the CRTC which -- and continued to negotiate, as I understand it, and have continued to negotiate ever since. I mean the negotiations at the individual level have been a constant activity in the last several years, since the end of '96. But there have been a lot of agreements reached that are of an interim nature; in other words, we will agree to do such and so, but if and when a regulator sets the rate, it will replace what we've agreed to, and retrospectively, to the beginning of the period. So it's sort of a kaleidoscope of discussions.

256
MR. KAISER: Thank you.

257
We will hear next from the CEA. Mr. Ruby, you have a motion you filed on September 24th, requiring...

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MS. FRIEDMAN: Mr. Chair? Sorry to interrupt, Mr. Chair, I was hoping to have a chance to reply.

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MR. KAISER: Oh, I'm sorry.

260
MR. LOKAN: And also, I was hoping to make a very brief submission on behalf of the Power Workers' Union.

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MR. KAISER: All right.

262
SUBMISSIONS BY MR. LOKAN:

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MR. LOKAN: For the Power Workers', we support the position of the EDA. We think that bifurcation makes sense in this context, and adopt the reasons given.

264

The one additional point that I would make is that a bifurcated proceeding may provide the occasion for more constructive negotiations. I'm thinking of what this Board recently did in the combined distribution service area amendment proceedings where some matters of principle were settled first and, in its decision, the Board certainly expressed a preference for negotiated outcomes that are consistent with the public interest.

265

It may be particularly, as defined by the EDA where they say it's not just regulate or not but perhaps give, if you are going to regulate, some indication of whether it's light or heavy, that that kind of preliminary ruling could be what's necessary to tip the parties back into a more constructive dialogue.

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Those are my submissions.

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MR. KAISER: Thank you.

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Ms. Friedman?

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REPLY SUBMISSIONS BY MS. FRIEDMAN:

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MS. FRIEDMAN: Thank you, Mr. Chair.

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Further to your earlier question, all parties here agree that the Board has jurisdiction; that the truth of the matter is, the Board having the power to regulate an area does not mean the Board determines it is in the public interest to actively regulate in that area.

272

So absolutely, the Board has the jurisdiction and the power to regulate pole access rates. We would submit it is incumbent on the Board to determine, first, whether it's in the public interest that it do so, and it's why we somehow have elevated issue number 1. Issue number 1 is clearly on the issues list: Should the Board regulate? And, as we say, it's not a foregone conclusion that the Board must regulate the attachment rate.

273

MR. KAISER: Is there some reason why you chose to file this motion so late? The points made by Mr. Brett that you had this issues conference and he went out and answered interrogatories that dealt with the whole list the issues, and now you bring a motion, as he says, on the eve of the settlement conference to bifurcate. Why are you so late with this motion?

274

MS. FRIEDMAN: Really, the strategic question came up when we saw

the interrogatory questions,
and we realized that the effort was going to be to keep -- to make the proceeding
into the details of costing data. And we realized that the principle of regulatory
efficiency would say, Well, let's see if we need the data first. So it was really as
part of that.

275
In light of hearing Mr. Brett's submissions, I wish I hadn't waited until the day interrogatories were due to
file the motion. And that was just because of the delay in obtaining instructions on it and consensus so
that we can file the motion materials.

276
But it was really when we realized that principles were not being focussed upon at all by the CCTA but
detailed costing data, whereas we were focussing on the principles. And so we thought some resolution
had to be brought to make the proceeding simpler; otherwise, we're really speaking from two different
ends of the spectrum - one from the level of principle and one from the level of detailed data.

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MR. KAISER: Thank you.

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MR. SOMMERVILLE: Ms. Friedman, isn't Mr. Brett right when he says that your motion sort of makes
nonsense of the issues list? How do we read this issues list in the context of your
motion?

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MS. FRIEDMAN: As I said, in the EDA submission, it's completely consistent with the issues list.
Clearly, it's an issue. When we attend the issues conference, we recognize what
all of the parties think are in issue in the proceeding. We know that the rate,
ultimately, if the Board is going to regulate, is in issue, so we would never deny
that that belongs on the issues list.

280
But as we say, this application is not brought by the entities who are being regulated. It's not the LDCs
who are saying, You are our regulator; please regulate us on this issue. This is an outsider coming and
saying, Board, you must regulate in this area. All that we ask the Board is to consider, within the scope of
its mandate, whether it is true that it needs to regulate this area first, before, as we say, and we'll hear
more about that, detailed cost data is gathered.

281
One of the points that I need to make is, Mr. Brett, I would submit, gave some evidence about the history
of negotiations. What you will find, Mr. Chair and Members of the Board, is that the LDCs have a

completely different side of the story to tell on what has happened during the negotiations. And so to accept Mr. Brett's submissions as evidence that, you know, negotiations have been going on but have been impossible and so you must regulate is simply, I would submit, uncalled for.

282

I don't want to fall into the trap of giving evidence myself, but I will just say this one thing, that we do intend to put forward a panel of LDC witnesses to speak to that; what has happened, what has happened in negotiations, et cetera. So I urge you not to take Mr. Brett's submissions as evidence that regulation is necessary and is a foregone conclusion.

283

Again, I feel the need just to point out a lot of talk is happening now about the Mearie group versus the EDA, and I better point it out at the beginning. The EDA and the Mearie working group are completely different. I was actually a little bit surprised to hear that there are 55 members in the Mearie working group. I didn't realize it was that extensive, but I can tell you this. The Mearie working group was not able to get sign off of every LDC in the province to become its negotiating agent to negotiate with the CCTA. And therefore, whether it is 55 or some other number, some LDCs have agreed to coalesce in a Mearie working group to negotiate with the CCTA.

284

And Mr. Brett, obviously, has, through his client, lots of information about that proceeding, about those negotiations. The information that I have received is that the CCTA will not go further to negotiate rates. In other words, it implies to me that this proceeding is strategic, in the sense that they would be able to negotiate rates, they've been able to negotiate other things, but for this proceeding. And, therefore, I just -- I just would like to just make sure there is not too much of a spin placed on what's been happening at the Mearie group, because we don't have evidence as to why those negotiations have stopped at the level of rate making or rate methodology.

285

On that same point, just to point out, the Mearie working group does not bind the EDA. The EDA, in this proceeding, has not agreed to any terms of access. We do not have that mandate. Again, had it been a situation where the Mearie working group was able to get sign off of every LDC in the province, then there would be a commonality and, quite frankly, the EDA and the Mearie working group would have somehow intervened in this proceeding together, but that's not the case.

286

Because there is not -- there was not sign off from every member, the EDA has intervened in this proceeding to give the overall perspective of the LDCs in the province, which is to allow them to continue to negotiate, whether individually, locally, or in the context of some groups like the Mearie

working group.

287
Thank you, Mr. Chair.

288
MR. KAISER: May I just ask you, Ms. Friedman, the 55 members of this Mearie working group that
Mr. Brett referred to, are they members of the EDA as well?

289
MS. FRIEDMAN: That's right.

290
MR. KAISER: And your position, or I should say, EDA's position was, you thought your members
should all do their own thing.

291
MS. FRIEDMAN: That's right.

292
MR. KAISER: But the 55 have clearly chosen otherwise.

293
MS. FRIEDMAN: No, let me explain a bit about that.

294
What the working group is, their mandate was to form a model agreement and then attempt negotiations.
No individual member of the working group is bound to that form of agreement. And, in the context of
that agreement, there are clauses to allow for individual negotiation.

295
So that is not an agreement that will cause the 55 to walk away and be bound by a form of agreement
from those negotiations. It was to form a model agreement that can give individual LDCs something to
start with, that had some basis of principle because the parties had had discussions about it, when they go
back to negotiate with their local cable company.

296
So not even any of those 55 are bound by a strict form of agreement, even if those negotiations are
completely successful. It was just to form a model to help them out.

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MR. KAISER: Leaving aside who is the bad guy and who is the good guy, do you dispute Mr. Brett's
submission that these negotiations have been going on for six or seven years?

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MS. FRIEDMAN: Hard to answer that question without giving evidence, but I don't dispute that the
parties have been talking for this many years. The reasons why negotiations may
or may not have been fruitful -- and I would say many local negotiations have
been --

299
MR. KAISER: I'm not interested in argument about the reasons or who is good. But these discussions, these negotiations have been going on a long time; isn't that correct?

300
MS. FRIEDMAN: That's right. Against the backdrop of the CCTA moving for regulatory intervention, which I would say colours negotiations quite a bit and makes the parties entrenched in their positions quite a bit.

301
MR. RUBY: Mr. Chair, just as a point of information. Maybe I could be helpful.

302
MR. KAISER: Thank you.

303
MR. RUBY: I acted as counsel for the distributors who were involved at the CRTC and ultimately through to the Supreme Court of Canada, so I've been involved in this since '96 or so. It is my understanding that there was a great deal of negotiation in 1996 when the old agreement was coming to an end, very little until the Supreme Court of Canada ultimately decided the issue of CRTC jurisdiction in May, 2003, and I'm not aware of, personally, of what has happened since then.

304
MR. KAISER: And I presume the fact that it went to the CRTC was indicative of the fact they couldn't come to an agreement between themselves; is that right?

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MR. RUBY: That was the position put forward by the CCTA.

306
MR. KAISER: But was that the case from the point of view of your client?

307
MR. RUBY: The point of view, I think, of my client at the time was that negotiations should have continued and that that was the appropriate way to resolve things, the way it had for the 30 years previous to that.

308
MR. KAISER: I see. Any other submissions from anyone else on this matter?

309
Let's proceed next then, if we can, to your motion, Mr. Ruby, that's the -- I am reminded we usually take a break at 11, so we will do that, for 15 minutes. And we will hear from you Mr. Ruby when we come back.

310

MR. RUBY: Thank you, Mr. Chair.

311

--- Recess taken at 11:00 a.m.

312

--- On resuming at 11:26 a.m.

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MR. KAISER: Mr. Ruby, you're to bat.

314

MR. RUBY: Thank you, Mr. Chair.

