



ONTARIO ENERGY BOARD

FILE NO.: EB-2017-0049 Hydro One Networks Inc.

VOLUME: Motion Hearing

DATE: October 18, 2018

BEFORE: Ken Quesnelle Presiding Member and Vice Chair
Lynne Anderson Member
Emad Elsayed Member

THE ONTARIO ENERGY BOARD

Application for electricity distribution rates
beginning January 1, 2018 until December 31, 2022

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Thursday, October 18, 2018,
commencing at 9:34 a.m.

MOTION HEARING

BEFORE:

KEN QUESNELLE	Presiding Member and Vice Chair
LYNNE ANDERSON	Member
EMAD ELSAYED	Member

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NO UNDERTAKINGS WERE FILED DURING THIS
PROCEEDING.

1 Thursday, October 18, 2018

2 --- On commencing at 9:34 a.m.

3 MR. QUESNELLE: Good morning, everyone. Please be
4 seated.

5 The Board sits today to consider a motion filed by
6 Rogers Communication Canada Inc. arising from a five-year
7 Custom Incentive Regulation application filed by Hydro One
8 Networks on March 31st, 2017 under section 78 of the
9 Ontario Energy Board Act, seeking approval for changes to
10 distribution rates to be effective January 1 of 2018 to
11 December 31st of 2022.

12 On May 18th, 2018 the Board issued its decision on
13 confidentiality and Procedural Order No. 6 in this
14 proceeding, which provided for submissions by Hydro One,
15 Rogers, and other parties on how the OEB might move forward
16 on the matter of pole attachments in light of the March
17 22nd, 2018 issuance of the report of the Ontario Energy
18 Board wireline pole attachment charges, more informally
19 known as the Pole Attachment Report.

20 The Board received submissions on this matter from
21 Hydro One, OEB Staff, Rogers, and a number of other
22 intervenors. Hydro One's submission filed on May 28th
23 included updated evidence on its pole attachment charge.

24 Hydro One stated that its updated calculation of the
25 2018 charge is based on the application of the OEB's
26 methodology set out in the Pole Attachment Report.

27 On September 4th, after a number of procedural steps
28 which included supplementary interrogatories, Rogers filed

1 the motion which is before the Board today. The motion
2 requested the following two items of relief: First, an
3 order that Hydro One serve and file full and complete
4 responses to the interrogatories listed in Rogers' notice
5 of motion, which Rogers asserted Hydro One had refused to
6 answer in its August 23rd, 2018 responses; and second, an
7 order that following the hearing of and decision on this
8 motion, and the provision of any supplementary responses
9 provided by Hydro One pursuant to that decision, a
10 technical conference be held with respect to any matters
11 arising from the interrogatories and all of Hydro One's
12 responses on a date to be set by the OEB.

13 The OEB in the notice of motion hearing and Procedural
14 Order No. 9 determined that it would hear this motion by
15 way of oral hearing.

16 The Board reminds parties that the focus today is on
17 whether or not Hydro One's updated evidence filed on May
18 28th related to the pole attachment charge is consistent
19 with the methodology adopted by the OEB in the Pole
20 Attachment Report.

21 With that, I will take appearances.

22 **APPEARANCES:**

23 MR. PINOS: Good morning, members of the Board. Good
24 morning, members of the Board. My name is Timothy Pinos.
25 I am counsel for Rogers Communications Canada Inc. here in
26 this hearing, and with me is my associate Chris Selby, S-e-
27 l-b-y, and my client from Rogers, Mr. Michael Piaskoski, to
28 my far right.

1 MR. QUESNELLE: Good morning, Mr. Pinos, thank you.

2 MR. VEGH: Good morning, Mr. Chair, good morning,
3 Panel members. My name is George Vegh. I am counsel for
4 the applicant, Hydro One, the respondent in this motion,
5 and I will be assisted today by two Hydro One employees,
6 and I would like them to introduce themselves to you
7 directly so you have a sense of who is sitting across from
8 you.

9 MR. QUESNELLE: Thank you.

10 MR. BEN-SCHLOMO: Hi, my name is Oren Ben-Schlomo, and
11 I work at Hydro One.

12 MR. QUESNELLE: Good, thank you.

13 MS. PATHMANATHAN: Hi, my name is Aarani Pathmanathan,
14 and I work at Hydro One as well.

15 MR. QUESNELLE: Thank you very much.

16 Any other appearances? Mr. Sidlofsky.

17 MR. SIDLOFSKY: Good morning, sir. My name is James
18 Sidlofsky, appearing as counsel to Board Staff this
19 morning. I'm accompanied by Martin Davies, case manager on
20 this file, and Jane Scott, manager for major applications.

21 MR. QUESNELLE: Thank you very much.

22 **PRELIMINARY MATTERS:**

23 Mr. Pinos, with your indulgence, before I ask if you
24 have any preliminary matters, the Board has one, and if I
25 could, I would ask -- I take it you will be introducing a
26 document that you supplied to the Board yesterday. It is a
27 written documentation of the list of the interrogatories in
28 which you are seeking fuller answers and your rationale for

1 why they are relevant to the Board's proceeding.

2 MR. PINOS: That's good. We actually uploaded it on
3 Tuesday afternoon on the RESS.

4 MR. QUESNELLE: All right. So it's --

5 MR. PINOS: That's correct.

6 MR. QUESNELLE: All right.

7 MR. PINOS: And we provided it to everybody, and we
8 indicated that we would be providing that on Tuesday in
9 response to a query from the Board, I think a little over
10 ten days ago.

11 MR. QUESNELLE: Excellent. Thank you very much.

12 That document we would like to introduce -- have you
13 introduce it as an exhibit, if you don't mind, and we will
14 document it now. You will be introducing it?

15 MR. PINOS: Yes, I am treating it effectively as my
16 written submissions. I am happy to have it marked as an
17 exhibit by the Board and ask it be marked. What it
18 consists of is basically three parts: The original Rogers
19 interrogatories, the Hydro One responses, and introductory
20 and interrogatory-by-interrogatory comments, or brief
21 submissions as to why we say either the answer was
22 inadequate or, where there has been no answer whatsoever,
23 why it is relevant and it should be answered.

24 MR. QUESNELLE: All right. Thank you very much. And
25 the only reason I am going through this exercise now, Mr.
26 Pinos, is I want to refer to it as a preliminary matter.

27 MR. SIDLOFSKY: That will be Exhibit K12.1.

28 **EXHIBIT NO. K12.1: WRITTEN SUBMISSIONS SUBMITTED BY**

1 **MR. PINOS.**

2 MR. QUESNELLE: All right. Thank you, Mr. Sidlofsky.

3 My question is to you, Mr. Vegh, and you are familiar
4 with the document. I believe you would have seen it filed.
5 If we can just turn to page 4 of the document. And just
6 going from the numbered listings of the issues in the
7 preamble, and number 9, and it reads -- and just in part
8 here, but:

9 "Given the clear statement in the final report
10 set out at paragraph 4 above, Hydro One may
11 accept the default province-wide rate (in which
12 case there is no need for this hearing), or may
13 apply for a custom rate using its own LDC-
14 specific evidence and inputs (which it purports
15 to have done)."

16 I think that is sufficient for the purpose of my
17 question. We would just like to have it on the record, Mr.
18 Vegh, that the Board is in agreement with that statement
19 from Rogers, that that is an option, and it was available
20 to Hydro One, and it may be on the record elsewhere, but
21 just for clarity today: Does Hydro One recognize and aware
22 that that was an option available to it? That it had the
23 ability to apply for the default province-wide rate?

24 MR. VEGH: Yes, that's right. I don't necessarily
25 agree with how this is characterized in the paragraph, but
26 there is the option to apply for default rate or the option
27 to apply for utility-specific rate in accordance with the
28 information in the workform.

1 And Hydro One has obviously chosen the latter option,
2 and, you know -- and that will be addressed in the motion
3 today, to see if -- to address my friend's objections to
4 how the workform was completed by Hydro One, but that --
5 that is the option.

6 MR. QUESNELLE: Okay.

7 MR. VEGH: So we recognize that.

8 MR. QUESNELLE: Understood. The only reason I am
9 raising this -- I don't want to make more of it than what
10 it is -- is that when the Panel read this and went back and
11 looked at the report we thought, well, maybe there is a
12 question here as to whether or not Hydro One recognized
13 that and had that option available to it, given that it did
14 have a utility-specific rate approved prior by the Board,
15 whether or not it felt that it was not in a category that
16 had this option available to it. So we just wanted to make
17 sure of that.

18 MR. VEGH: Yes, sir, thank you for that. And that is
19 helpful.

20 Just as a practical matter, depending how long this
21 proceeding ends up taking, the concern of Hydro One is to
22 ensure that there is no delay in the decision on the main
23 rates application. So depending where today goes and
24 subsequent steps go, Hydro One may in fact have no choice
25 but to go ahead with the default option.

26 MR. QUESNELLE: Well, I take it that, you know,
27 obviously if Hydro One wants to amend its application at
28 any time throughout it can always bring that request to

1 amend to the Board and the Board would entertain it in due
2 course, so --

3 MR. VEGH: No, I understand that. Yes, I am just
4 addressing the practical implications of this being heard
5 at this stage at this time in the calendar.

6 MR. QUESNELLE: Thank you, Mr. Vegh.

7 Mr. Pinos, any further preliminary matters from you,
8 sir?

9 MR. PINOS: No, sir.

10 MR. QUESNELLE: What we had envisioned today, then,
11 and recognizing that you have responded to the request that
12 something be filed in writing in advance, and as you just
13 described this document, recognizing that we have that,
14 what we would expect today is just further submissions,
15 oral submissions, on any highlights that you want to bring
16 to our attention. If there is anyone in support that --
17 there is no appearances other than from the applicant or
18 Board Staff, if there are further submissions in support of
19 the motion, we would hear that. And we would hear from Mr.
20 Vegh, from the respondent to this motion, and then give you
21 the opportunity for final reply, once you hear those
22 responses, okay?

23 MR. PINOS: Will do. I will endeavour to highlight
24 and supplement what I've provided in writing to you and not
25 read -- I am certainly not going to read my submissions to
26 you on this.

27 But there's several reasons why I believe this is
28 important to both -- all of the Board, my client, and its

1 other attachers and my friend, Mr. Vegh's, clients and
2 other LDCs, in that this is the first hearing under --
3 pursuant to the wireline attachment report from March of
4 this year, in which a LDC has sought an LDC-specific rate
5 in the context of that report and its methodology.

6 And that sort of underscores why we viewed it
7 important that we have this motion, both orally and now in
8 writing, and a chance to sort of explore the implications
9 of the wireline attachment reports and the dichotomy
10 between a default province-wide rate and how a LDC-specific
11 rate actually will work.

12 So what I would like to do is make a few sort of
13 overview submissions as to the scope. I agree part of the
14 issue before the Board today is the application of the
15 methodology. This is about interrogatories, so it's not a
16 determination of the merits. And to the extent to which I
17 preview arguments that we may wish to make on the actual
18 determination of the rate, those are more to illustrate why
19 we say our questions are relevant and should be answered,
20 as opposed to making submissions or asking the Board to
21 make sort of an interlocutory ruling on how the methodology
22 is to be applied in these circumstances.

23 There's basically two sort of fundamental
24 underpinnings to the submissions set out by my client,
25 Rogers, in the document before you.