315

If I may, I'd like to start with adding one additional piece of information to a question I answered immediately before we took a break. Mr. Chair, you asked about if there had been any negotiations since '96 when, what I think of as, the problems started. And I can tell you, this wasn't a client I acted for at the time, but Hydro One Networks, in fact, has negotiated with the CCTA, and ultimately with its member Ontario cable television companies, an agreement, a pole attachment agreement, in 2001, which is coming due this year. So, in fact, on a utility-by-utility basis, there have been some successful -- at least one set of successful negotiations. And I understand Hydro One, in fact, has 78, I think it is -- 75, more or less, agreements in place with respect to use of its poles.

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MR. KAISER: That's Mr. O'Brien's organization, isn't it?

317

MR. O'BRIEN: That's correct.

318

MOTION BY THE CANADIAN ELECTRICITY ASSOCIATION RE DISCLOSURE OF INTERROGATORY RESPONSES:

319

SUBMISSIONS BY MR. RUBY:

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MR. RUBY: With respect to the CEA's motion concerning materials filed in confidence, it's my hope that this will be the simplest motion of the day to deal with; it's relatively straightforward. And it may be useful if you have the compendium that I provided to the Board, the buff-coloured book, and you turn to tab B and the six tabs behind it.

321

The essence of the CEA's motion is that two of the parties have filed data in confidence with the Board. The best that I can tell from what they've publicly provided is that it is price information, that is, the prices that cable companies in Ontario have agreed to with Ontario electricity distributors. In some cases,

the indications on the public record are better than others as to what it is, but that seems to be the gist of
it.

322
In light of the presumption that the Board has that all materials in a proceeding are to be filed in public,
and the fact that the CCTA has not provided any evidence whatsoever that the parties to this agreement
keep this data confidential, it's my submission that the data should either be withdrawn by the CCTA
from the record considered by the Board, or that it should be disclosed to all of the parties.

323
So, in a nub, that's it. I've provided at tabs 5 and 6 the Board's rule, just an excerpt of the Board's rule,
dealing with motions, and then the key guidelines in dealing with the filing of confidential information.
Nothing turns in particular on this, except on one point that I would draw to the Board's attention.

324
The CEA, as is proper for these types of confidentiality motions, brought a formal motion by notice of
motion, which is what is required, under Rule 8. And then, under Rule 8.04, what is required is that a
party who wishes to respond has to file and serve, at least two days in advance, a written response, an
indication of oral evidence, or other evidence in appropriate affidavit format.

325
And what that means for this particular motion is that, when the CEA says, Well, there's no indication
here that the other parties to these agreements, that is, the LDCs, are keeping their information in
confidence, their cost -- not cost but their price information, price for access to poles, then it is up to my
friends at the CCTA to put in an affidavit and say, in fact, this isn't confidential information. And the first
indicator, and main indicator, of confidentiality is that the parties themselves, both parties, treat it as
confidential.

326
And with respect, that hasn't happened here. There have been no responding affidavit materials filed by
the CCTA. So all this Panel has before it on this motion are the bald statements made by the CCTA that
the confidentiality rules of the Board should attach to this evidence, and that's it.

327
so with respect, although I will make a number of other points, in my submission, that is sufficient for
this Board, this Panel, to dispose of the motion on the basis that the materials should either be disclosed
or withdrawn.

328
That said, it's worth looking at exactly what has been provided. And if I could ask the Panel to turn to tab
3 of my compendium. This is the answers given by the CCTA to two Board

interrogatories. And in my
submission, it doesn't make a difference that it was the Board that asked for this information, the Board
Staff. If information is filed in confidence, it's impossible for the other parties to test its accuracy if they
don't know what the information is.

329
But in the first paragraph on the first page, Board Interrogatory 2, under the heading "Response," the first
paragraph is all that has been presented with respect to why the information is confidential. And the
CCTA says it is sensitive and its disclosure would cause harm. Well, there is no separate evidence of
that, but for the moment, I will let that pass.

330
But what there isn't is an indication or even a statement that the parties to the agreements, that is, the two
parties that have agreed on a price, which is what's been submitted in confidence, it appears, that both
parties have agreed that the information should be kept confidential. And to the best of the CEA's
knowledge, in Ontario, there aren't any LDCs who treat the price of pole access as confidential
information. And if it's publicly available from one party, another party can't claimed that it's
confidential.

331
Now, the CEA's in a bit of an awkward position because, of course, it doesn't represent all 90-odd LDCs
in Ontario. We don't have access to that information. So we're put in the awkward position of having one
party say, The prices are such-and-such, without our being able to verify that information. Or in the case
of this material filed by the CCTA, we can't even figure out which LDCs they're talking about so we can
go back and ask the LDCs for the information, to the extent that they'll give it to the CEA as opposed to
any other organization.

332
So again, in summary, that's the problem with the CCTA submission. And if you look, again, two or three
pages in, at Board Interrogatory No. 6, you, again, got the same type of paragraph, the first paragraph
under the heading "Response," which merely says that it's sensitive and its disclosure would cause
specific harm. But, again, no allegation that the parties have treated this confidentially.

333
And the reason that I drive this home is because, if the Board can turn to tab 2, which is the cover letter
that Mr. Brett filed with the Board covering the CCTA's interrogatory responses, the reason he gives for
filing it in confidence is a record type number 5, which is the record that -- I'm sorry to ask you to do a
little bit of flipping here. But if you turn to the last tab in the book, tab 6, I've excerpted the section of the
guideline on confidentiality. And at page 14, you have the record types. And the Board will be aware, of

course, that the way it typically treats confidentiality is if you come within one of these five or six record types, you have almost a presumption that the information is confidential. And if it doesn't, then you have to make an argument on some other basis.

334
But what the CCTA has pointed to is record type number 5, that is, section 17 of the Freedom of Information and Privacy and Protection Act. Now, that provision does deal with third-party information. But the key aspect of it, or the first -- getting to first base means that you have to -- it has to be confidential information. Yes, you have to have information that's sensitive and can cause commercial harm. Those are aspects of section 17. But parties don't get to treat information that isn't treated as confidentially, generally, as confidential for the purpose of a regulatory proceeding.

335
Now, again, I don't want to dwell on this, but MTS Allstream, and its interrogatory response that we're seeking an answer to is at tab 4 of the compendium that's before you.

336
MR. SOMMERVILLE: Mr. Ruby, just before you proceed. It doesn't strike me as counter-intuitive that a specific contractual arrangement between parties has some spaces of confidentiality interest attached to it. And that's really what we're talking about here, isn't it? Specific contracts, between CCTA members in one case and some other information in other cases, related to a specific contractual arrangement that has obvious commercial implications for others who may be negotiating like contracts. Isn't that normally the kind of thing that one would see as being -- having commercial sensitivity?

337
MR. RUBY: It may have commercial sensitivity, without being confidential. Parties can and have, in other provinces, explicitly agreed in their pole-attachment agreements, that the prices, for example, will remain confidential.

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You have an example of that on the record of this proceeding in the case of Hydro Quebec. This Board has before it the Hydro Quebec standard agreement with cable licensees, and it explicitly provides that certain aspects of that agreement, one of which is the price, will remain confidential; that is, the parties have decided to treat their information as confidential.

339
But without any other -- any indication and it may be -- it doesn't have to be in the agreement. It could be a letter. It could be that the parties -- the CCTA could have produced an affidavit from the LDCs saying:

Yes, we don't have a confidentiality agreement or provision, but we treat this information as confidential.
We don't show it to anybody else. Nobody gets to see it. We've never produced it to the Board in any
other form. It hasn't formed part of a regulatory filing. We haven't answered an interrogatory in public
that makes this information publicly available.

340
The CCTA could have put in evidence, in the right circumstance, if the facts were such, saying: This
information is treated as confidential. And if it was important to the CEA to maintain confidentiality and
not rely on the practice, if I can put it that way, of the LDCs, then it could have insisted on a
confidentiality provision.

341
MR. SOMMERVILLE: I'm a little puzzled. As I understood your submissions with respect to cost
eligibility, you suggested that the interest of your association was in the general
issues and not with respect to the specific arrangements that arise or may arise
between, for example, cable operators and specific utilities. That was not the tier
of interest that your association had. You were interested in the broad range of
things.

342
And in this argument, I see an interest that is really driving very deep into the very specific arrangements
between these parties. And -- well it's as simple as that. That puzzles me.

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MR. RUBY: I appreciate that. Maybe I could answer it this way. This is why the CEA would like to
get this information.

344
This morning, for example, you've heard comparisons drawn between rates across Canada. Mr. Brett
alluded to what the rate was and had been set in Nova Scotia. That is one argument that apparently may
be made to the Board is that it should have comfort, in a CRTC-type of ultimate rate, leaving aside the
formula, because $15, for example, to pick a number, is roughly what everybody is charging in Canada.
So that the Board can take comfort in an Ontario $15 regulated rate.

345
What that involves then is comparing rates across Canada. Now, the CEA has information about what's
going on outside Ontario and with respect to -- not universally, but does have some information, and with
respect to its own members in Ontario. But if a comparison is going to be drawn, as apparently it's going
to be, across the spectrum, then the CEA should be entitled to have that information and make sure that
the rates that are being compared are apples and oranges.

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MR. SOMMERVILLE: But why disaggregate? Why do you need it to be disaggregated?

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MR. RUBY: So that you can make sure that all of the rates are being charged for the same thing.

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MR. SOMMERVILLE: That's your interest?

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MR. RUBY: The interest is to make sure that the apples and oranges -- whatever the numbers are, they are. But, for example, some utilities roll into their annual rate a charge for what's been variously called tree-trimming, vegetation management, that is clearing brush and trees from around the wires that are on poles. Some utilities wrap that into the annual charge and, for some, it's an extra charge. You pay fifteen dollars, for example, plus another two or three dollars for that.

350
That's the kind of information that could be important to the Board in comparing the apples and oranges.
Now, it may be at the end of the day that we're satisfied with what the CCTA produced, but we can't tell if we don't get to see the data.