26 The first is that -- and for the purposes of our
27 submissions, we accept the final report on wireline
28 attachments. We accept the workform and the formulae in

1 the workform. We don't accept necessarily that -- and
2 there are two basic issues, I think, before the Board today
3 that emerge from the questions asked and the
4 interrogatories posed, and the answers provided by Hydro
5 One.

6 The first question is really to what extent is someone
7 providing interrogatories permitted to test or enquire into
8 the basis for numbers used in a workform or in a rate
9 calculation to determine the accuracy and reasonableness of
10 those numbers for the purpose of the workform. Many of the
11 questions that are attached to our -- cited in our notice
12 of motion and are set forth in the submissions that I have
13 provided are instances where, yes, there is a number and we
14 asked a question or two about perhaps how Hydro may have
15 approached the calculation of that number for the purposes
16 of the workform.

17 And then we drill down and ask about what, in some
18 cases, seem to be inconsistencies, or we ask to have
19 illustrations or some form of backup so that we can
20 actually enquire into that number as to whether it is a
21 real number, whether it is fair and reasonable in the
22 circumstances, and then appropriate for use in the
23 workform.

24 That is one category and I think that is the majority
25 of the questions that have not been answered in these
26 circumstances. Either Hydro One has said they're not
27 relevant, or they provided a partial answer, but not a
28 complete answer, when we asked for either sample

1 calculations or some evidence to back up the manner in
2 which that number was developed by Hydro One.

3 The second category is areas where rather than provide
4 LDC-specific evidence leading to the calculation of a LDC-
5 specific input for the purpose of the workform, that Hydro
6 One has merely accepted the default value in the workform.
7 And this goes to the issue that is discussed in the opening
8 and the overview and background of my document that I have
9 submitted, Exhibit K12, relating to our submission that
10 when you deal with the application of the wireline
11 attachment report, that you have two paths.

12 You have the default path, in which case no hearing is
13 necessary, or you have the LDC-specific path. And it is
14 our submission -- it will be our submission to the Panel
15 ultimately hearing this case -- and it doesn't have to be
16 decided today, but it is ultimately that two things. One
17 is Hydro One should be using LDC-specific evidence from its
18 own financial and operational records for the workform, and
19 should not be able to rely on defaults in the workform that
20 are used to generate or build-up the province wide rate.
21 That is the first submission.

22 Secondly, our interrogatories should be able to
23 enquire, even where Hydro One has not provided a LDC-
24 specific input -- because we're going to be arguing that
25 they can only use a LDC-specific input, we should be able
26 to enquire as to the available evidence in Hydro One's
27 books and records relating to that input, even where they
28 haven't specifically provided a LDC-specific input, because

1 not today, but at the hearing of this matter, we will be
2 making the strong submission that it's an either/or
3 situation, that it is not possible and not appropriate from
4 a rate-making standpoint to permit a LDC carrier -- LDC to
5 effectively use a hybrid approach, where they take some
6 LDC-specific inputs and other default inputs to arrive at a
7 rate that kind of reflects their specific circumstances,
8 but don't fully reflect their specific circumstances.

9 And I think, you know, from our standpoint, we will be
10 arguing that absent the application of LDC-specific inputs
11 to all aspects of the workform that provide for those LDC-
12 specific inputs, that Hydro One doesn't qualify for an LDC-
13 specific rate and can only rely on the default province
14 wide rate.

15 MR. QUESNELLE: Mr. Pinos, can I ask you just to
16 respond on that particular point that you are making now.

17 You were talking about the timing of this and the
18 phasing of it, that that is something that the Board would
19 make a determination now, on whether or not further
20 responses would be of merit and on point to your -- to the
21 interrogatory and relevant to your case.

22 What's the practical ramification of the Panel -- this
23 is the same Panel that will be hearing the ultimate, making
24 that determination at this point as to whether or not a
25 hybrid, as you characterize it, approach taken by Hydro One
26 is acceptable at this juncture?

27 MR. PINOS: I think it is fair that -- this is an
28 interlocutory matter, this is an interim matter, this is

1 whether questions should be answered or not.

2 And the issue of whether Hydro One should be able to
3 use default inputs in combination with its own inputs to
4 create a hybrid workform, I think you would want to see
5 Hydro One's own evidence with respect to the matters in
6 which it is attempting to use the default value, to see
7 where there is a material difference, because if it is an
8 immaterial difference, it may not matter. But we don't
9 know sitting right here today.

10 But if, from a rate-making standpoint, if there is a
11 material difference between a factor that is, you know,
12 that has been determined for the default calculation and a
13 Hydro One-specific factor that is material to the rate, I
14 think that's something the Board should know before it
15 makes a decision on whether it is a default path or a
16 custom path, or whether you can have a hybrid path.

17 I think that would be valuable information in knowing
18 the degree of variation to see whether, as a matter of
19 convenience, an LDC can pick and choose default inputs as
20 opposed to custom inputs and mix and match, so to speak.
21 And we don't know that sitting here today.

22 MR. QUESNELLE: Well, we may -- I will confer with the
23 Panel perhaps some time, if we take a break this morning if
24 we get to a break, as to whether or not we accept that from
25 the point of view -- from a practical perspective. We
26 haven't heard from Mr. Vegh, but it wouldn't be beyond the
27 realm of imagination to think there may be a fair bit of
28 work to gather information which hasn't been gathered to

1 date.

2 Mr. Vegh has mentioned the timing of this, and if we
3 were to put off the determination of that to allow and
4 compel the response, just to find it is going to take a
5 month to put that together, hypothetically, then I am not
6 understanding the practical disadvantage of determining
7 that now.

8 MR. PINOS: Well, my threshold submission, if you were
9 inclined to do that, would be that the final report is
10 clear, that it's an either/or situation. It is either a
11 default, or a LDC-specific rate. If it is a LDC-specific
12 rate, my submission is that LDC-specific for every input in
13 the workform that admits of a LDC-specific number.

14 I acknowledge that for everybody, because the report
15 came out in March while this hearing was already on foot
16 and ongoing, the timing is somewhat unfortunate. But there
17 will be other hearings down the road where, if Hydro One --
18 if it becomes too difficult -- but I think there is a
19 threshold issue of principle here as to whether, you know,
20 the final report effectively means what it says.

21 And, you know, it may well be that for, you know, for
22 this rate period, the default rate is the only one that is
23 accessible to Hydro as a matter of practicality, given that
24 it doesn't want to delay anything else, and that is
25 unfortunate, but that is not of our doing, it is just the
26 way things fell out from the report and the fact that it
27 came out in the middle of this proceeding.

28 So -- and there will be an opportunity down the road

1 for Hydro One to, if there's a ruling that the LDC-specific
2 rates have to be used in their entirety if you want one,
3 the LDC then hasn't -- makes an advertent choice, whether
4 it wants to go to the work of generating the data necessary
5 to calculate a valid and credible LDC-specific rate, or
6 whether on a cost/benefit basis it chooses to simply accept
7 the -- what my client will characterize as a fairly
8 generous default rate that is significantly higher than
9 rates that have been charged in the past.

10 MR. QUESNELLE: Okay, thank you, that is helpful. I
11 think --

12 MR. PINOS: So I think, just to summarize, you know,
13 as a matter of principle I don't think we could -- that it
14 would be appropriate to accept a hybrid rate just for
15 expediency right now, if in fact on a principled matter it
16 should be one or the other, that this isn't the end of the
17 world as far as that. There will be plenty of
18 opportunities in the future to revisit this rate on an LDC-
19 specific rate if appropriate, and then it may well be that
20 because of the timing right now we all have to accept the
21 default rate rather than, you know, Hydro being able to
22 argue that the rate should be higher and my client being
23 able to argue based upon Hydro's specific -- Hydro One's
24 inputs that the rates should be in fact lower than the
25 province-wide rate.

26 MR. QUESNELLE: Thank you.

27 MR. PINOS: Right. So those are -- you know, I think
28 it is important to take that time for my threshold

1 submissions, because really everything then falls out of
2 that in terms of the remainder of the form.

3 **SUBMISSIONS BY MR. PINOS:**

4 And I just -- what I would like to do now is then walk
5 through the various categories, walk through, without
6 making -- reading you my submissions, just talk about which
7 category each falls within, in terms of whether it is
8 simply an input that Hydro has provided based upon its own
9 records that we are testing and looking to raise -- you
10 know, find evidence upon which we conceivably could raise
11 issues with the appropriateness of the size of the figure
12 with respect to costs, whether all of the costs have been
13 appropriately accrued or whether there are extra costs
14 being thrown in that shouldn't be applicable to an
15 attacher; with respect to revenues, whether all revenues
16 relating to the poles have been included in the costs of
17 the poles or in other cases related to that.

18 If we could move to page 6 of Exhibit K12, this deals
19 with the costs of the installed poles. Here this is --
20 this is -- and, you know, one of the issues with that
21 embedded costs is what is the actual part of the -- section
22 of -- part of the pole that should be attributed to
23 attachers such as my client.

24 And from the standpoint is -- of this is the net -- if
25 the true net embedded cost is to be used as an input here
26 we want the opportunity to sort of test both what is
27 included in that net embedded costs, the kinds of poles
28 that are being included in that calculation, so that we

1 understand whether there are poles of excessive size of
2 which we are being asked to contribute a proportional share
3 that is excessive to our requirements and whether -- why we
4 should be contributing to larger poles beyond our
5 requirements in certain circumstances.

6 So really all we are looking for here is as much
7 information -- some information, not all of the information
8 -- relating to a breakdown of the various poles, their
9 sizes, because size matters in this case with respect to
10 the various levels of pole size. As, you know, as a
11 communications attacher we take a finite piece of a pole,
12 and we need to understand whether, in calculating the net
13 embedded costs attributable to us, whether that is fair and
14 reasonable in the circumstances.

15 All of these questions go to that issue, and to say
16 that, you know, this is not relevant to the scope, well,
17 the scope in terms of the overall hearing includes the
18 reasonableness of the costs, and that is all these go to,
19 with respect to the first one, which is 53-Rogers-S02.
20 That is the costs of the installed poles.

21 MR. QUESNELLE: Okay, thank you.

22 MR. PINOS: Moving on to the next one, which is at
23 page 9, 53-Rogers-S03, costs per pole versus number of
24 poles, this tests a particular factor that emerges from
25 Hydro One's evidence in relation to what's happened to the
26 costs per pole.

27 And the questions here are in an effort to understand
28 why the costs for poles have gone up by 33 percent, a

1 third, whereas the number of poles have stayed relatively
2 the same. And here this is a case where there was an
3 answer, but it doesn't answer in 1(b), second paragraph, it
4 doesn't explain how the number of poles can drop slightly
5 but the net embedded costs can increase by a wide margin.
6 We want to understand what is driving the cost and provide
7 some evidence to support that, those calculations.

8 So again, this is a standard approach in
9 interrogatories to say, you say X is the case, but, you
10 know, show me something that substantiates that X is the
11 case. And this isn't -- this is a case where the increase
12 in costs is significant and material and it is not a de
13 minimis factor in the calculation of the pole rates and the
14 net embedded costs. So I think it is a material number
15 that we would be entitled to at least some evidence by way
16 of interrogatory to be able to test or substantiate the
17 evidence given to date.