351
MR. SOMMERVILLE: That's certainly helpful.

352
MR. KAISER: Mr. Ruby, I have a question. You're cooperating with Ms. Friedman's client, calling evidence. Why don't you just ask the EDA for this data?

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MR. RUBY: Well, I'm not sure at the moment the EDA has the data, and we have been cooperating closely with the EDA.

354
MR. KAISER: Why wouldn't they have the data from their own members?

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MR. RUBY: Well, they might be able to get it. I don't know. I don't have access to their members. But at the moment, what has happened is there is a party to the proceeding, in fact, the proponent, that in the context of the interrogatory process gives the Board information that it doesn't disclose to the other parties. And the Board's own basic rule on confidentiality is that Board proceedings are open and information is not to be kept confidential unless there is a reason to do so. And one of the reasons to keep information off the public record is because the parties have treated it confidentially.

356

MR. KAISER: And we're not disputing that. What you say is perfectly right. I'm interested in more of a practical approach. You've got two associations, some overlap in membership, you're national, they're provincial, I guess, cooperating on the evidence. They must have the data. Did you not ask them?

357

MR. RUBY: Well, part of the problem is that even if we got the data from the EDA, there would be no guarantee that it matched exactly what the CCTA had put in front of the Board. What our motion is, is to get to see what the CCTA has given the Board. Asking the same question of the EDA or its members wouldn't necessarily get you exactly the same answer. In an ideal world, you would like to think it would, but particularly in the context of a proceeding that's moving along at a fair clip, excuse me, with only a couple of weeks that have passed since the interrogatory responses and then the reply evidence has been filed, the -- in my submission, the proper regulatory approach is to have the party that produced the information to the Board to provide it.

358

Now, it's also maybe of interest that that is the reason why I say that an alternative to disclosure is the CCTA withdrawing the evidence. And I would be quite content with that. If the CCTA can't or won't put forward the evidence but doesn't want the information disclosed, then it shouldn't put it in front of the Board. It can't use what it doesn't have, and I'm in the same position.

359

MR. KAISER: All right. Did I understand you to say, however, that at least according to your knowledge, the members of the EDA do not treat these prices as being confidential?

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MR. RUBY: That's right. To my knowledge, and I can only speak to the members that are CEA members that are participating in this process.

361

MR. KAISER: And which seven are those, by the way?

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MR. RUBY: They're listed. They're actually in the compendium.

363

MR. KAISER: All right. What tab?

364

MR. RUBY: Tab 3.

365

MR. KAISER: Tab 3, thank you.

366
MR. RUBY: You will see there, they're listed by province, and then you can look at the list for Ontario.

367
MR. KAISER: Are those your submissions?

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MR. RUBY: If I may, the only other brief submission is to just point out a slight difference with the Allstream evidence.

369
The Allstream answer to the interrogatory we're raising is at tab 4, B4, of the compendium. And if you turn to the second page. I only have the abridged version. The Board, obviously, would have the unabridged version.

370
In my view, this does one step better than the CCTA at least, because at least it tells us a little bit about the information that's being disclosed.

371
The CEA -- I'm guessing that it's price information. It looks like price information, but who knows what it really is.

372
MTS has, in my submission, done a better job, but we're still in a position where you have information that's being provided to the Board that we don't get and, therefore, if it became appropriate, couldn't cross-examine upon, for example.

373
So not to put too fine a point on it, with respect to the MTS evidence, all we're looking for is the information that's marked by a number sign in the second column.

374
MR. KAISER: One of the assertions, I believe, is that your members - and it may be Ms. Friedman's members - have affiliates that compete with the telecoms; is that the case?

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MR. RUBY: That's an assertion. It's certainly an allegation that's been made in that proceeding, and there's quite a --

376
MR. KAISER: Is it accurate, or not?

377
MR. RUBY: The evidence that's on the record, I think, to fairly characterize it, and Mr. Brett will, of course, correct me if I get this wrong, is that certainly the CEA's evidence was, and is, that there is very little competition with cable companies in the telecommunications

market with respect to affiliates. Some CEA members - and it's not just in Ontario, it's across the country - either through affiliates or directly in provinces that allow for it to happen, have ventures, if I could put it that way, that provide telecommunications services to the public for compensation.

378
The telecommunications services vary quite a lot, but the evidence is that if they compete with what the cable companies do, it's on a very, very minor basis.

379
MR. KAISER: The reason I ask it is, unfortunately, MTS is not here and the lawyer for Videotron-Quebecor is not here. I'm just talking about telecoms now. The cable boys can take care of themselves. But you're telling me that some of your clients do have affiliates that provide telecom services?

380
MR. RUBY: They do. And some of those services are in competition with companies like Group Telecom and MTS Allstream. And, in fact, in the case of MTS Allstream, MTS Allstream in Manitoba, in fact, is the incumbent telephone company. So just about anything you do in the telecom business would compete with them.

381
MR. KAISER: Thank you.

382
MR. RUBY: Those are my submissions.

383
MR. KAISER: Thank you, Mr. Ruby.

384
Ms. Friedman, do you have a position on this motion?

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MS. FRIEDMAN: No, the EDA doesn't take any position on this motion.

386
MR. KAISER: Before I turn to Mr. Brett, does anyone else have a position on this motion?

387
Mr. Dingwall?

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SUBMISSIONS BY MR. DINGWALL:

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MR. DINGWALL: Very briefly, sir.

390
Energy Probe's view is that, in the event the information is of value to the world at large, some degree of sensitivity might be undertaken with respect to its distribution, and I will leave

Mr. Brett to speak to the
degree of sensitivity.

391
But from our position, we're seeing that the outcome of this process could be a uniform rate, or it might
not be. And if it's not, is there a potential that harm could arise to the individual service agreements that
are in place? Yes, because if there's some indication as to who's the lowest and who's the highest, then
that might impact where negotiations go in the future.

392
If we're working on the premise that a standard agreement does not emerge from this, there is some
potential that the existing agreements would have to continue. So we do see, and have some
understanding for the suggestion of sensitivity.

393
With respect to process, it's conceivable that, for the purpose of completing this hearing, sensitivity might
be addressed through some form of written undertaking, as has been used on the gas side, which enables
counsel or principal clients to gain access to the confidential information to the degree it's necessary to
participate in the hearing. And, from our perspective, we don't see a need, from our position, to have that
information at this point in time.

394
MR. KAISER: I want to thank you for reminding me of that.

395
Mr. Ruby, would you be satisfied if the information was provided to you, as counsel providing an
undertaking to the Board, that you would keep this information confident? Would that meet your
requirement?

396
MR. RUBY: It would, to a point. And I would be in the usual situation, in that case, of having the
necessity, perhaps, to reapproach the Board if, in my view, I needed the assistance of my
client to deal with the information. And in that case, it may be that I only need to
disclose it, for example, to the Ontario members of the CEA. There may be a way to
narrowly craft an order in that respect.

397
MR. KAISER: Mr. Brett, do you have a problem with that?

398
MR. BRETT: I have a problem, I think, Mr. Chairman, with the last sentence, about disclosing it to the
Ontario members of the CCTA. That's exactly what we're concerned about. Sorry, the
Ontario members of the CEA. Because they are also five of the -- or seven of the
distributors with whom we have been or may be negotiating in the event, or at least until

such time as there is a uniform rate, or in the event that there isn't one.

399
I have no problem with the idea of Mr. Ruby having the information on a confidential basis to him, if that helps him in his understanding of -- we've done this in the gas -- as you know, in the gas area on occasion. But I would have a problem with disclosure if he intends to use this as the first step, you know, to -- if he really thinks he'd like to talk to his clients about it, I have a problem there.

400
MR. KAISER: Well, he said he'd approach the Board before taking such further steps.

401
MR. RUBY: I would undertake to do it. But I do have another suggestion, Mr. Chair, that may solve the problem.

402
The CCTA, you'll recall, or MTS for that matter, didn't put forward this information. This information was provided in answer to Board Staff interrogatories. I have to admit, I don't quite see the relevance of the information in the first place, that is, what the current prices are, if that is what's been disclosed. I obviously don't know. But it may be that if the Board determines that it doesn't need the information, despite the Board Staff asking for it in trying to provide a fulsome record, the CCTA didn't put it forward so apparently it didn't think it was important for the Board to have that information in the first place.

403
MR. KAISER: You've lost me. What's your submission?

404
MR. RUBY: My submission is, maybe the Board Staff would withdraw the request, or we'd just strike the whole interrogatory off the record.

405
MR. KAISER: Well, it could be --

406
MR. RUBY: I don't know if that is acceptable.

407
MR. KAISER: The Board Staff has withdrawn the request, but you haven't withdrawn -- this is your motion.

408
MR. RUBY: Sorry, I didn't understand, and it may be that it's completely my misunderstanding. But I understood that material had been filed in answer to a Board interrogatory that is currently on the record and will be considered by the Panel in the course of the hearing. If that's no longer the case, that would solve the problem, certainly.

409
MR. BRETT: Maybe I could help a little bit.

410
MR. KAISER: Yes, sir, go ahead.

411
SUBMISSIONS BY MR. BRETT:

412
MR. BRETT: Mr. Chairman, Panel, maybe just to help the Board. It is the case that the CCTA, in responding to the Board IRs No. 2 and No. 6, did file -- we filed two things. We filed an abridged -- well, first of all, we filed four pieces of paper, four separate sheets, which outlined on them the responses that the Board Staff -- the questions the Board Staff had with respect to the price in the existing agreements; whether the agreements were interim or final, "interim" meaning an agreement that was -- in which the price would change if the regulator set a price. The price would default to the regulator's price. And then also the status of the discussions with each of the LDCs.

413
Those were -- I think number 2 asked for the status -- number 2 of -- question number 2 of the Board said: "Please indicate whether there is currently a pole attachment agreement, the state of negotiations if there is no agreement in place, and, if applicable, whether the distributor has taken any steps to inhibit/block the use of its poles." And a question about whether they're uniform. "What agreements are in place? Please indicate whether the agreements in place are standardized for each CCTA member." And then in 6, they had asked -- basically, they asked, Board Staff Interrogatory No. 6: "What are the current annual charges per pole being charged to each CCTA member accompanied by each Ontario electricity distributor. Do CCTA members consider them to be unreasonable, and so on?