18 MR. QUESNELLE: So it is the final portion of the last
19 sentence in the second paragraph:

20 "Please provide all evidence and calculations
21 that substantiate your response."

22 That is the lacking?

23 MR. PINOS: Yes.

24 And this is not a case of trust me or don't trust me.
25 This is a case of evidence. And just support and to -- if
26 it were, you know, a modest amount and I was seeking that
27 one might say, okay, this is the way costs go, they rise.
28 But when it goes up by a third, we seek to understand why,

1 because we, you know, frankly spent a lot of money
2 attaching to LDC poles and paying these rates.

3 So on to page 10. 53-Rogers-S04. Number of poles and
4 attachers. The questions here relate to also the request
5 to provide necessary supporting calculations. In this case
6 it is not a question of a substantial increase in cost, but
7 here we see what we believe to be some possible
8 inconsistencies in the data provided by Hydro One.

9 It is a classic use of interrogatories to try and
10 understand whether there is an inconsistency in the data
11 and, if so, why it is inconsistent or resolve the
12 inconsistency, or if we're misunderstanding information and
13 additional information that will satisfy us that there
14 actually is no inconsistency.

15 So likewise, with respect to interrogatory (b) and (c)
16 there is a request for backup supporting calculations and
17 assumptions underlying the data that is in the table at the
18 beginning of the interrogatory and that has been created
19 using data provided by Hydro One.

20 So again, we have an answer, but it doesn't explain,
21 from our standpoint, the inconsistency and, you know, why
22 there are -- the two bullet points, the issues that we have
23 identified in the information. And in this simple case it
24 is a request for evidence and calculations, or calculations
25 on the basis and what assumptions are used in those
26 calculations to get there. That is 53-Rogers-S04.

27 Moving on to 53-Rogers-S05, this goes to net embedded
28 cost, which is clearly a relevant input into the workform

1 on an LDC-specific basis. And the issue here which is
2 connected to some of the other issues, you know, and the
3 increase in pole costs are to what extent is Hydro One
4 replacing poles and incurring additional costs for reasons
5 other than just replacing poles that need replacing.

6 And in response to this -- and we are quite explicit
7 about why we were asking the question -- there's a
8 consistent refusal to answer the question. So the question
9 is -- I think it is relevant, because if Hydro One is
10 electing to replace poles and incur additional costs for
11 reasons other than the necessity of replacing it so that we
12 can still be on a pole, we would like to know.

13 So we can make submissions accordingly as to whether
14 all of those replacement costs are necessarily
15 appropriately bound into, or are they being replaced for
16 other reasons that are for the purposes of other attachers,
17 or that bear no relationship to our use of the pole and
18 what a fair and reasonable allocation of that use is to us.

19 So that is 53-Rogers-S05, and all of the questions
20 flow from that central request.

21 If you go over to page 14, we move to 53-Rogers-S06.
22 One of the issues here with respect to who else is using
23 the poles and what are they paying to do so relates to what
24 I would call the issue of equity, in terms of sharing the
25 costs of the poles.

26 The methodology applies a certain ratio of the costs
27 of the poles to us. However, with respect to two
28 instances, and here we're talking about streetlights --

1 elsewhere there is an issue with some wireless attachers --
2 the streetlights are paying \$2 per pole and it is a rate
3 that was regulated over 25 years ago.

4 And my client legitimately asks and says, well, you
5 want to charge us \$45 a pole for attaching a wire and you
6 only charge \$2 for a streetlight. Why is that the case?

7 And although it doesn't -- it goes to the revenues
8 associated with the poles and whether Hydro One is
9 effectively cross subsidizing one user with another user's
10 rates. And one of the, you know, principles of rate making
11 is horizontal and vertical equity; like uses should be
12 treated alike.

13 What we would like to know is whether there is a
14 defensible rationale for the reason why Hydro One has not
15 elected to seek a higher rate from municipalities attaching
16 streetlights to poles.

17 There is a threshold answer, but all of the questions
18 that follow relate to effectively a request for information
19 that underpin the appropriateness or validity of the
20 rationale for saying we're only going to charge \$2 per
21 streetlight, and we're not going to try to make them pay a
22 higher share of the pole costs that we're seeking on a
23 real-time basis from telecom attachers.

24 So it goes to an argument we would make that if Hydro
25 One is deliberately not charging an appropriate amount for
26 an attacher, that that should go to exclude a portion of
27 the costs of that pole from the calculus of our rates.

28 Streetlights are one example. Wireless attachers are

1 another example, and we have questions about them, too. It
2 goes to an argument about equity. And when you talk about
3 the costs of the workform and the revenues associated with
4 the use of the poles, it is not just any cost and any
5 revenue. It is, you know, to arrive at a just and
6 reasonable rate, you have to look at what others are being
7 charged for the use of that pole in determining whether
8 either the costs should be adjusted, or whether revenues
9 should be imputed from a failure to charge an appropriate
10 rate that is proportional to other regulated rates.

11 MR. QUESNELLE: And those are two different tests,
12 depending on the nature?

13 MR. PINOS: Yes, it depends on the -- and the answers
14 may satisfy the Board that two bucks is the right rate and
15 we're all wet. But at the end of the day, we would like to
16 be able to make -- to have the evidence that would enable
17 us to decide whether to make the argument that there should
18 be some adjustment to one or more of the Hydro One inputs
19 to reflect that failure to charge a reasonable rate to a
20 certain constituency of attachers.

21 53-Rogers-S07 relates to a series of questions
22 relating to the net embedded cost and power specific
23 assets, and there are a number of questions that also go to
24 the net embedded costs and whether it is fair and
25 reasonable to exclude capital contributions to pole
26 inventory coming from other attachers.

27 Now, there are some answers here, but about half the
28 questions are just not answered at all. What we're trying

1 to do is break out the categories of poles that are either
2 paid for by other attachers, or erected by other attachers
3 that may also influence the net embedded costs of the
4 poles.

5 That is the first section. The second section on page
6 17 deals with the cost of certain make-ready work, and it
7 appears on Hydro One's own evidence so far that they've
8 included the costs -- certain costs that are borne by my
9 client in their costs.

10 And simply what we're asking for is, well, if we're
11 paying for that and you are not, we need to net that out of
12 your costs in the circumstances, and so we need your data
13 as to how much of those costs are aggregated on your books
14 so that we can ask that the net embedded costs be reduced
15 by an appropriate amount to reflect things that we actually
16 pay for, such as guying and anchoring as part of the make-
17 ready work.

18 So that is the second category under this general
19 heading. And the last two are on page 18, whether the net
20 embedded costs new and bigger poles installed at the
21 request of a third party generator. Again, that is the
22 same as question 1, whether there are costs here that are
23 not attributable to the needs of Hydro, but are
24 attributable to the requests of others and are those others
25 paying for them, and therefore we shouldn't be paying for
26 them.

27 And secondly, the question of the power-only deduction
28 and the default value of 15 percent. This is the first

1 instance we come across where Hydro One has used a default
2 allocation in the workform rather than provide its own LDC-
3 specific number.

4 There is a little bit of a history in the question 6
5 at the bottom of page 18 going over to page 19 about some
6 evidence that was submitted to the Pole Attachment Working
7 Group that give rise to the final report, and the fact that
8 the Hydro One evidence provided to the Pole Attachment
9 Working Group was different from the default rate
10 calculated as a result of the working group process, and
11 the draft report and the final report process.

12 Again, it goes to the point where we -- if this is
13 truly a LDC-specific rate, we would like the LDC-specific
14 evidence, and it is not provided in response to that
15 question number 6.

16 So that's that is that group of questions.

17 We then move to page 20 and 53-Rogers-S08, which are
18 the LDC-generator pole attachment rate. Again, this goes
19 to the question of -- we are not challenging any matters of
20 methodology. It is what it is. But the question is,
21 having arrived at a brand new methodology for wireline
22 attachers, is there an under-charging or inappropriate
23 charging with respect to the generator pole attachment
24 rates that is causing a form of cross-subsidization between
25 my client and the generators.

26 We want to find out whether there is that. If there
27 is none, there is no argument to be made by my client. If
28 there is some, we have an argument that there should be,

1 likewise, some adjustment made to the costs and the rates
2 on the basis of what generators are charged with respect to
3 the pole attachment rate.

4 We are not seeking a re-do of the generator pole
5 attachment rate, but we are seeking information upon which
6 we can make submissions as to whether or not Hydro One
7 inputs should be adjusted to reflect the actual appropriate
8 rate that should be charged to my client and other
9 telecoms, as opposed to simply ignoring what goes on in the
10 world outside, and have that information.

11 The questions are set out at pages 20 and 21, and are
12 fairly thoroughly explained as to the rationale for them
13 being asked.

14 The last group of questions relates to pole
15 maintenance, and relates to another input where Hydro One
16 has chosen to use the workform default of 48.5 percent.
17 And, again, we refer to evidence provided to the Pole
18 Attachment Working Group where the range provided by two
19 telecoms, one Hydro One and the other London Hydro, was
20 extremely wide: 5 percent on the part of Hydro One, in
21 terms of information it provided to the Pole Attachment
22 Working Group, and 92 percent provided by London Hydro.

23 We simply ask for an update as to what Hydro One's
24 actual, so we can make submissions on the basis that if
25 this is truly to be a LDC-specific work group and the real
26 number is 5 percent or closer to 5 percent, that it would
27 be fundamentally inappropriate to use the default of 48.5
28 percent, which is just a very bald averaging of the London

1 Telecom -- London Hydro number and the Hydro One number.

2 Again, it is clear in this case that the data was
3 available at the time of the Pole Attachment Working Group,
4 and we would simply like the current number for Hydro One
5 so we can make those submissions and -- as to why that
6 number should be taken into account in the workform rather
7 than the default.

8 So in sum, there are really just two issues. There is
9 the desire on our part with respect to LDC-specific numbers
10 and inputs used by Hydro One to enquire into them, explore
11 some, what appear to be inconsistencies, and then,
12 secondly, in these latter two instances, situations where
13 Hydro One has used default values when, from our
14 standpoint, it is reasonable that there should be LDC-
15 specific information, and we seek the production of that
16 LDC-specific information in these circumstances.

17 I hope I haven't repeated myself too much or read much
18 to you, and I thank the Board very much for your attention
19 on this motion.

20 MR. QUESNELLE: Thank you, Mr. Pinos. That was a very
21 efficient use of the document. Thank you very much.

22 Mr. Sidlofsky, do you have any submissions this
23 morning?

24 **SUBMISSIONS BY MR. SIDLOFSKY:**

25 MR. SIDLOFSKY: Very few, sir.

26 From Staff's perspective, we've reviewed the Rogers
27 material, including the material that was filed with the
28 Board this week, Exhibit K12.1, and with the exception of

1 one supplementary interrogatory -- and I will go into a bit
2 more detail on that in a moment -- we feel that further
3 answers are not required from Hydro One.

4 Our position on this is based on our view that the
5 question of whether Hydro One's evidence with respect to
6 its proposed joint-use telecom charge was consistent with
7 the methodology adopted by the Board in the Pole Attachment
8 Report can be properly addressed with the information that
9 is currently on the record.

10 In Staff's view, the answers requested are outside the
11 scope of the proceeding, either requesting information that
12 Hydro One doesn't have, and for example, I would refer to
13 Rogers' supplementary interrogatory S02, or that is not
14 required as an input into the workform, and the workform is
15 based on the methodology adopted in the report, when it is
16 used to develop the utility-specific rate. And an example
17 of that would be Rogers' supplementary interrogatory 6.

18 However, the one interrogatory which Staff suggests
19 the Board should require an answer for is interrogatory 53-
20 Rogers-S09, and Mr. Pinos referred to that just toward the
21 end of his comments.

22 The request from Rogers is to explain why Hydro One
23 has used 48.5 percent when they calculated -- when it had
24 calculated and proposed 5 percent in the Pole Attachment
25 Working Group proceeding. And this relates to the
26 allocator for the portion of pole maintenance costs to
27 telecom attachers, and in that case Staff submits that it
28 would be helpful for parties to understand why Hydro One

1 has chosen in that instance to use the default value of
2 48.5 percent when its own utility-specific calculation was
3 5 percent.

4 I would also note that the request in Rogers'
5 supplementary Interrogatory No. 9 is similar to a request
6 made by Staff in OEB Staff Interrogatory S06(d), and in
7 that supplementary interrogatory, part (d), Staff had noted
8 that Hydro One had used an allocation factor of 48.5
9 percent for account 5120, rather than 5 percent, as in the
10 updated evidence filed on June 7th, 2017.

11 And Staff asked whether, in Hydro One's view, the 48.5
12 percent represents a more accurate allocation for pole
13 maintenance attributed to communication carriers for its
14 pole population.

15 The response that Staff received to supplementary
16 interrogatory 6(d) was that Hydro One has applied the OEB's
17 methodology and pole maintenance cost allocation factor for
18 determining joint telecom use. That is the -- that was the
19 response in its entirety.

20 I think that obtaining an answer to Rogers'
21 supplementary Interrogatory No. 9 would be helpful in
22 understanding what Staff are also interested in
23 understanding of, which is whether it is the 48 percent or
24 the 5 percent that is an accurate allocation in Hydro One's
25 case.

26 Those are my submissions.

27 MR. QUESNELLE: Thank you, Mr. Sidlofsky.

28 Mr. Vegh.

1 **SUBMISSIONS BY MR. VEGH:**

2 MR. VEGH: Thank you, Mr. Chair.

3 In responding to my friends' submissions, I am going
4 to be referring to Exhibit K12.1, which I think is a very
5 handy compendium of the questions and answers, so I thank
6 him for preparing that.

7 I will note as I go through it, it is not an exact
8 replication of the questions in the -- identified in the
9 notice of motion. There are some additional questions in
10 here that weren't identified, but I will address those as I
11 go through them.

12 The second thing I am going to refer to is the
13 worksheet itself, because that's an important context. I
14 will also be referring very -- well, on a couple of
15 occasions but briefly, to the report of the OEB on the
16 wireline pole attachment charges, because really, the issue
17 in this case -- this is in response -- this is in
18 addressing responses to interrogatories -- the only issue
19 is whether the interrogatories are relevant.

20 And the Board has defined relevance very clearly twice
21 in two procedural orders in this case, Procedural Order 8
22 and Procedural Order 9, that relevance is consistency with
23 the report. It is not -- we are not starting a new cost-
24 of-service proceeding to address the costs of attachments.
25 It is consistency with what is in the report, and the
26 report directs the completion of the workform.

27 So that is what we need to be looking at. And I agree
28 with you, Mr. Pinos did go through his submissions, he said

1 efficiently, perhaps quickly, and there's some glosses on
2 the submissions, on the questions, and I will be going
3 through it question by question, because I think you have
4 to look at exactly what's being asked to determine
5 relevance.

6 The procedural orders were also clear that the initial
7 Hydro One pre-filed evidence, which was filed it seems like
8 a lifetime ago, is not relevant. What is relevant is the
9 updated evidence and its compliance with the report and the
10 workform.

11 So I would like to start then by taking you very
12 quickly to page 52 of the report, because that sets some
13 context, and it is put up under the heading (b), second
14 sentence:

15 "LDCs that choose to apply for a custom
16 charge..."

17 And that is Hydro One in this case:

18 "...will be required to submit specific inputs
19 from sub-accounts and file the OEB workform."

20 So that is what we are looking at: Did Hydro One
21 provide the inputs from the sub-accounts and file the
22 workform?

23 And so -- or, sorry, file the workform. and is the
24 completion of the workform accurate?

25 So the workform is what identifies the costs to be
26 provided for the determination of the rate and the format
27 for providing them.

28 And Hydro One's submission is that the workform

1 directs the content of the information to be provided and
2 the format of the information to be provided.

3 So -- and the cells in the workform actually provide
4 the instructions on how the workform is to be completed.
5 And so they function like filing requirements, this
6 workform. And the information provided is consistent with
7 that.

8 And that means that information that is not provided
9 for in the workform, that's not requested in the workform,
10 that involves a new permutation of data from the workform,
11 is irrelevant.

12 So the result of this motion is not to determine
13 whether the workform should be changed or revised or give
14 information that Rogers is looking for, the issue in this
15 motion is whether the workform has been complied with, and
16 our submission is that it has been.

17 And to just address your question at the outset, Mr.
18 Quesnelle, with respect to the implications of this
19 decision, if this decision effectively agrees with my
20 friend and says you have to disregard the workform and
21 start over with a cost of service application with respect
22 to attachments three years after this process started,
23 after the report has been done, after the workform has been
24 completed, we're going to toss that and start over. Then
25 effectively, the Board is directing Hydro One to file the
26 default rate, because that's impossible to do under the
27 circumstances.

28 But I don't think that is what is required in this

1 case, but those would be the implications. We are
2 basically -- if we ignore the workform and say provide
3 information that is not required in the workform, we're
4 starting over.

5 So I think it is important to look at the workform and
6 we will pull that up. What we are looking at here, this is
7 HR -- I don't know if you want to notionally mark this for
8 identification purposes, but this is the OEB workform. So
9 this is not the version that was completed by Hydro One;
10 we're just look looking at the template here.

11 I don't know, if for identification purposes, you
12 would like to mark it, Mr. Sidlofsky?

13 MR. SIDLOFSKY: That will be K 12.2.

14 **EXHIBIT NO. K12.2: OEB WORKFORM TEMPLATE**

15 MR. VEGH: So we're going to start at tab 1 and you
16 will see the instructions up top. And you see that this
17 form is to be used only for distributor-specific charges.

18 So that is what this form applies for. If a
19 distributor is applying for the default provincial rate,
20 then they're not required to fill in this form. So
21 everything in this form is about the distributor-specific
22 charges that we're looking at in this application.

23 Still in the instructions, the second paragraph states
24 that the majority of the information is intended to provide
25 for an overview of distributor-specific information.

26 Not all of the information populated in the workform
27 is distributor-specific, but the majority is. So some is
28 not.

1 And that is what I want to really spend some time on
2 here with respect to the power deduction factor and
3 allocation of pole maintenance costs. This is the 15
4 percent default that my friend was talking about, and the
5 48.5 percent default my friend was talking about. And I
6 agree with him; this is a threshold issue.

7 Hydro One did choose these default factors of 15
8 percent and 48.5 percent. You will see these figures a few
9 times in the workform and our submission is essentially
10 complying with the workform by choosing the default figures
11 is compliance with the workform.

12 And if this Board were to say by using the default
13 figures, they're not complying with the workform, then
14 again we are starting over. We're getting rid of the
15 workform and starting over.

16 So I would like to go through how these -- where these
17 figures are used. You will see them --

18 DR. ELSAYED: Just to clarify one thing, if I may?
19 Are you suggesting -- I haven't seen the workform
20 before -- the column that says default, just as a matter of
21 principle, and then there is the distributor allocation or
22 distributor-specific input.

23 Are you suggesting that the values under the default
24 column are an option for the applicant to use under the
25 distributor-specific scenario?

26 MR. VEGH: I would like to take you to the actual
27 entries for those, but that is my submission.

28 DR. ELSAYED: Okay.

1 MR. VEGH: But it is not just based on what is in this
2 provincial average box. You will have to go down -- why
3 don't we do that now?

4 DR. ELSAYED: Sure.

5 MR. VEGH: If we go down to the calculation of
6 wireline pole attachment charge, you will see in the power
7 deduction factor -- under the heading "indirect cost" in
8 column G, you will see the power deduction factor of 15
9 percent and to just scroll down a bit, for the allocation
10 of pole maintenance to third party attacher, that is 48.5
11 percent.

12 If you scroll up, you will see the title to these
13 workforms is application. So you have the provincial rate,
14 which is the generic provincial rate, and then the
15 application. So that is where an applicant like Hydro One
16 that went for the specific rate. Again, these figures will
17 go a couple of times.

18 You will see that for these factors -- and again if we
19 can scroll down -- under the heading application, you will
20 see that these are already completed in the workform
21 itself. So they're hard-wired into the workform as a
22 default factor.

23 And as you will see in a minute, an applicant can
24 request a departure from the default factors. So that is
25 an option that is available.

26 But obviously, following the default and not
27 exercising that option, is perfectly compliant with the
28 form. So let's just follow both of these cells through.

1 So let's just start with line 43, so G43, cell G43.
2 That is the power deduction factor of 15 percent. Maybe we
3 can click on the 15 percent.

4 Click once. Sorry. Go back and just click once, not
5 twice.

6 So we will see -- I am looking now at tab 4, the
7 directions, the instructions on the form:

8 "If a change to the proposed power deduction
9 factor is proposed, please provide the supporting
10 documentation in tab 4a and link to the
11 appropriate figure."

12 So a 15 percent power deduction factor is an option
13 under the workform. In fact, it is a default option and it
14 is only if you want to depart from that option and provide
15 specific information that you are to follow those
16 instructions and go to tab 4a.

17 So this is again, you know, the bridge year
18 application year, so this is the use of the 15 percent.
19 Again, there is the option to change it for a different
20 deduction factor, but you can comply with this by using the
21 hard wire deduction factor.

22 And that's the same point for this 15 percent power
23 deduction factor. The same point arises for the 48.5
24 percent, the default allocation factor.

25 You will recall at tab 1 that the default allocation
26 factor of 48.5 percent is in the form and this arises -- if
27 you click on 55, what happens? Sorry, we are pulling up
28 the workform for that.

1 Okay. So we are now looking at the default allocation
2 to third parties. So that is line 51, and you see what
3 it's called, the default allocation. So this is for a
4 utility that is applying for a rate.

5 The default allocation is 48.5. And you see that
6 number come up -- that comes up at line 51. You see it
7 comes up again at line 45 -- sorry, line 55 and then again
8 another note, instruction note. If you -- I'm sorry, could
9 you click that?

10 The notes or rationale for change. So that's for a
11 change from the 48.5. Now you can click on it and see what
12 the instructions are.

13 If you are going to request a departure from the 48.5,
14 you provide calculations, if any.

15 So in both cases, we have the default opportunity of
16 15 percent, 48.5 percent, and then the opportunity to
17 depart from that with explanations and with specific
18 information.

19 So if an applicant does not propose a change, the
20 applicant does not provide a separate calculation. It is
21 the same point here for the 48.5 percent as there is for
22 the 15 percent. Hydro One could have provided more
23 information if it sought a different cost.

24 But it did not do that. And you certainly cannot say
25 that Hydro One has acted inconsistently with the
26 application by using the defaults that are themselves
27 proposed as the default in the application.