414
So what we did, the only part of these answers that were in confidence, we filed in confidence, were the four sheets where we listed the actual price for each existing agreement and the status of the negotiation. We then prepared an abridged, a summary version of that -- as you know, a summary version or an abridged version of that aspect of each response.

415
For example, Board Staff interrogatory 6, on page 1 of our response, we provided the ranges. In paragraph 2, we say: "Generally, however, rates vary between $15.89 and $20 per pole where there is a final agreement in place, and between $10.44 and .31 per pole in the case of an interim agreement." We then defined what is an interim agreement.

416

We then went on to say: "In the large majority of cases, there is no current agreement in place. In many instances, electric distributors are charging 15.89 per pole, per year," which was the CRTC rate, "pursuant to a month-to-month extension of the expired 1997 MEA agreement, pending the outcome of this proceeding."

417

So that is the aggregation that we provided. And then we provided answers to the rest of the questions in each case.

418

So the only thing that is confidential are those four sheets. So if that is of any help. We haven't heard anything on that from Board Staff or anybody else. I mean, the filing is still there. And it has been filed, as you know -- as a preliminary matter. It has been filed in the Board's confidential file, the four sheets have.

419

MR. KAISER: Mr. Ruby, coming back to Mr. Sommerville's question. Looking at this response which Mr. Brett has just referred to, this is the first two paragraphs of interrogatory 6, Board interrogatory 6. Do you have that?

420

REPLY SUBMISSIONS BY MR. RUBY:

421

MR. RUBY: Yes.

422

MR. KAISER: It's your tab 3. Now, why isn't that satisfactory for your purposes? What more information do you need than that?

423

MR. RUBY: Well, for example -- just to take the simplest example, is I have no way of verifying whether it is correct.

424

MR. KAISER: So you're not content when Mr. Brett says the range is between 15.89 and $20, where there is a final agreement in place. You want to be able to check that?

425

MR. RUBY: Yes. And part of my problem, of course, is the CCTA hasn't put it forward, the Board Staff has asked for it. And I don't know what use it's going to be made -- what use is going to be made of it.

426

So --

427

MR. KAISER: Well, it's an interrogatory response. It is in the

record now; right?

428
MR. RUBY: Well, that information is, but not, for example, which utility is which, and if the Board, for example, doesn't accept EDA's bifurcation motion, one of the things that Mr. Brett has asked for is for the Board to set the level of the charge.

429
MR. KAISER: Yes.

430
MR. RUBY: One issue that may go into setting that level, the CEA would submit that it's not an appropriate element but it may be considered by the Board, is where are we now? For example, do we want to be quadrupling the charge? Maybe that is a factor. Maybe there should be a phase in. I mean, there are all kinds of different implementation issues that the Board may consider important. I don't know. I don't think they're important, but the Board may consider, knowing where we are with respect to each utility, if the Board doesn't set a uniform rate, we may get there.

431
MR. KAISER: Those will all be issues, of course, when we commence the substantive part of this and I think we all understand that. Are you content to -- if you want to have this information in order to check the veracity of this response and others like it, are you content that it be provided to you, as counsel, in confidence?

432
MR. BRETT: The problem is I don't have any way of checking it then.

433
MR. KAISER: Why don't you have -- I mean, he's going to provide you the background data that enabled him to calculate and make this response. Why can't you check it?

434
MR. RUBY: Well --

435
MR. KAISER: Why can't you check the range? We'll give you the details of each of the companies that fall within that range and you'll be able to determine whether he has accurately stated the range as between 15.89 and $20.

436
MR. RUBY: Yes. I might be able to check that. What I wouldn't be able to check, for example, is whether there is one at the low end and 90 utilities at the high end, or vice versa, or where they fall individually. And again, if the Board decides to set individual charges for

utilities, that may become important.

437
MR. KAISER: But if he gives you the detail for each of the utilities, as counsel in confidence, can't you check that?

438
MR. RUBY: I can only check it against information that's provided by others. So if I can get the information, for example, from the EDA's members, yes, I can compare them.

439
MR. KAISER: But he's making a response. This is a response by the CCTA. He doesn't have access to EDA data, he has access to his members' data. You want to check, you've told us, that this is an accurate response.

440
MR. RUBY: What I want to check is that -- not just that the summary is accurate --

441
MR. KAISER: Yes.

442
MR. RUBY: -- but that the data he's providing to the Board in confidence reflects reality, and ultimately the use that could be made of this is on cross-examination. If it turns out that there is reason to be suspect of the information that's been provided, as I say, I'm quite content as counsel to look at it first, and if there is a problem, come back to the Board. And for example, say I'm going to need a cross-examine on this, I need the Board's leave because it is still being held confidential. Or I need to consult my client. It's hard to speculate what the data is going to show.

443
MR. KAISER: I understand, but you're not expecting Mr. Brett to give you EDA data.

444
MR. RUBY: No.

445
MR. KAISER: He's going to give you CCTA data and you're going to check it. You're now going to go get EDA data and make sure that his data is accurate.

446
MR. RUBY: To the extent I can.

447
MR. KAISER: Right. And if you had to cross-examine a CCTA witness on this, we could do that in camera. Would that be satisfactory?

448

MR. RUBY: It would be satisfactory to me. I don't know how the other parties would feel.

449
MR. KAISER: Well, we'll find out what they think about it in a minute, but that is acceptable to you?

450
MR. RUBY: Yes.

451
MR. KAISER: Mr. Brett, any response to that?

452
MR. BRETT: I think on the basis that you've laid it out, Mr. Chairman and Panel, yes, we could do that, to Mr. Ruby in confidence.

453
MR. KAISER: Thank you.

454
MR. BRETT: As counsel.

455
MR. KAISER: All right. Let's move on to the next one.

456
MOTION BY THE CANADIAN CABLE TELEVISION ASSOCIATION FOR AN ORDER DIRECTING EDA TO RESPOND TO THE CANADIAN CABLE TELEVISION ASSOCIATION'S INTERROGATORY NO. 4(A) TO (G) AND INTERROGATORY NO. 6(A) TO (G):

457
MR. KAISER: This is the CCTA motion of September 28th.

458
Mr. Brett?

459
SUBMISSIONS BY MR. BRETT:

460
MR. BRETT: Thank you very much, Mr. Chairman and Panel.

461
Just by way of introduction, we really -- the reason we would like this information is that, in general, the reason we would like this information is to demonstrate that the uniform pole rental rate that we're proposing in the case is a reasonable rate, is a reasonable proxy for a calculated average pole rental rate for the Ontario utilities. We believe that the EDA members, the utilities, have virtually all of the information that we've requested and that, given the EDA's statements about the fact that they represent the utilities in this proceeding and the fact that the individual utilities are not actively participating in the proceeding, that as a practical matter the EDA has some obligation to collect the

requested information
from its members, and the utilities have some obligation to provide it.

462
So I would like to just go through question by question, if I may. The responses that we're -- we're
looking for further and fuller responses to our number 4 and number 6.

463
If you look at our motion on the first pages 1 and 2, question number 4, our question number 4 to the
EDA is:

464
"For each member of the EDA that owns power poles, please provide the following information for each
of the years 2001, 2002, 2003: The number of distribution poles owned, either solely or jointly with
another party; the number of distribution poles with cable television attachments; the number of
distribution poles with communications attachments, other than cable television attachments; annual
revenues from cable television pole attachment fees; total annual revenues from all attachment fees;
annual revenues from electricity distribution; and, annual revenues from electricity distribution and
sales."

465
Now, first of all, the last two, (f) and (g), we agree on -- that that information is available in the Board
records and we've obtained information on (f) and (g). It's not entirely clear that -- in some cases, the
public information that's filed does include -- does break down total revenues from sales -- from sales and
service. In some cases, it doesn't.

466
Our understanding is that under GAAP, the utilities that must file their annual statements, their annual
statements, year-end statements, don't have to make that breakdown, but good accounting practice would
suggest that they do. Some have and some haven't. In any event, we will rest with what we have, what
we've got from the public record on -- for items (f) and (g). So those fall away.

467
If I may turn to (a) for a moment, question 4(a). We believe that the number of poles -- the information
with respect to the number of distribution poles owned is available. We note that the CEA has already
provided this information for its Ontario members, its seven Ontario members, and so we think this
information is readily available.

468
With respect to questions 4(b) and (c), if you go over to page 4 of our motion, again, we believe the EDA
members have this information. We note, again, that the CEA has provided this information for Hydro
One and Hamilton Hydro, which are two of its six Ontario members. And the same is true for 4(c), which
is the non-cable telecommunications -- numbers of poles with non-cable

telecommunications
attachments.

469
With respect to (d), annual revenues from cable television pole attachment fees, we believe that the
utilities are required to keep this information by the uniform statement of accounts approved by the
Board. Account 4210, revenue from electricity property, they've been required to keep that since January
1 of 2000.

470
Now, we would assume, and it is an assumption, that for internal management purposes, the utilities
would separate out these various sources of property revenues, so they would separate out pole rental
revenues from other property rental revenues. They're not required to do that specifically by the uniform
statement of accounts, although it suggests that they disaggregate the revenues from the various sources
and -- but there is a specific account for revenues from electricity property.

471
And then I would use the same approach as I did in (d) above. And then (f) and (g), as I've said, we've got
that information, so we don't have to ask for it.

472
With respect to question number 6, our question number 6 was, the CRTC would note -- I'm sorry:

473
"The CCTA would note that it based its evidence on all available cost data as placed before the CRTC by
the LDCs in the proceeding leading to telecom decision 9913."

474
This is at the bottom of page 2 of our motion.

475
"And would further note that it has no way to obtain such data other than by asking for it to be filed in
this proceeding. Therefore, for each LDC, please provide the following cost data: (a) the average
embedded cost per joint-use pole; (b) the average net-embedded cost per joint-use pole defined as the
historical cost less accumulated depreciation; (c) the average pole attachment administration cost per
joint-use pole; (d) the average cost due to loss in productivity resulting from communications
attachments, that is, productivity of the LDC resulting from communications attachment per joint-use
pole; (e) the average annual depreciation charge per joint-use pole; (f) the average pole maintenance
expense; and (g) the weighted average cost of capital."

476
Now, with respect to (a), the answer we received was:

477
"The EDA does not have the information requested, nor does it believe that all" -- my emphasis -- "all of

the requested information is available from all LDCs. In addition, please see EDA's motion."

478
First of all, just to repeat, we think that the EDA -- we understand the EDA doesn't have, in its own files,
this information, and we can accept that. But we do think that they have an obligation to ascertain, from
its members if they have it, and if they have, or part of it, to collect it and file it in this proceeding.

479
With respect to 4(a), we -- sorry, I'm -- I need to take you over to page 4 -- to page 5, point number 7 on
page 5, CCTA questions 6(a) and (b) and (e).

480
With respect to 6(a), this is the embedded cost per pole, and (b) is the net-embedded cost per pole, we
believe that the EDA members have the requested information. The embedded cost per pole and
net-embedded cost per pole is information that the utilities are required to keep, again, by the Board's
uniform statement of accounts in account 1830 for the original cost for distribution poles and related
fixtures.

481
Now, we understand this account also records some assets that are not part of the pole cost, but the bulk
of the assets in this account do represent the cost of poles. And we understand that there are, and I won't
get into the details now, but we understand that there are mechanisms that other regulators have used
with respect to this -- similar accounts to this, to say -- to effectively subtract out the part of the account
that is not part of the net-embedded pole cost.

482
This account contains a bit more than the net-embedded pole cost, but it's the closest that we're going to
get to that. And we accept the fact that there needs to be some adjustment to the numbers that come out
of there, but we also put to you that other regulators in other places have been making this kind of
adjustment for some time.

483
Account 5705 is for amortization, with separate records required in respect of pole assets, in our reading
of the procedures handbook.

484
Furthermore, the Board's electricity reporting and record-keeping requirements, the triple R, requires the
utilities licensed by the OEB to submit a trial balance in the USOA format by April 30th of each year,
which reconcile to the audited financial statements which are due at the end of December.

485
Now, then, with respect to 6(c), question 6(c), which is the average pole administration cost, we think the

utilities would likely have this information because, as a matter of good management practice, they
would wish to record separately the incremental costs incurred in administering the telecom attachment
approval process.

486
The same with (d). We think that utilities would likely have information because, as a matter of good
management, they would want to record their lost productivity cost because their employees have to work
around the communications companies' attachments.

487
Moreover, as some of you may recall if you've looked at the CRTC decision, the MEA, the predecessor
to the EDA, produced an annual estimate of lost productivity cost of $3.15 before the CRTC in 1999
which the CRTC accepted and used to establish the lost productivity expense for that case. And they also
produced, the MEA, that is, produced -- this wasn't Milton Hydro or a single company. The MEA
produced, from their analysis, an administration cost, an incremental administration cost, how much
more they had to pay an admin cost because of the presence of the communications attachments, and that
was 62 cents.

488
So based on that, we feel that information must be there. It was there for the MEA to make a submission
in 1999 to the CRTC as to what they thought was an appropriate number.

489
And then, finally, the last question, (f) -- well, 6(g), I think, is -- 6(g), I think, is pretty well
self-explanatory. The utilities do know their allowed return on equity and their weighted average cost of
capital.

490
But 6(f), again, we believe that the information for pole maintenance expense per joint-use pole, which is
part of calculating, effectively, the carrying cost of the pole, is available in account 5120. It's at least a
component of that account which must be maintained and we think that, therefore, they would be able to
provide at least some enlightenment on that.

491
I guess a general point here. These things tend to be a bit messy. We're not saying that that information is
going to precisely give us a magic answer to exactly what this rate rental charge should be, but we are
saying that it will throw more light on the situation. It will help the Board arrive at a reasonable
conclusion and, therefore, it's better to have it, even in its imperfections, than not to have it at all.

492
We think it is there for the most part. And perhaps not every single bit of it is there in every single utility.
We accept the fact that the utilities probably have different levels of

sophistication in their tracking. I
mean, they've only been asked to use the USOA since January 1st of 2000. But we think, for a lot of
them, they would have a lot of this information, and we would like to get what is there. What is not there,
we obviously can't get.

493
So those are my submissions, Mr. Chairman and Panel.

494
MR. KAISER: Before I turn to the EDA, any other parties have a position on this? Mr. Dingwall.

495
SUBMISSIONS BY MR. DINGWALL:

496
MR. DINGWALL: Very briefly, sir. Energy Probe agrees with the submissions made by the CCTA
in respect to this motion. It sounds, to a certain degree, like we're dealing with
two categories of information. The first category being information that's already
confirmed to be in existence and which has been produced elsewhere by a
predecessor organization, and that category of information appears to be quite
clear, that there isn't much of a burden to produce it. It does exist.

497
With respect to the second category of information, that would be what one should do in response to an
interrogatory. Make reasonable efforts to determine what information you have and to respond by the
provision of that information or the detailing of what information might be available with a view to
entering into further discussions as to what can be produced and what quality it might be. I think that is a
necessary part of answering any interrogatory, and I agree with Mr. Brett that that effort should be
undertaken.

498
And while the response may have some degree of qualification to it, depending on availability and
consistency, certainly that information would provide significant benefit to the record and is quite
necessary in the determination of what a just and reasonable rate would be.

499
MR. KAISER: Anyone else have any comments?

500
SUBMISSIONS BY MR. RUBY:

501
MR. RUBY: Mr. Chair, the CEA takes no position on the motion, but it may be useful to raise two
matters, just that Mr. Brett addressed.

502

One is, the CEA was asked only some of the questions that are at issue in this motion and answered some of them in great detail. And Mr. Brett has said, Well, if the CEA could do it, why can't the EDA in the time frame? I would just like to point out that what happened is that the CEA has been trying to gather some of the data that it turns out Mr. Brett wanted for months. So it didn't take two weeks for the CEA to pull it together, it took many months to get the data that Mr. Brett has been looking for, at least on the CEA's part.

503

The second issue is, again, just an informational one. Although the MEA in the proceeding that ultimately ended up at the Supreme Court of Canada was the named party -- not named party, but the front man, if you will, at the CRTC level, that was actually a proceeding against 32 particular utilities. At the time there were over 300 municipal utilities in Ontario, so we're talking about, roughly, 10 percent of them. So the exercise in gathering data was a different one than I suspect the EDA faces today.

504

MR. KAISER: Thank you.

505

Ms. Friedman?

506

SUBMISSIONS BY MS. FRIEDMAN:

507

MS. FRIEDMAN: Thank you, Mr. Chair.

508

In order to respond to Mr. Brett's positions on the question-by-question basis, I would ask you to turn to the responding affidavit of Mr. Robert Mace which I filed in this proceeding. Mr. Mace is the -- one of the current vice-chairs of the EDA and the chief executive officer of Thunder Bay Hydro.

509

What we put forward in this affidavit is the question-by-question analysis and tried to explain to the Board why it's not a simple matter for a given LDC to provide the information.

510

I should just start by distinguishing between two things. I thank my friend, Mr. Brett, for acknowledging it. The EDA often asks for information, often does not receive what it asks for, precisely because members are concerned of what use will be made of it. We did, however, make reasonable inquiries to get a handle on what's out there, and why our members, in response to our questions, do you have -- for example, do you have embedded cost of pole data? They say, well, what do you mean by that? What should we be providing?

511

And that's what we attempted to explain in the affidavit of Mr. Mace, who sets out on a question-by-question basis the difficulty of answering a given question. That, as I said, is a separate question from what our members will provide to us without Board direction, to provide information.

512
So as I've also tried to point out, the EDA is happy to ask any question to obtain information. Whether or not we will receive anything is anybody's guess. As I've put forward elsewhere, in materials, in respect of the Board Staff interrogatories -- which I understand has been withdrawn -- oftentimes we are able to get data if we say it will be held in confidence and specifically not filed in a proceeding, which again presents some difficulty.

513
With those initial comments, I would like to start, if I may, with question number 6, Interrogatory No. 6, which is all the costing data that the CCTA hopes to get from my client. That starts on page 4 of Mr. Mace's affidavit, where I excerpt Interrogatory No. 6, which Mr. Brett carefully went through, of all of the data that they're looking for.

514
We will start off with 6(g). Admittedly, the LDCs can, if they were so inclined to, give us their weighted average cost of capital. So, in fairness to my friend, I ought to, in response to that interrogatory, have said, while the EDA does not have the whack, our members must have it, although they haven't provided it to us.

515
With respect to 6(a) through (f), Mr. Mace explains the difficulty with answering each of the questions. 6(a) and (b) ask for average embedded costs and average net-embedded costs. And Mr. Mace explains -- really encapsulates what our members told us when we went to them and asked them. How do we give you this information? We recognize there are accounts that must have this data within them, but without getting specific accounting advice, we can't tell you what -- or statistical advice, evidence, we can't tell you what portions of these account numbers are relevant to the inquiry.

516
So, for example, account number 1830, deals with poles and fixtures and that deals with assets, distribution assets in addition to poles. Now, Mr. Brett says there is some -- the majority of that account is for poles. Well, the LDCs don't know that and they don't want to accept that without either an expert or the Board telling them that. So in fairness to the LDCs, they weren't asked to provide the contents of particular account numbers. They were asked to come up with an embedded cost number or a net-embedded cost number, and they simply did not -- do not know what methodology or assumptions to use and did not take it upon themselves to go seek expert or accounting advice as

to how they do it.

517
So, that's with respect to question 6(a) and (b).

518
With respect to 6(c) and (d), Mr. Brett suggests that as a matter of good management practice,
incremental costs of administering attachments and incremental costs in respect of lost productivity
would be maintained by the LDCs. Well, that may be true, but the reality is, the LDCs do not track those
costs. They have never been required to do that by their regulator and they don't do it.