28 And in fact, if that is the conclusion, then these

1 workforms make no sense, or at least these two entries make
2 no sense. How can you have a default and it says to use
3 the default unless you have a change, but then the
4 conclusion is you can't use the default. In fact, the
5 application form becomes incoherent. The workform invites
6 the use of the default.

7 Now, my friend is saying that -- that Hydro One is
8 effectively cherry-picking to use these default numbers, as
9 well as, we don't have the completed application form here.
10 But in the other areas where there was utility-specific
11 information to be provided, Hydro One provided that
12 information. It completed the workform. It was only in
13 these two areas where it used the default rate which, as I
14 said, isn't an option.

15 So the argument from Rogers seems to be premised on
16 the assumption that regulatory costs are one extreme or the
17 other. You either have bottom-up cost-of-service costs, or
18 you can have default costs, and you can only choose one or
19 the other. But that is an extreme position, and it is not
20 the position that the Board has taken for this material --
21 as is clear from the workform -- but it is also a common
22 regulatory practice to have a mix of default components and
23 actual cost components.

24 And if we think of, as an example, for example,
25 something as basic as utility-specific ROE, the Board has
26 prepared a guideline. It says here is the default ROE. If
27 you want to apply for a different ROE, apply with specific
28 evidence supporting that different ROE.

1 It is not an unusual practice by the Board to have a
2 mix of defaults and cost-specific. And this is
3 particularly the case here because we're dealing with
4 indirect costs, the indirect costs of pole attachments.

5 There is not a single precise number. So the use of a
6 default is reasonable, because there are many factors and
7 judgments that the Board -- that are called into play when
8 you are looking at the indirect costs, and it makes sense
9 to have rules of thumb available. It is true it provides
10 some fairly rough justice, but the point is to -- I would
11 say that the point of having these workforms is to bring
12 some closure to this.

13 As I say, this proceeding has been going on for three
14 years. The Board prepared a report. It said, here is the
15 approach. The Board prepared workforms: Here is the
16 approach. And remember, we do have cost-of-service
17 proceedings that look at things like pole replacement
18 policies and all of these sorts. We're not relitigating
19 every issue around costs up here -- costs here.

20 So these indirect costs that we're referring to, they
21 fall precisely into the category of when default numbers
22 can be used. And I will take you to the report, please,
23 again, as page 30 to just say why this is an appropriate
24 candidate for the use of this approach to cost, because
25 this is a case where -- and I am not saying that Hydro One
26 created this default approach, and I think I heard my
27 friend say that Hydro One created the workform. Hydro One
28 did not create the workform. The Board created the

1 workform, and Hydro One is filling in the workform.

2 But the reason why I say it is not surprising that
3 there would be default components in this is that -- could
4 you show the picture?

5 This illustration on page 30, this Figure 3,
6 illustrates what the Board calls a subsidy-free range, in
7 which you could say a rate is a just and reasonable rate or
8 the rate is economic and there are no subsidies.

9 You will see it is quite a range, that is my only
10 point, that that graphically demonstrates that within this
11 range the Board has said there is no subsidy, therefore the
12 rate is appropriate.

13 If you go down, please, to just the description under
14 Figure 3, it says:

15 "Economic theory does not provide firm guidance
16 as to the best price to charge."

17 So you know that there is a range of potential
18 outcomes here, and so you need an approach that keeps the
19 rates -- or keeps the components within that range, and
20 then the Board says later on that it is adopting a hybrid
21 approach to look at what these costs ought to be.

22 And the hybrid approach is what is reflected in the
23 workbook. It is a hybrid of actual costs and default
24 costs, with the ability but not the obligation to go full
25 actual or full default. This, like many other Board
26 approaches, is a hybrid approach. It has some components
27 of each.

28 So under the circumstances here, when looking at this

1 broad range, there is a regulatory judgment being
2 exercised, and there is a submission -- there is wisdom in
3 that regulatory judgment.

4 So when the workform provides defaults and provides
5 actuals and when the Board created the workform to do that,
6 the -- using those options that are available is not
7 cherry-picking. It is following the rules, and that is
8 what Hydro One did.

9 So with that, I would like to go now to the specific
10 interrogatories that --

11 DR. ELSAYED: Before you do that, can we just go back
12 for a minute to the workform, the list -- the cells that
13 talk about the 48.5. Just for my information, what was the
14 heading of that column?

15 MR. VEGH: This is bridge year actual, an application
16 forecast. And when you go --

17 DR. ELSAYED: How does it relate to the previous
18 headings that talked about the default versus the LDC-
19 specific?

20 MR. VEGH: Go to tab 1. It's under the heading
21 "provincial rate and application".

22 DR. ELSAYED: Okay.

23 MR. VEGH: So what we're relying upon -- what we're
24 pointing is the application, because that is what Hydro
25 One --

26 DR. ELSAYED: I am just curious where does it make it
27 clear that what is under application is specific to the
28 LDC-specific, not to the default?

1 MR. VEGH: Well, the provincial rate is on the first
2 column.

3 DR. ELSAYED: That is the --

4 MR. VEGH: That sets up the provincial rate.

5 DR. ELSAYED: That is the default.

6 MR. VEGH: Yes, okay. That is the generic default
7 provincial rate. Where you apply for -- where you bring an
8 application for an LDC-specific rate, you are in the second
9 column.

10 DR. ELSAYED: Can you click, for example, on the 15 --
11 on the provincial rate?

12 MR. VEGH: On the provincial rate? Column 1?

13 DR. ELSAYED: Yes. Okay. So that refers to a cell.
14 And then the 15 percent under "application", that is a
15 formula; is that correct?

16 MR. VEGH: It cross-references to another page, to
17 indirect costs. You see the reference to tab 4 at the top?

18 DR. ELSAYED: Right.

19 MR. VEGH: So it takes you to tab 4. So click on
20 tab 4. And this is where the 15 percent comes up again,
21 and this is where the instructions are.

22 DR. ELSAYED: Okay.

23 MR. VEGH: And you see, this only applies if you are
24 bringing an application for utility-specific rate. This
25 doesn't apply -- you don't need to complete the form if you
26 are just applying the generic provincial rate. The only
27 time you complete the form is when it is the utility-
28 specific rate.

1 DR. ELSAYED: So your understanding then of the notes
2 by OEB Staff is that -- what is your understanding of the
3 criterion that you would use in either using the default
4 number or your own number? How do you make that
5 determination? If you are given that choice as per your
6 interpretation.

7 MR. VEGH: Well, that's right.

8 So I can't really give evidence on why Hydro One chose
9 this specific one. I can tell you with respect to the
10 48.5. With respect to the -- with the 48.5 in particular,
11 there was discussion by my friend about this, you know, 5
12 percent, and I think Mr. Sidlofsky asked the same question,
13 and this comes from the POG working group. At one point
14 Hydro One said 5 percent. Well, Hydro One did not say
15 5 percent of this amount of 5120 -- of this account 5120 --
16 sorry, 5 percent of 5120, but the total costs were much
17 higher.

18 So if Hydro One were to complete, you know, its total
19 cost, total pole-related costs to complete this, it
20 wouldn't be the 5 percent that was referred to. It would
21 be much more detailed information.

22 So in this case, if Hydro One is directed to go back
23 and say you can't use the 48.5 percent, then it wouldn't
24 just be this 5120 costs, it would be a whole series of
25 costs.

26 So for a matter of administratively doing this more
27 cost-effectively, time-effectively, they adopted the
28 provincial rate, because it would have been much more

1 involved to come up with --

2 DR. ELSAYED: So it is not that you have another
3 number, it is just a question of, this is simpler -- it is
4 easier to use the default number than --

5 MR. VEGH: It would have had to be constructed. And
6 then we would get more interrogatories, I am sure, more
7 analysis. This was -- you know, Hydro One chose this
8 option because it was considered -- or the option was
9 available and because it was administratively simpler and
10 easier to follow than the detailed information that would
11 have to be provided with respect to it -- Hydro One
12 specific allocation factor.

13 DR. ELSAYED: Thank you.

14 MR. VEGH: Yes?

15 MS. ANDERSON: Mr. Vegh, if I could try and make sure
16 I understood.

17 So in this approach, the default that you are saying
18 is 48 -- from the report is 48.5 of account 5120; is
19 that -- and...

20 MR. VEGH: Yes. That's correct, yes. Yes.

21 MS. ANDERSON: And what you are saying is that the
22 5 percent that you provided in the POG is that of -- that's
23 also a 5120, but there is other accounts involved other
24 than the three identified in the report? Is that what
25 you're saying?

26 MR. VEGH: Yes, that's right. So if Hydro One were to
27 go through -- were to provide a utility-specific allocation
28 of pole maintenance costs, it wouldn't just refer to

1 account 5120. There would be other accounts involved.

2 So the total amount would have to be an accumulation
3 of different factors. And that's why they would have to go
4 into this box of notes of -- notes or rationale for change
5 and provide a rationale for why -- for what is the
6 appropriate components of the costs that go into pole
7 maintenance expense.

8 MS. ANDERSON: Thanks.

9 MR. VEGH: Thank you. So if there is nothing else --
10 I will keep the workform up because now to answer my
11 friend's questions on some specific interrogatories, it is
12 helpful to have these fresh.

13 And I think for ease of doing that, I would like to
14 start with his last submissions, question 9.2 in his
15 submissions, because that is what really -- so 9.2, because
16 really 9.2 addresses what my friend calls this flagrant and
17 illogical inequity of using the 48.5 percent default that
18 is provided for in the form.

19 Our submissions for this point are quite simple. The
20 only issue in this application, this application for the
21 interrogatory responses, is whether or not Hydro One
22 complied with the form. And my submission is that the form
23 speaks for itself. This is a default opportunity. If you
24 want to depart from the default, you have to provide notes
25 and rationale for that change, for any changes.

26 So the questions around why did you choose this
27 default -- I provided information in response to your
28 questions, but in terms of compliance with the form, that

1 is irrelevant. Hydro One complied with the form.

2 And I think while we're on this point, I will go to
3 the other area where the form compliance is addressed and
4 that is with respect to Rogers 7. So it is starting at
5 page 16 of the submission 7, numbers 2, 4 and 6.

6 These again ask the question: How can you choose
7 this 15 percent? How could you cherry pick and have some
8 utility-specific costs and some default costs?

9 And the answer, with respect to Interrogatory No.7 and
10 the 15 percent, is the same as with the 48 and a half
11 percent, which is that this is an option provided for in
12 the form.

13 So if the only issue the Board says is compliance with
14 the form, so there is compliance with -- it's irrelevant as
15 to what other options might have been available. Hydro One
16 has complied.

17 So those were the two in particular that deal with the
18 default, and I agree with my friend that's the larger
19 threshold question here is whether Hydro One is entitled to
20 use the default as the form says it is. And that is a
21 complete answer, in my submission, to Interrogatory No. 9,
22 and the interrogatories 2, 4 and 6 of number 7.

23 MR. QUESNELLE: Mr. Vegh, just a comment you made, I
24 just want to make sure that we fully understand your
25 submission.

26 You mentioned that the Board has narrowed the scope of
27 the motion to be limited to whether or not Hydro One is in
28 compliance with the -- well, you just mentioned actually

1 the methodology adopted by the form rather than the report.