519
So while we may be able to come up with appropriate numbers for use by the Board, if the Board wanted
that data by use of expert or statistical evidence or analysis of the accounts that the LDCs do maintain,
that's not data that is readily accessible to the LDCs. And when we asked them for it, they just look at us
with a question mark.

520
6(e) asks about the average annual depreciation per joint-use pole. First point to make: Any information
about poles in LDCs' records do not distinguish between a single-use pole and a joint-use pole. So that
was the first question we always got when we asked about joint-use pole data.

521
Secondly, there is no depreciation account for poles. There is an overall depreciation account for
distribution assets. And, again, the LDCs weren't asked to advise, Well, what number is in that account;
and they don't know how to divide up that account to assist in order to come up with an average annual
depreciation charge per joint-use pole, even if he they could come up with it for a pole, which they say
they cannot, without specific guidance as to what they should do.

522
Question (f), which asks about pole maintenance expenses, again, Mr. Brett suggests in his motion that
there is one account, 5120, that can help in this regard. And that's an account which deals with
maintenance of poles, towers and fixtures. And in fairness, he does acknowledge that account deals with
maintenance expenses for more than just poles. The first problem is the LDCs don't know what to do
there. They have no expert or Board guidance as to how they divide it.

523
But to continue, they also say they don't only record their maintenance expenses for poles in that account;
there are several different accounts that their maintenance costs might make their way into, and without
retaining their accountant to help them with that question, can't give us that data.

524
On page 7 of Mr. Mace's affidavit, he goes through the other accounts, 5135, which

deals with -- which is
actually a balance sheet account dealing with overhead distribution lines and feeders maintenance and
rights of way, which often contain that sort of data. And he goes through some other accounts.

525
So if we were dealing with a question -- this is on the actual accessibility to our members, if the question
was, Tell us what's in account 5120, I suspect that the LDC could do that. But when you're dealing with
defined terminology, which they say deals with accounting terms and bookkeeping in which there is
much discretion, it becomes very difficult to come up with the answers to the interrogatories.

526
So that deals -- that deals with question number 6 on a question-by-question basis. I'd like to quickly go
through 4, and then just summarize the main principles upon which the EDA has acted when it responded
to the interrogatory.

527
Question number 4 asks about pole data and revenue from attachments. Mr. Mace deals with this, starting
on page 2 of the affidavit. And quite frankly, one would expect 4(a) to be a trivial answer for our
members: How many distribution poles do you have? Unfortunately, they tell us that it's not a trivial
question. And I have grouped 4(a) through (c) together because they ask for the number of distribution
poles owned jointly -- solely or jointly, poles with television -- cable television attachments and then
poles with communication attachments.

528
As Mr. Mace described, the reality of the situation is, it simply depends on the sophistication of their
databases. It so happens that the data that Mr. Ruby provided for some of the CEA members that overlap
with EDA members had GIS systems, and those GIS systems were populated with the data that Mr. Brett
wanted. But that is the vast minority. In fact, only a few LDCs have GIS systems, and the ones that do
usually use, as Mr. Mace explains, their GIS systems for distribution asset recording and don't deal with
things like pole attachments of third parties in there.

529
So what we would expect, if the Board were to ask the individual LDCs to provide this data, is for some
LDCs, the data would be available; but for other LDCs, they would have to go through written records
and have people go on, literally, site visits to count attachments.

530
Now, the easiest in the hierarchy, of course, is, How many poles do you have? And the questions get
more difficult as you ask what specific attachments are on each pole.

531
With respect to questions (d) through (g), which ask for revenue information, I

heard Mr. Brett to say he's
obtained information that he's satisfied with for (f) and (g), which I appreciate.

532
Questions (d) and (e), our position is, simply, that the EDA doesn't have it. Of course, we do accept and
acknowledge that our members must have it. Our members have not provided that to us. But we would
ask that we only be compelled to ask our members for it with some guidance from the Board, or some
direction from the Board, that the LDCs should be providing it in order to assist in the gathering process,
and if the Board believes it's appropriate for the information to be filed at this time.

533
In terms of general responses to the CCTA's motion, there are really three primary responses.

534
The first one which I think encapsulates what I've gone through is the data requested by the CCTA is not
impossible to provide; we're not suggesting it is. But it's more or less difficult, depending on an
individual LDC's record-keeping and history of attention to this particular issue of pole attachments. And
so when we ask our members about this, we kind of get a blank stare-back; we're not sure exactly what to
provide, I should go further, even if we would provide it to you, which is never clear unless we undertake
to keep it in confidence, which is not helpful to the parties in this proceeding.

535
Secondly, the EDA submits that efficient regulation in the electricity sector dictates that only information
which is subject to regulation ought to be filed with the regulator. And I hear my friends about best
efforts to respond to interrogatories, and the EDA simply doesn't have it and has made inquiries. But we
urge on this Board not to require the LDCs to go and do work, and what I hope is taken from Mr. Mace's
affidavit is that it is work for the LDCs to get at this data, unless the Board needs the data to regulate.

536
Those are my submissions, Mr. Chair and Members of the Panel.

537
MR. KAISER: Ms. Friedman, Mr. Brett -- just dealing with, first of all, questions 6(a) and 6(b), he says
that the information - and he'll correct me if I'm wrong - in account 1830 and account
5705 would be satisfactory. If he's happy with that, given whatever frailties may exist
with respect to these accounts, will your clients have any problem producing that?

538
MS. FRIEDMAN: Well, the EDA doesn't have it. We can request it --

539
MR. KAISER: No. I --

540
MS. FRIEDMAN: -- from the members.

541
MR. KAISER: I understand that. And part of the problem I'm having here is, you're here making submissions on behalf of these embers. When we ask you for something, you say, I don't have it, the members have it.

542
MS. FRIEDMAN: That's right.

543
MR. KAISER: Can you not speak on behalf of your members? Can you ot tell us whether they would be prepared to produce that r not? The account information. I'm not asking them to go on some grand inquisition.

544
MS. FRIEDMAN: Yes.

545
MR. KAISER: Do you have any guess whether they would be willing to do that?

546
MS. FRIEDMAN: Well, let me tell you this: From my discussions, and believe me, we have had plenty of discussions on what data is out there and how we can get a handle on it, the members would be reluctant to provide it to us for this very reason. That is not the embedded cost data that Mr. Brett is really getting at. And they would fear that that's what it would be used for. So they're in a bit of a quandary.

547
Quite frankly, this Board regulates the LDCs. If the LDCs are told to provide information to the Board, they have to and most certainly will. But with respect to a request coming from their industry association, what they tell us is that that's not what the CCTA wants. The CCTA wants to get at an embedded cost. That's not how you get it, by looking at those two accounts. So if we provide that information to you, it will be misused. That's their concern.

548
I mean, I think none of the questions are more clear on that than that very last one with respect to pole maintenance expense. Mr. Brett suggests you get it out of one account, and our members say, Excuse me, I would have to sit down with my accountant and go through five or six different accounts.

549
But as I said, Mr. Chair, if the Board were to direct the LDCs to provide specific account information, no doubt they would have to provide it.

550

MR. KAISER: Well, I understand the problem, but this is sort of a chicken and egg situation. On the one hand you say give Mr. Brett what he really wants, we'll be here forever doing expensive studies and they'll go on for months. He's suggesting to the Board, I'm happy with the information in these accounts. You, of course, will have an opportunity to make whatever submissions you want on behalf of your client if that's not accurate information or not representative.

551

I'm just trying to get to first base. Is there a lot of work in producing that information if the Board is prepared to rule that you produce at least this account information?

552

MS. FRIEDMAN: What's in account numbers? I wouldn't expect. I expect that their bookkeeper can look at what is in that account.

553

MR. KAISER: All right. I would have thought so.

554

And while we're on this, on 6(g), this was the weighted average cost of capital. You acknowledge that they had it and I take it they didn't want to produce it unless the Board ordered them to produce it?

555

MS. FRIEDMAN: That's correct.

556

MR. KAISER: All right. And then over in question 4, we had a similar issue, this was 4(d) and (e), Mr. Brett says that's in account 4210. You may have some quarrel about whether that is actually the information you want, but I take it the bookkeeper could produce that if the Board so ordered? This was the annual revenue of cable television pole attachment fees and the total annual revenues from all attachment fees. There is some suggestion that would be in account 4210.

557

MS. FRIEDMAN: Right. The members would be able to provide the data in that account. I can tell you they might take issue with what's encapsulated this that account.

558

MR. KAISER: I understand.

559

MS. FRIEDMAN: Exactly.

560

MR. KAISER: Now, Mr. Brett, you've heard the response. I will give you an opportunity to make your

submissions, but on 4(a), (b), and (c) where we're counting up poles, some with communication attachments, some with cable attachments and the total, do you really need that? Why do you need that? Before we send an army of people around the province counting telephone poles, do you really need it?

561
MR. BRETT: One of the questions there was -- one of our comments there was, we assumed that the -- each LDC when it sends out its bills, it has to bill the cable companies on an annual basis. And when it bills them, it's got to effectively tell them how many attachments it's billing them for. So we don't quite follow the logic. We think the billing trail should give that information. It should --

562
MR. KAISER: So you would be happy with taking that information from existing bills to cable companies, where they have it?

563
MR. BRETT: Yes.

564
MR. KAISER: That would be satisfactory for you?

565
MR. BRETT: For the -- that's right. For the --

566
MR. KAISER: You're not asking those companies that are not submitting bills to your members, adding up the poles, to go out and count them.

567
MR. BRETT: No, we're not.

568
MR. KAISER: Apparently, they don't know how many poles they have.

569
MR. BRETT: We're not asking them to go out and count them. Anybody who is, If I've got this right, any LDC on which we have attachments will be sending us bills. So they would have --

570
MR. KAISER: Why wouldn't your members already have them? Why can't your members -- they're getting the bills. Well, why do we need to go back to these people and ask them how many poles they're billing for?