2 So do you see the form being, I am asking, part and
3 parcel to the report, and equally as such?

4 MR. VEGH: I do, sir, and that is why I took you
5 initially to the Board's -- to page 52 of the report. I
6 don't have to read it to you again; I've read it to you.
7 Page 52 of the report says:

8 "If you want to custom charge, you are required
9 to provide specific inputs from the sub accounts
10 and file the OEB workform."

11 MR. QUESNELLE: Okay, thank you.

12 MR. VEGH: So I see the report as kind of creating the
13 context for the workform.

14 MR. QUESNELLE: Understood. Thank you.

15 MR. VEGH: And the workform, I take it, is Staff's
16 attempt to comply with the report. It is not a Hydro One
17 form, so...

18 MR. QUESNELLE: Thank you.

19 MR. VEGH: So now then I would like to just deal with
20 some of the other specific interrogatories that don't
21 necessarily deal with the defaults.

22 But the form remains relevant because that is what
23 Hydro One did. That is what -- Hydro One is directed to
24 file evidence. It filed evidence through the workforms,
25 and that is what is before the Board.

26 So if we look at, starting now with Rogers number 2 at
27 page 6 of the motion record, and it is helpful here -- so
28 these questions -- these questions ask a lot of information

1 about different size of poles and the questions of, you
2 know, what are the cost drivers. They focus on the length
3 of the pole, and what are the cost drivers of using 50-foot
4 poles, 40-foot poles.

5 You will see that this distinction of length, 50-foot
6 poles, 40-foot poles, is not relevant to the workbook.

7 If you go to tab 1, you will see the costs of the
8 poles are addressed -- the net embedded costs are set out
9 at number 42, 43 and 44.

10 At the next -- at tab 4, if you go to tab 4, table 6,
11 you will see the gross value of poles. That is what the
12 form asked for. It doesn't break down between 40-foot
13 poles and 50-foot poles. Those length distinctions are not
14 a relevant factor for completing the workbook.

15 And the factors referred to in these IRs are not
16 relevant to the issue of compliance with the workbook.
17 They're just -- they're just not relevant. The workbook
18 doesn't have these categories.

19 In fact, what Rogers is effectively saying is let's
20 redo the workbook and ask for information on 40-foot poles.

21 In fact if you go to -- perhaps we can go to tab 2.
22 This is also an IR, this is also an IR in Rogers' 02. You
23 will see there is -- Rogers 02, number 4, asks for
24 questions on pole height and types of attachers.

25 But if you go to tab 2, you will see there is a type
26 of attacher category that Hydro One completed and then if
27 you go down, you see there is a pole population by pole
28 height.

1 So Rogers is saying let's have a new table, one that
2 combines or mixes up table 1, which looks at type of
3 attacher and table 2, which looks at the pole population by
4 height.

5 Again, Hydro One just completed the form. It provided
6 how many poles there are of certain length. It provided
7 what the different attachments are, but it didn't go down
8 to the next level of detail, because it is not required in
9 the workform, and I don't think Hydro One has this
10 information, which is to say, well, how many telecom
11 attachers are at 40-foot, 50-foot, different pole lengths.
12 That information is not provided for in the form.

13 Hydro One did not provide that information because
14 again, it is not relevant because the form -- I am saying
15 relevance is determined by the workform and that is not
16 relevant information.

17 So the questions in Rogers 2, when you go through
18 them, it's all looking at this relationship of the cost of
19 the pole, the height of the pole, the type of the attacher,
20 and as I have said, that is not how the workbook approaches
21 this issue and that is not what Hydro One did.

22 And because the workbook didn't approach the issue
23 this way, I don't think you can conclude that Hydro One
24 failed to comply with the workbook by not providing this
25 information.

26 I would like to go now to the next, which is Rogers'
27 4. This is an issue that was discussed which isn't
28 directly tied to the workform, but the question is -- the

1 question is, again, asking for the relationship of some
2 numbers in the form and saying, well, the joint use pole is
3 increased by a certain number and the number of attachers
4 increased by a less number.

5 Intuitively this does not seem to correlate. How can
6 joint use poles increase without a corresponding increase
7 in the number of attachments to those poles? And Hydro One
8 provided the explanation. Again, not a full bottom-up
9 cost-of-service explanation but an explanation as to why
10 you would see a difference between the -- the difference
11 between the two.

12 And, you know, this is a -- the number of joint use
13 poles -- as comes from this answer -- it is a dynamic
14 matter. These numbers are changing as new poles come in
15 and different work is being used and it is being updated.

16 So anytime you look at these numbers you are going to
17 get a snapshot in time, and that is the explanation that
18 Hydro One provided.

19 I am not going to go through every answer with you,
20 because I don't want to use up too much of your time, but
21 that is the basic rationale that you will see it comes from
22 the response.

23 Now, Rogers 4 -- actually, the one I just referred to,
24 Rogers 4, is actually -- this is an example where it is not
25 in the original notice of motion. So this question just
26 came up in the last couple of days. But I read you the
27 answer. It is the same kind of answer, that the number of
28 poles do change from time to time, the number of

1 attachments do change from time to time, and there are --
2 the response has highlighted the drivers of that, of those
3 changes.

4 I am going to turn now to Rogers 5. Again, there is a
5 long list here. And I think I will go through them one by
6 one. The first section of these asked for a detailed
7 description on the pole replacement process. Again, that
8 is not relevant for compliance with the form.

9 And also, if you look at the information that is
10 requested, when are attachers notified, when is the cut-
11 over of the transfer, et cetera, it is not an issue of
12 compliance. And I am not even sure why this is being --
13 Rogers should know this. They were involved in the process
14 that Hydro One uses when it communicates with them on the
15 notification of attachers and time lines.

16 So it's looking for information which it has as part
17 of the normal course of business, and it is certainly not
18 relevant to the -- not relevant to compliance with the time
19 lines.

20 And it is the type of thing where if we linger on
21 these sorts of extraneous points, this process -- which has
22 gone on for three years and was supposed to be resolved
23 through the report and the workbook -- will just take us
24 down into that -- these rabbit holes of finding new
25 questions on new information.

26 Of course, these questions, they also -- they all
27 repeat IRs from the earlier evidence, which the Board said
28 is irrelevant. The earlier evidence is now irrelevant

1 because of the report.

2 There is a lot of questions in this about the pole
3 replacement policy. As this Panel knows, the pole
4 replacement policy is thoroughly canvassed in rates cases.
5 It has been canvassed in this case. And this is not an
6 opportunity to relitigate pole replacement policies. A DSP
7 panel spent a lot of time on pole replacement policies, and
8 the Panel asked some questions. The intervenors asked some
9 questions.

10 So again, it is a matter of relitigating -- number 2
11 and all of these subsections, they're all getting back into
12 the pole replacement policy. This is not -- it's not --
13 it's not the process of the pole attachment rate to
14 relitigate those issues.

15 And you see the questions are asking about pole
16 replacements by year for the pole replacement process with
17 respect to height -- and that is in 2(f) -- with respect to
18 the drivers of replacement in 3, the replacement of poles
19 with telecom attachers in question 4.

20 I don't want to have to go through the form again to
21 prove the negative: This information is not sought in the
22 form. So it is -- from a compliance issue it is all
23 irrelevant.

24 Going next now to Rogers 6, the information that's --
25 the interrogatories that are challenged are 3(a), (b), (c),
26 (d) -- 3(a), (b), (c), and (d), 4(a), (d) -- 4(a) and (d),
27 5(a) and (b) and (c).

28 You will see the first thing about this interrogatory,

1 it starts, again, with -- it is a follow-up of an
2 interrogatory on the initial pre-filed evidence, which the
3 Board said is irrelevant, and that applies to almost all of
4 these interrogatories. I won't go through it every time,
5 because I appreciate the Board's limited time.

6 So they also raise it, but they raise the issue of
7 what was in the pre-filed evidence, they're following up
8 interrogatories from the pre-filed evidence. And look at
9 these questions. You know, Mr. Pinos is saying, well, this
10 is all about fairness between municipalities and other
11 users, but look at these questions:

12 "3(a), to your knowledge when was the last time a
13 municipality lobbied the provincial government
14 for the right to charge utilities for their poles
15 on municipal rights-of-way? And please provide
16 evidence of lobbying."

17 That's -- I mean, that is not Hydro One information,
18 to begin with, and it is not the type of issue that this
19 Board would look into. What are the lobbying activities of
20 the municipalities? That is -- under any circumstances
21 that is irrelevant on its face. And it has nothing,
22 obviously, to do with compliance.

23 So you see that. And the next interrogatory:

24 "What would have to be done from a legislative
25 point of view to change things? So how would you
26 lobby the government to carry out legislative
27 change?"

28 Again, the OEB never gets into these types of issues,

1 and certainly not in a narrow or prescribed case like this.

2 IR 4 in this section, in Rogers 6, also asks questions
3 about the agreements with Bell, which the Board
4 specifically said are excluded, and the -- and again, the
5 conduct of Bell and Telus and the other parties named in
6 these interrogatories have no bearing on compliance with
7 the workbook.

8 I am going to turn now to Rogers 7, and we have
9 addressed some of those in the context of the 15 percent
10 default. So Rogers 7, 2, 4, and 6 I have already
11 discussed. That is about the 15 percent default, and
12 responded to that.

13 This leaves Rogers 1(b) and Rogers 3. So in 1(b) the
14 question -- 1(b) -- just step back a bit. 1(b) is, the
15 context is, do you deduct capital contributions from your
16 accounts? The answer is yes, and that is what the Board
17 always expects, that a capital contribution will be
18 deducted from an account.

19 And there is a quotation here in their response from
20 Hydro One's financial statement which describes how this
21 works, how there is a deduction of capital contributions
22 from the original cost of capital, but it is Board
23 practice. So, you know, we consider that to have been
24 answered.

25 And if you look at 1 -- so that is 1(b). And question
26 -- this is -- it is the same answer for 5(d), 5(d). You
27 will see there is a question around:

28 "You stated the capital contributions were

1 provided as a negative value. Please provide
2 evidence."

3 Well, there is a quotation from the audited financial
4 statements. And also, the Board is aware of this practice,
5 and I don't think this practice is in issue in this case,
6 that you deduct capital contributions.

7 So that is 1(b), and as I say, also includes 5(d),
8 which is claimed not to have been answered.

9 And then question 3 of -- (3) in Rogers 7 asks about
10 make-ready costs by telecom attachers and, again, asks --
11 basically, the answer that was provided is that the make-
12 ready costs are not included in the sub-account, because
13 they're not capital costs.

14 So that was the -- that was the answer. It was
15 effectively saying, well, demonstrate to us how you take
16 these costs out. A, that is not relevant to the workbook,
17 and the Board has processes for ensuring that inappropriate
18 costs are not included in accounts. There are audits.
19 There are other forms -- other forms to do that.

20 You will -- and this also goes to, in a sense, the
21 methodology because, you know, when we look at costs being
22 taken out, not the make-ready costs but other costs, that
23 is included in the 15 percent power deduction factor. That
24 is what is reduced.

25 I think -- I am just going to speak to my client. I
26 think I am just about finished on my submissions.

27 [Mr. Vegh confers with Hydro One personnel]

28 MR. VEGH: Just one more piece of information, or one

1 more submission.

2 This goes back to the power deduction factor of 15
3 percent, which we have talked about and is at tab 4 in the
4 workbook that deals with indirect costs.

5 And we saw what happened when we hovered over the 15
6 percent and I have taken you to this, the instructions, if
7 a change to the power deduction factor is proposed, to
8 please provide supporting documentation in 4a.

9 And perhaps we can just turn to 4a, to tab 4a, the
10 instructions -- the reason we are doing that is just to
11 point out again the instructions in the first paragraph,
12 it's the same as what we saw when we hovered over the cell,
13 the instructions.

14 "If a change to the default allocation of 15
15 percent is proposed, please complete tab 10a on
16 the costs by circuit configuration."

17 So again this is going -- this is another piece that
18 goes back to the original point that the 15 percent is the
19 default. We demonstrated that by more showing you what the
20 cells said.

21 But you will see in the cell says -- go to 4a on
22 tab 4. And then if you go to 4a, you see the instructions
23 of when you use 4a and that is when you are departing from
24 the 15 percent default.

25 MR. QUESNELLE: Thank you.

26 MR. VEGH: Anything else?

27 DR. ELSAYED: So on the page in the following
28 paragraph, it says Hydro One's methodology to confirm the

1 15 percent. So you have actually gone through an exercise
2 to confirm that the 15 percent is the right number?

3 MR. VEGH: I think this is referring back to the
4 working group, and I am not really a staff -- it's the
5 Board that put this instruction in. This wasn't completed
6 by Hydro One. The staff put this together.

7 DR. ELSAYED: This box has the instruction --

8 MR. VEGH: This whole box is our staff instructions.
9 Again, it only becomes relevant if you are departing from
10 the 15 percent, right? You only get to table 4a or tab 4a
11 in the workbook if you are exercising the option in tab 4
12 to depart from the 15 percent default.

13 So this tab wasn't completed by Hydro One.

14 MR. QUESNELLE: Thank you. Thank you, Mr. Vegh.

15 Mr. Sidlofsky, we will take a break now until 11:30,
16 unless you ask for more time, because I would like you to
17 put you on notice. I would like the Board Staff to perhaps
18 provide some further information, if they have submissions.

19 I am just thinking back to your submissions, Mr.
20 Sidlofsky, on the one interrogatory which you felt should
21 be responded to, and that would help Staff understand
22 better the use of the 14 -- 48.5, excuse me, 48.5 percent
23 amount in account 5120 and the rationale for that.

24 What I am looking for from Staff is -- and Mr. Vegh
25 has made the comment that this is a Staff-created model and
26 they view the model as part and parcel of the report and,
27 therefore, compliance and application of the report is what
28 the Board is looking at and that the model is an extension

1 of that report.

2 If you could help the Panel understand Board Staff's
3 views on the linkage of the workform to the report, and if
4 anything in the report that drives the creation of this
5 workform in the configuration that it has.

6 I think that the Board issued a report, and part and
7 parcel of it is by extension and we haven't accepted that
8 premise, I think, Mr. Vegh. I want to be cautious here. I
9 haven't conferred with my panel as to whether or not the
10 workform is a natural extension of what the Board's policy
11 is.

12 But we would be assisted by Staff's submission on
13 that, Mr. Sidlofsky, as to how it views the instructions in
14 the workform as being linked to and flowing from the actual
15 report itself.

16 MR. SIDLOFSKY: Thank you, sir. I will do that on the
17 break. I will start by speaking with my colleagues who are
18 in the room with me. I may need a bit more time for that,
19 if we have to go further.

20 MR. QUESNELLE: Okay. I think that would be helpful
21 to hear that prior to Mr. Pinos' response. So if you could
22 let us know and we will address whatever time you need.

23 MR. SIDLOFSKY: Thank you.

24 MR. QUESNELLE: Thank you very much. Unless we hear
25 further, we will be back at 11:30. Thank you.

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

27 --- On resuming at 11:58 a.m.

28 MR. QUESNELLE: Thank you. Please be seated. Mr.

1 Sidlofsky.

2 **SUBMISSIONS BY MR. SIDLOFSKY: (CONT'D)**

3 MR. SIDLOFSKY: Thank you, sir. I appreciate the
4 indulgence. I did need a few extra minutes to consult with
5 my colleagues.

6 Sir, before the break, you asked for Staff's view on
7 the linkage between the report and the workform, and I
8 think there is a very short answer to that.

9 OEB Staff consider the workform to be an integral part
10 of the policy set out in the report. I am not sure that I
11 need to say much more about that. Staff do consider the
12 workform to be part of the report, however, or at least the
13 -- an implementation of the policy established by the Board
14 in the report.

15 A couple of points, though, on the 15 percent default
16 power deduction factor and the 48.5 percent default related
17 to pole maintenance and more particularly on account 5120.

18 The report recognized that not all utilities have
19 detailed information about the costs that they incur, as
20 allocated between power and attachers.

21 And in fact, on page 53 of the report, in discussing
22 new data requirements, the OEB will want utilities to
23 collect more detailed information.

24 More particularly, on those two items, though, on page
25 17 of the report, the Board noted that -- or the report
26 reflected an understanding that not all LDCs maintain sub-
27 accounts to track costs directly related to third-party
28 attachments. And that led to the OEB's use of a 15 percent

1 factor as a default.

2 With respect to account 5120 and maintenance costs,
3 there is a discussion at page 18 of the report in which the
4 Board recognizes that only two distributors provided data
5 on the allocation of maintenance costs between power and
6 third-party attachers.

7 But one of those two distributors was Hydro One. The
8 other was, I think, Mr. -- my friend Mr. Pinos might have
9 mentioned London Hydro. In fact, it was Hydro Ottawa. But
10 it was Hydro One's data that reflected an allocation of
11 5 percent to third-party attachers.

12 So without getting into the issue, which I think is
13 more a matter for submissions and not related so much to
14 the matter that we are on today, which is the matter of the
15 interrogatory responses, without getting into the issue of
16 whether Hydro One should be able to use default values or
17 if it's seeking a utility-specific rate, it must use all
18 utility-specific information.

19 In this particular case, the information that we have
20 from Hydro One, the utility-specific information that we
21 have from Hydro One that is reflected in the report, is the
22 5 percent value for account 5120.

23 So it seems to Staff to be reasonable, and it seems
24 that it may assist the OEB, to have an explanation of the
25 difference between the 5 percent value that Hydro One
26 provided and that was used as an input into the calculation
27 of the 48.5 percent average -- excuse me, an explanation of
28 the difference between that 5 percent and the 48.5 percent

1 that Hydro One's using as the default value.

2 MR. QUESNELLE: Just for clarification, I think you
3 may have misspoke, or I misunderstood, Mr. Sidlofsky. Did
4 you say we have the information we have from Hydro One,
5 5 percent, being at 5 percent; that is the information
6 provided to the working group?

7 MR. SIDLOFSKY: That's correct.

8 MR. QUESNELLE: I understand, okay.

9 DR. ELSAYED: Can I ask a question? Just to confirm
10 what I think I heard, you're saying the report is linked as
11 part and parcel -- or the workform is part and parcel of
12 the report, and there are two parameters that we're talking
13 about.

14 Can you confirm then the intent of the report was to
15 actually give the option to the applicant for those two
16 parameters, to either use -- and that is the 15 percent and
17 the 48.5 percent -- those numbers, or their own numbers for
18 an LDC-specific application?

19 MR. SIDLOFSKY: Sir, that's actually the issue that I
20 thought was more suited to submissions in the proceeding
21 itself, in the pole attachment portion of Hydro One's rates
22 proceeding.

23 I am not sure that I can -- I am in a position right
24 now to give you a submission on that, on whether Hydro One
25 should be required to use its own specific information, or
26 Hydro One or any other utility must use its own specific
27 information or may use the default. I would prefer not to
28 make that submission now, if it's all the same for the

1 Board.

2 And I suspect that Mr. Pinos and Mr. Vegh may also
3 want to make those broader submissions in a context other
4 than a motion on the interrogatory responses.

5 MR. QUESNELLE: Mr. Sidlofsky, just back to my request
6 for Board input on this. It wasn't so much a submission.
7 What we're looking for was, if Board Staff provided
8 instructions within the workform, what I was looking for
9 is, where did the guidance on how to prepare -- or is there
10 guidance, I should say. Was there guidance in the report
11 relied on to create those instructions in the workform?

12 MR. SIDLOFSKY: If I could just have a moment, sir.

13 MR. QUESNELLE: Yes.

14 MR. SIDLOFSKY: Sir, what I can tell you at this point
15 is that both the report and the workbook or the workform
16 reflected an understanding that not all utilities would
17 have their own utility-specific information.

18 So that when it came to the workform, it was
19 permissible. The workform was set up in a way that a
20 utility could enter its own specific information or use the
21 defaults.

22 But again, I am staying away from the question at this
23 time as to whether the utility must use its own
24 information, if that information exists.

25 MR. QUESNELLE: And I guess what I was looking for --
26 and I have read the report. I don't recall it myself, but
27 I was asking Staff as to where they got their guidance --
28 if something went specifically to the notion of the hybrid

1 approach or not, whether or not these were options.

2 You're suggesting that the report -- the workform is a
3 reflection of the report, which recognized that not all
4 utilities had that information. Therefore, it was
5 permissive as to what direction they took, but not
6 instructive, necessarily.

7 MR. SIDLOFSKY: Yes.

8 MR. QUESNELLE: Okay, thank you.

9 With that, Mr. Pinos.

10 MR. PINOS: So I don't have to ask to do reply twice,
11 if Mr. Vegh has any comments on what Mr. Sidlofsky said, I
12 would suggest that he says those now, if he has them.

13 **SUBMISSIONS BY MR. VEGH: (CONT'D)**

14 MR. VEGH: Well, the issue here is relevance, and the
15 issue on relevance is whether there's been compliance with
16 the report -- sorry, with the report and the workform, and
17 I haven't heard any submissions to say that there hasn't
18 been compliance, because it's permissive. So I really have
19 nothing to really add to what Mr. Sidlofsky has said.

20 But just one piece of information, if it would be
21 helpful to the Panel on the issue of Hydro One specific
22 costs and why 5 percent doesn't reflect those costs.

23 The participant in the process, in the working group,
24 the POG process, is Mr. Boldt, who has given evidence
25 before this Board before and this panel on this
26 application.

27 And if the Board would find it helpful, he can provide
28 a better explanation for which accounts we're talking about

1 than I can.

2 So I am just saying that is available to the panel, if
3 you would find that a helpful piece of information.

4 MR. QUESNELLE: Thank you, Mr. Vegh. We weren't
5 really set up today to hear cross-examination or a
6 provision of evidence.

7 We recognize, and take it as your submission, that it
8 was not the 5 percent. And I think, Mr. Pinos, if you are
9 comfortable with arguing on that submission, then I think
10 we recognize the point. Without identifying a quantum per
11 se, we recognize it goes beyond the 1520. Thank you.

12 MR. PINOS: I will be brief in my reply. First to
13 address the last point, the report itself records the
14 5 percent maintenance cost for Hydro One, and then applies
15 it against the -- and I was mistaken, the Hydro Ottawa
16 maintenance cost and just divides by two because it had two
17 data points, and that was that.

18 So it is recorded in the final report. It wasn't just
19 a piece of data provided to the POG working group.

20 MR. QUESNELLE: Mr. Pinos, we haven't furnished an
21 opportunity for evidence to come in today, I recognize
22 that.

23 But the characterization that Mr. Vegh put forward was
24 that that number didn't represent the full maintenance at
25 that time.