571
MR. BRETT: Just on that. I will answer that just in a second. I think you're right on that, but we're also asking for the bills -- we want to know about telecommunications attachments; in other words, revenues from telecommunications carriers.

572
MR. KAISER: Why do you care about telecommunications?

573
MR. BRETT: Sorry?

574
MR. KAISER: Why do you care about the telecommunication poles?

575
MR. BRETT: Well, we're trying to get a complete picture, I guess, of -- what we need for purposes of establishing an average pole rental charge is an average of the number of attachments per pole in the province. So we will want to know effectively: What is the distribution? What's the frequency distribution - that's a crude word - but do most poles have two attachments, three attachments? We have our views on this, but we're trying to get more information to nail that down.

576
So we want to know -- and -- we want to know how many, you know, what -- how many poles of each distributor have telecommunications attachments as well as cable attachments. The cable, we would have, but we wouldn't have the telecommunications. And again we would go to the bills. I mean, they would have bills for those.

577
MR. KAISER: Let's say 60 percent of their poles have cable and 40 percent have both. How does that help you?

578
MR. BRETT: Well, that ultimately -- ultimately it -- you're going to be calculating a charge to the cable companies for usage, a usage-based charge, and it will have a -- one of the variables in that formula is how many communications parties are sharing that communication space. If there is two, then it's divided two ways. If there's three, it's divided three ways. If it's one, I think it's for us.

579
MR. KAISER: But this interrogatory just deals with number of poles, it doesn't talk about the revenue.

580
MR. BRETT: No. That's true. But later on, it -- oh, I see. I may be confusing two sets of questions. The first questions deal with number of poles, then further on we talk about revenues from --

581
MR. KAISER: So I don't see in any of these interrogatories how you're going to get to the information you want. You're going to get the number of poles.

582

MR. BRETT: Yes.

583

MR. KAISER: Some are going to be cable only, some are going to be telecom only, some are going to be both; fine. You haven't asked for the revenue with respect to those poles.

584

MR. BRETT: I think we have. I think in (b) and -- I think in (g) and (d) through --

585

MR. KAISER: (e) is all attachment fees.

586

MR. BRETT: Right.

587

MR. KAISER: So for those poles -- that's not going to give you the revenue broken down in those three categories.

588

MR. BRETT: Well, (d) will give me revenue from cable television attachments, and (e) gives me total annual revenues from all attachments, so it will give me some categorization. We thought there it would just be a question of what the bills were. We could follow the bill chain.

589

MR. KAISER: Well, you've got a total and you've got electricity.

590

MR. BRETT: We have got a total and we have got cable.

591

MR. KAISER: And you've got cable.

592

MR. BRETT: Right.

593

MR. KAISER: So how are you going to allocate those? I mean, think about the statistics. You're going to have three categories, you're going to have some poles that have both, some poles that have one or the other. You're going to have three categories of poles.

594

MR. BRETT: We have a few -- we probably have more than two as well.

595

MR. KAISER: You may have some poles that have none; right?

596

MR. BRETT: And some that have more, yes.

597

MR. KAISER: Anyway, I mean, if you think you need it, you need it. It's not immediately clear to me that you're going to be able to do the calculation that you think you can.

598

MR. BRETT: I think the only other point I would make on the -- Mr. Chairman, is that we -- on the depreciation, we don't see any reason why depreciation would be different for a joint-use pole and a sole-use pole. The poles, to us, are poles. And as I think will become -- if it isn't clear now, I think it will become clear in the course of the proceeding, that the overall driver for the pole cost is the electric use.

599

So you don't change the depreciation on that pole by adding an attachment to it for cable purposes or for some other telecommunications purpose.

600

MR. KAISER: I just want to make comment to you. I mean, you've expressed a concern, which I think the Board recognizes and accepts, that this process has probably gone on longer than it should have. And I'm just urging you to make sure you actually need this data before you set up a situation for a further delay. So just think about that.

601

Mr. Sommerville has a question.

602

MR. SOMMERVILLE: Ms. Friedman, if I understand your submissions with respect to this motion, it's not that the questions that are being asked are inappropriate or not relevant to the establishment of a pole-access fee, if that, in fact, is the outcome of this proceeding, you're not suggesting that.

603

MS. FRIEDMAN: No.

604

MR. SOMMERVILLE: You're suggesting that there is some difficulty in producing this information?

605

MS. FRIEDMAN: That's correct.

606

MR. SOMMERVILLE: That gives me a dilemma, in suggesting that your clients ought to either produce the information within a reasonable -- within some reasonable accuracy, or accept the vastitudes of not having produced it. And leaving the field, in fact, open with respect to costs, information and that sort of thing.

607

I understand your dilemma to some extent, but it is a dilemma that is inherent in

this kind of process, that
if you don't produce information when it is appropriately requested, you are faced with the vicissitudes of
having failed to do so. And, you know, all information with respect to costs or any offsets that your
clients may choose to rely upon will be lost to them.

608
MS. FRIEDMAN: I appreciate that, and believe me, I've been struggling with that for quite some
time, as you can imagine.

609
The problem is that the LDCs, as regulated entities, are used to filing information with the Board that
they've been told to file, and they're at a little bit of a loss here with exactly what they file.

610
MR. SOMMERVILLE: Right.

611
MS. FRIEDMAN: And so that's been a fundamental problem. I mean, they've expressed two
problems. One is, We don't want to provide it to you; we don't know what use is
going to be made of it; the Board hasn't asked us for it; our history of dealing
with our regulator is when the Board wants specific information, we file that
specific information. So, that's really what the problem is. And I, of course, and
the EDA as an organization has been struggling with that. We don't want there to
be a data vacuum. That's why we brought the motion for bifurcation, and built in
that, said, Before -- if you tell us you need the information because you're going
to regulate, please allow some kind of a motion hearing process to determine
exactly what's out there, how the LDCs should provide it to you, because
historically that's what they're used to doing. You tell them you want specific
information and they can do it.

612
And then, you know, of course what they also expressed is, Who's paying for us to go figure out what this
data is, and how to analyze it. But we will leave that aside. And then we'll go and do it. But that's why
we've asked for that.

613
When it became clear, through trying to get answers to interrogatories, that the LDCs, quite simply, we're
shaking their heads not knowing what to do, that we needed some Board guidance as to how they should
file it.

614
MR. SOMMERVILLE: The fact of the matter is that cases come along, and the Board has rules. I mean,

if you need direction as to whether you should answer the questions, you may not need to look much further than the Rules of Procedure for the Board which require you to respond to interrogatories unless there is a valid objection to the question that's being asked. And I don't see that here.

615
I mean, the Board does provide direction, and is providing direction within its practice rules with respect to these matters. And the real risk, in terms of trying to establish a revenue stream, which is what this is at the end of the day, for the utility, surely they want to get their information before the Board on these important aspects of the question.

616
As we sit here today, in the absence of answers to these questions, we don't have that information. And, I mean, I don't know how much more clearly we could put it, that your clients need to address their minds, before the -- I would think, you know, one approach to this is they need to address their minds to this subject matter before this hearing resumes.

617
MS. FRIEDMAN: That's right. I think I should just point out one more mental stumbling block, if that's what I can call it, and it's that the position of all of our members is, there is no need for the Board to be involved at all. And so that's always their first stumbling block. You're asking us to go out and give you detailed information. We're quite confident, and unfortunately that might be overconfidence and I hope that they're not incorrect, but the Board will see that it's not necessary that they gather -- that we gather and they have all of this information.

618
And so we've got kind of two stumbling blocks. One is the Board does not need this data and they will see that; and secondly, if they do need it, we need some help as to how exactly we go about providing it to them, as we do when they choose to regulate other aspects of our business.

619
MR. SOMMERVILLE: There's a gamble in that equation.

620
MS. FRIEDMAN: That's correct. There is.

621
MR. KAISER: I come back to the practicality of -- I understand this problem that they don't want to respond until they're ordered to respond. But your clients are sending out bills now to telecom companies charging them for pole attachments; correct?

622
MS. FRIEDMAN: Let me address that, Mr. Chair. There is a couple of

complications there.

623
The first one is, historically, they've sent out bills but they're not per attachment, they've been per pole.
Now, there's been a shift in the thinking, and, quite frankly, most LDCs believe the charges should be per
attachment. So, so far, if one of Mr. Brett's client's members has six attachments on a pole, they just get
one bill for the pole. The LDCs' view is they should be paying six times an attachment rate. But that's not
what's been happening. So that's one problem. So the bill data won't give you, unfortunately, a
per-attachment charge, even though, I'm not sure if I hear that from Mr. Brett, I know that lots of the
LDCs believe that, going forward, they should be able to negotiate per-attachment rates, because it's per
attachment that their costs are affected.

624
Secondly, there's a bit of a problem with bills in the sense that some LDCs simply stopped sending out
bills because they weren't getting paid. So the bill-keeping cycle, I mean, there -- again, I don't want to
get into evidence, but there are instances where, I hope this Board will hear from my witnesses, bills
haven't been paid for years and the attachments are just going -- so the LDCs themselves spend very -- try
to spend very little money on monitoring exactly what's going on but for safety because they don't feel
they're recovering their costs for doing so.

625
And so they tell us that -- I fully agree with Mr. Brett that good, you know, accounting and management
practice would say you have all of this data. They tell the EDA they don't have the data because they're
not recovering the costs of doing it and they have too many other regulatory priorities.

626
So that's a bit of a dilemma. Certainly, as I've said before, I think Mr. Brett's clients should have the bills
that they received, and also my clients should have any bills they send out. So at that level, I think both
Mr. Brett and I ought to be able to get that information, if the LDCs will give it to us, so -- and his clients
will give it to him. But I don't think that the bill collection or collating process is going to get you any
details about attachments, given the way charges have been made historically.

627
MR. KAISER: Okay. We're not asking your clients to produce information they don't have, because I'm
sure that the applicant doesn't want to delay this a couple of years to go and find that
information. They are sending out bills, whether they collect them or they don't collect
them. If they don't send out bills, that's the end of the story.

628
Those that do send out the bills, could they not give us the total revenue and the total number of poles

and/or attachments? You would be happy, Mr. Brett, if that was on the last month?