26 MR. PINOS: That's why we're asking the question.

27 MR. QUESNELLE: Understood. Let's just take it that
28 that 5 percent is not -- the submission made by Hydro One

1 is that that 5 percent is not representative of the intent
2 of the capture, which is the maintenance costs.

3 Did I capture that, Mr. Vegh?

4 MR. VEGH: Yes, sir. I think that is right. The
5 point is that account 5120 doesn't reflect all of the costs
6 that are relevant here, and that is Hydro One's submission.

7 And I say the opportunity to provide further
8 information, if the Board would find that helpful.

9 MR. QUESNELLE: All right.

10 MR. VEGH: When this part of the report that Mr. Pinos
11 is talking about it is just talking about account 5120, and
12 we're just saying there is more to the story if we have to
13 dig into that point, then --

14 MR. QUESNELLE: We will accept that.

15 MR. VEGH: -- the opportunity is there to do that. I
16 understand that.

17 MR. QUESNELLE: We understand that, thank you.

18 MR. PINOS: Let me proceed. First of all, it is my
19 submission in reply to my friend and what Mr. Sidlofsky
20 says, it is clear on the face of the final report that no
21 workform was attached.

22 At the time of the emergence of the final report,
23 there was no workform. It talks about a workform in the
24 future, but a workform is not part of the Board's final
25 report. It is not part of the Board's order in this
26 proceeding giving rise to the pole attachment methodology.

27 The Board talks about LDC-specific rates in two places
28 and I won't repeat myself, but I will just refer you to the

1 pages. Page 35 says the LDCs may apply for a custom pole
2 attachment rate using the OEB's methodology and their own
3 specific costs where the province-wide rate it does not
4 reflect their specific costs.

5 That is the first point at page 35. And the second
6 part is the part I reproduced in my submissions:

7 "LDCs that choose to apply for a custom charge
8 will be required to submit specific inputs from
9 sub accounts and file the OEB workform."

10 That is the only reference to a workform in the whole
11 thing.

12 The workform emerged later and we hear it seems to
13 have emerged from staff rather than from the Board itself.

14 Now, in response to my friend's submissions with
15 respect to the two factors, he seems to view the form as if
16 it was a statute. It's not. It is a convenience generated
17 by Board Staff.

18 And someone on Board Staff, or working for Board
19 Staff, when they programmed the spreadsheet -- because that
20 is all it is, it is a spreadsheet -- decided that with
21 respect to two of the default factors, that the spreadsheet
22 would copy those over by default to the distributor-
23 specific tallies.

24 Now, we don't know who decided that. It wasn't the
25 Board because there is no mention of either of those
26 figures being default figures.

27 Both figures are mentioned categorically in the
28 report, but nowhere does it say this will be the default

1 for an LDC-specific rate unless the LDC chooses to input
2 its own numbers.

3 Rather, what the Board said is if a LDC wants a custom
4 rate, it has to use LDC-specific inputs.

5 So my submission is the form is not part of the
6 report. It is not part -- it's not law. And to the extent
7 that the workform is inconsistent with clear words in the
8 report about providing LDC-specific inputs, it should be
9 disregarded because it has no independent force and effect.
10 It is a creature of Board Staff in an effort to be helpful
11 and implement a report. But on its face, it is
12 inconsistent with the report which requires LDC-specific
13 inputs.

14 The fact that the report deals -- you know, says as a
15 matter of motherhood that a lot of LDCs don't have specific
16 cost information doesn't give rise to an inference that
17 these two points, and not others, should be treated as
18 defaults.

19 Someone in the Board offices could have just as easily
20 picked the number of attachers and had that copy across the
21 spreadsheet and all of a sudden we would be assuming that
22 was a default, because it is no more treated as a default
23 in the report as either of these two data points, as either
24 the 15 percent or 48.5.

25 So in my respectful submission, my friend's
26 submissions are the tail that is attempting to wag the dog.

27 What controls here is the Pole Attachment Report and
28 the specific provision that you have a default rate or a

1 LDC-specific rate, and there is no mention of a hybrid
2 rate.

3 There are references to -- the word hybrid is in the
4 report. But it refers to a specific aspect of the
5 methodology and whether you are sharing costs on a
6 proportional or an equal basis.

7 Using the advice of a consultant Nordicity, they use
8 the word hybrid in relation to that aspect of the
9 methodology, but not the fact that the rate calculation
10 exercises can be a hybrid between the default and the LDC-
11 specific rate.

12 So those are my submissions in response to the two
13 elements of the worksheet.

14 And further, the procedural order that gave rise to
15 this motion is very specific. Unlike friend who says this
16 is all about whether the interrogatories and the data
17 comply with the workform.

18 No. It is a question about whether the focus in the
19 current proceeding -- this is page 3 of Procedural Order
20 and Motion Order No. 9:

21 "The parties are reminded once again that the
22 focus in the current proceeding is on whether
23 Hydro One's May 28th, 2018, updated evidence for
24 the pole attachment charge is consistent with the
25 methodology applied by the OEB in the Pole
26 Attachment Report."

27 So it is the methodology in the Pole Attachment
28 Report. We say the methodology is either a default or LDC-

1 specific, and that is why we ask questions about these two
2 so-called defaults in the workform, which aren't defaults
3 in the report.

4 So just to cap that off, my respectful submission is
5 the form doesn't rule. The report rules. The procedural
6 order rules. And it is fair game, in my respectful
7 submission, for my client to take a position that it is
8 entitled to ask questions about the LDC-specific power
9 discount, and the LDC-specific maintenance costs.

10 With respect to the other categories of the questions,
11 again my friend seemed to take the position that because
12 there is a number in the form opposite a cell and a
13 category, that I can't ask information about the
14 information underlying that.

15 I am not seeking to replace the workform. I am taking
16 numbers in the workform and asking questions about how
17 those numbers were built up, whether they're justified and
18 appropriate for use in the workform.

19 The fact that there is a number isn't the end of the
20 case. My friend's client admits it when it does answer
21 some questions about the genesis of some of the numbers.
22 It does answer -- but the second we get and say, well, show
23 us how you calculate that so we can be satisfied that it is
24 accurate, that is not redoing anything in the workform.
25 That is verifying the input to the workform, or
26 establishing that the input to the workform should be a
27 different number.

28 It's not changing the methodology. It's not changing

1 the approach of the workform. It is simply doing what
2 parties to a rate hearing do, is test the evidence and want
3 to understand whether it is fair and credible and
4 reasonable in all of the circumstances. And that is why we
5 asked the rest of the questions.

6 Those are my submissions in reply.

7 MR. QUESNELLE: Thank you very much.

8 MR. VEGH: Mr. Chair --

9 MR. SIDLOFSKY: Sir --

10 MR. QUESNELLE: Mr. Sidlofsky?

11 **FURTHER SUBMISSIONS BY MR. SIDLOFSKY:**

12 MR. SIDLOFSKY: I just want to address one comment
13 that Mr. Pinos made.

14 He mentioned the statement in the report at page 52,
15 in which the Board said that LDCs that choose to apply for
16 a custom charge will be required to submit specific inputs
17 from subaccounts and file the OEB workform.

18 I would also simply refer the Board to page 35 of the
19 report, where the Board says:

20 "LDCs may apply for a custom pole attachment
21 charge using the OEB's methodology and their own
22 specific costs where the province-wide rate does
23 not reflect their specific costs."

24 There is a footnote to that paragraph. The footnote
25 states:

26 "The OEB has posted a workform that utilities
27 must file when seeking a utility-specific
28 charge."

1 I simply want to make it clear that the workform isn't
2 as divorced from the report as my friend Mr. Pinos might
3 have been suggesting. Once again, Staff submit that the
4 workform is integrated with the report.

5 MR. QUESNELLE: So it was footnoted on the release and
6 it was posted at the time of the release?

7 MR. SIDLOFSKY: That's correct. I can check the
8 record for that proceeding and just confirm that while my
9 friend Mr. Vegh makes his comments.

10 MR. QUESNELLE: All right. Mr. Pinos, I will give you
11 the opportunity to respond to anything that --

12 MR. PINOS: I would appreciate confirmation, because
13 from our standpoint the report appeared and then we became
14 aware of a workform.

15 MR. QUESNELLE: Yes, okay. Mr. Vegh, any --

16 MR. VEGH: Sir, if I may -- and I know that this is an
17 indulgence, but Mr. Pinos' initial submissions -- he made a
18 point in reply that wasn't made in the initial submissions
19 and it wasn't made in response to an argument I made, and I
20 am just offering the Board clarification.

21 He made the submission that the workform is a Staff
22 document, not a Board document. We know the difference
23 between Staff documents and Board documents. Staff
24 documents are reports, draft reports, seeking submissions,
25 et cetera. This work book is a Board document, not a Staff
26 document.

27 Whatever the internal approvals or oversight were, we
28 don't look behind Board documents to say whether they were

1 -- you know, what was the role of Staff, what was the role
2 of Board members. It's a Board document, it is not a Staff
3 document.

4 And perhaps -- and I will just provide some
5 information that actually supports Mr. Pinos' position, but
6 I want to have the information in front of the Board.

7 If you look at the -- if you open it, the Board, May
8 28th -- and to be fair, that was after the report was
9 issued. I think they are integrated, but date-wise -- if
10 you look at the -- it is -- the OEB has posted an updated
11 attachment workform.

12 So there was a workform in place in March, and it was
13 updated, I guess, to address the report in May. But the
14 point is the OEB posted it. It's not put forward as a
15 Staff document, it is an OEB document. And frankly, if the
16 question is compliance of my client, what the OEB has
17 acquired, I don't see how you say they were not compliant
18 when they dealt with -- when they complied with a document
19 -- with an OEB document on its face, and I will leave it at
20 that.

21 MR. PINOS: I don't want this to go any further except
22 that when my friend was going through the workform and
23 hovered over the explanation, every one is prefaced with
24 the word "Board Staff".

25 MR. QUESNELLE: Understood. So those instructions are
26 highlighted as Board Staff instructions.

27 And Mr. Sidlofsky, if you are confirming release
28 dates, perhaps you can complete the record by suggesting

1 that May 28th, as Mr. Vegh has brought us to, there was an
2 updated pole attachment workform. So we want to
3 distinguish that from the original, and when was the
4 original posted and was it posted at the time of the
5 issuance of the report. And this is just to Mr. Pinos'
6 argument that the two are disconnected, and just to
7 complete the record.

8 MR. SIDLOFSKY: I expect I am looking at the same page
9 as Mr. Vegh. And the updated form does appear to have been
10 issued on May 28th. I don't have a date for the original
11 form. I can -- I don't normally give undertakings, but I
12 can undertake to provide that to the Panel and to the
13 parties.

14 MR. QUESNELLE: And I think just -- we do that -- we
15 will recognize that you are going to do that and we can do
16 that informally so the parties have that information. I
17 think that'll be -- including the Panel, obviously, Mr.
18 Sidlofsky.

19 MR. SIDLOFSKY: Certainly.

20 MR. QUESNELLE: All right?

21 MR. PINOS: Thank you very much. That's all.

22 MR. QUESNELLE: Thank you very much, Mr. Pinos, Mr.
23 Vegh, Mr. Sidlofsky. Thank you. We are adjourned.

24 --- Whereupon the hearing adjourned at 12:23 p.m.

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