629
MR. BRETT: Yes.

630
MR. KAISER: You don't need a year's worth of data?

631
MR. BRETT: No, I don't think we do, sir. We can extrapolate from that, yes.

632
MR. KAISER: And those that have it, have it; those that don't have it, they may do it on a different basis, but they have what they have. Mr. Brett will have to accept what they have. We don't want to manufacture anything. We just want stuff that is going out the door now, whatever shape or form it may look like. Is that acceptable, Mr. Brett?

633
MR. BRETT: Yes, sir.

634
MR. KAISER: Mr. Brett, did you have any response to ...

635
MR. BRETT: Excuse me, Mr. Chair, Panel, I don't have any further comments. Thank you.

636
MR. KAISER: Thank you, Mr. Brett.

637
Any other comments? Mr. Dingwall?

638
We will break now for an hour and a half and come back at 2:30 with our decision.

639
--- Luncheon recess taken at 1:00 p.m.

640
---On resuming at 2:31 p.m.

641
DECISION ON MOTIONS:

642
MR. KAISER: The Board's decision in this matter will deal with the matters in the order in which they were argued this morning. First, we'll deal with the cost issue.

643
Having heard the submissions of the different parties, the Panel has concluded that each party should be responsible for its own costs. This is subject to the Board costs being shared equally by the cable companies and telecom companies on the one hand and the electricity distributors on the other.

644
For the moment, we will leave the division of the costs in the two groups up to the members of those groups. If the cable companies and the telecom companies can't agree, they can speak to the Board; and, to the same degree, if the CEA and EDA can't agree, the Board may be spoken to in that regard.

645
To the Board costs, we will add the costs of the expert evidence that has been prepared jointly by the CEA and the EDA, and we will add the costs of Energy Probe. We recognize that based on an earlier decision, expenditures were incurred with respect to that expert evidence. We also realize that Energy Probe is a non-commercial entity, and perhaps of all the parties is more aligned to what might be regarded as a consumer interest or the public interest. That's the reason we have dealt with their costs differently.

646
We have not dealt differently with the costs of the Major Power Users, and if there are submissions that need to be heard in that, we're prepared to listen to them. But the ruling of the Panel is that each party bears its own costs, subject to what I've said with respect to Energy Probe.

647
We realize that we've departed from our earlier decision with respect to costs in this matter, but the proceeding has changed materially in its complexion. In particular, the telecom companies have intervened and we think that has made a difference. We think it is important that the access to be enjoyed by the telecom companies be dealt with at the same time as the cable companies. It's not in the public interest, or in the Board's interest, or any of the parties' interest to split this into two separate proceedings.

648
We recognize that these are essential facilities. They are not only monopoly assets, as Mr. Brett stressed, but they are essential facilities, and non-discriminatory access is important. In this regard, the Board notes these industries are converging. The cable companies are increasingly competing with telecom companies and vice versa, and the LDCs are, themselves, entering into some telecommunication activities. In such circumstances, it is important that there be non-discriminatory access and no undue preference to any of the competing entities.

649
The next matter deals with the motion of the Electricity Distributors Association filed with the Board on September 13th. That motion requested a Procedural

Order
to bifurcate this proceeding into two phases; phase one, the current phase, wherein
the Board would determine if the Board will set specific terms of access; and B, if
necessary, a second phase to determine the specific terms or charges, if any, which
the Board wishes to set.

650
Having heard the submissions of the parties, the Board has concluded that it would
be unwise to further delay these proceedings. As mentioned by Mr. Brett, this
application was filed back on December 16th of last year. We are now nine months
into the process. This entire matter has been proceeding for years. It's important
that it get resolved in a timely fashion and the Board is not open to any further
delay.

651
We are particularly concerned in this regard with the fact that this motion was
brought late in the day. Accordingly, this motion is denied.

652
The third matter is a notice of motion that was filed by the CEA on September 24.
This was a motion for an order for disclosure on the public record of an unabridged
response of the Cable Television Association, answers to OEB Staff Interrogatories
Nos. 2 and 6, and an order requiring the CCTA to answer the CEA's Interrogatory
No. 3(b), which was of similar effect. The third aspect of that motion was for an
order for the disclosure on the public record of an unabridged response of MTS
Allstream's response to OEB Staff Interrogatory No. 2.

653
In this proceeding before us, this morning MTS Allstream was not represented, but
we did hear from counsel for the CEA and the Canadian Cable Television
Association. Pursuant to the discussion with the parties, counsel for the CEA, Mr.
Ruby has agreed to accept these answers in confidence, and we accept his
undertaking that they will remain in confidence. Mr. Ruby has indicated to the
Board that if he requires disclosure of this material to his client, he will approach
the Board for further direction. Mr. Brett, for the Canadian Cable Television
Association, has agreed to that procedure.

654
With respect to MTS Allstream, although they're not represented, we will ask them
to comply with the same procedure.

655
Last but not least, and perhaps one of the more complicated motions, is the motion
by the Cable Television Association of September 28th, requiring that the
Electricity Distributors Association be ordered to provide a full and adequate

response to CCTA Interrogatories 4(a) through 4(g), and Interrogatory 6(a) through 6(g).

656
I'm going to try to deal with those in the order in which they were raised. Dealing first with questions 4(a), (b), and (c). This was a question posed by the Cable Association regarding the number of distribution poles owned, either solely or jointly with another party. 4(b) was the number of distribution poles with cable television attachments. 4(c) was the number of distribution poles with communication attachments, other than cable television attachments.

657
The discussion on the record indicates that the LDCs do, in fact, bill both cable companies and telcos currently, and that those bills would indicate revenues as well as the number of poles and/or attachments. Accordingly, we direct the LDCs to provide a copy of the bill for the last available month in each of those categories, 4(a), 4(b), and 4(c), to the extent that they're available. The Board is not requesting the LDCs to provide information they do not have. What the Board is requesting is that they provide the existing bills, obviously totalled, so that an aggregate amount by month can be made available to counsel for the Canadian Cable Television Association.

658
Mr. Brett has agreed on the record that that is acceptable, and the last month's billing will be sufficient for his purposes.

659
Turning next to questions 4(d) and 4(e). Question 4(d) is the annual revenues from cable television pole attachment fees. 4(e) is the total annual revenue for all attachment fees. We're led to believe, by Mr. Brett, that such information is available in the uniform system of accounts, account number 4210, and accordingly we direct each of the LDCs to produce that information. Again, we are not asking the LDCs to produce something they do not have. We're asking them simply to provide that information for the last reporting period for that account.

660
Regarding 4(f) and 4(g), we understood counsel for the Canadian Cable Television Association to say they had that information and a Board ruling is not required with respect to those matters.

661
Turning next to Interrogatory 6, and starting with 6(a)and 6(b), question 6(a) related to the embedded costs per pole and 6(b) was the net-embedded cost per joint-use pole.

662

We are led to believe that the information referred to and requested in 6(a) is available in account 1830, in the uniform system of accounts. And the information requested in 6(b) is available in account 5705. Again, we direct each of the LDCs to produce that information from those accounts for the last reporting period.

663
We accept and understand the submissions of counsel for the EDA that such information may not be exactly what Mr. Brett requests, but in order to proceed in an expeditious manner, we'll start with this and ask the LDCs to produce the information in that account, and we'll go from there.

664
We then come to question 6(c) and 6(d). In this respect, an affidavit was filed by Mr. Mace, who is the vice chair of the EDA and the chief executive officer of Thunder Bay Hydro. Mr. Mace states, in paragraph 18 of that affidavit that:

665
"In reality, the LDCs have never been required and do not track these costs."

666
While we accept Mr. Mace's statement, the Board is unclear, from that answer, as to whether the information doesn't exist for some of the utilities or all of the utilities. Accordingly, we would ask counsel for the EDA to inquire of each of the LDCs that she represents, and, for that matter, Mr. Ruby, in the case of the seven LDCs that he represents - I'm not sure whether there is an overlap or not - to inquire of their clients, do they or do they not have that information. If they do have that information, it should be produced; if they do not have that information in a manner that can be readily supplied to the Board, we are not asking at this time that it be created or extensive efforts be undertaken to obtain it.

667
We then come to 6(e) and 6(f). 6(f) was the average pole maintenance expense per joint-use pole and 6(e) was the annual depreciation charge per joint-use pole, as reflected in the books of the LDC. We are led to believe that such information is contained in account 5120, and we ask and we direct the LDCs to produce such information as contained in the most recent reporting period.

668
With respect to 6(g), that was the weighted average cost of capital, we understand from counsel of the EDA that such information exists, and accordingly, the Board directs each of the LDCs represented by that association to produce that information.

669
We believe the above information can be produced in a timely fashion. It appears to

the Board that it's readily available. In order to move on with these proceedings, we ask that it be produced within seven days. If there is a problem with that timeline, the Board may be spoken to.

670
Thank you very much. Is there anything arising from the Board's decision that we need to consider at this time?

671
Mr. Brett?

672
MR. BRETT: No, sir, I have no questions at this time.

673
MR. KAISER: Mr. Ruby?

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MR. RUBY: If I may just have a moment to consult. No, thank you, Mr. Chair.

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MR. KAISER: Thank you, sir.

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Mr. Dingwall?

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MR. DINGWALL: No questions, sir.

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MR. KAISER: Ms. Friedman?

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MS. FRIEDMAN: Sorry, if you could just give me one moment to look back --

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MR. BRETT: Mr. Chairman, just while Ms. Friedman is checking, I assume our settlement conference proceeds tomorrow as planned?

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MR. KAISER: Yes.

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MS. FRIEDMAN: No.

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MS. LEA: Mr. Chairman, I'm not sure if it's of any assistance to the parties, but I just thought I'd let folks know that I was only here for the day, so if you have questions of a legal nature and need to speak to counsel for the Board in the matter, it will be Mike Lyle rather than myself.

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MR. KAISER: Thank you.

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That said, the Board is adjourned.

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--- Whereupon the hearing adjourned at 2:50 p.m.