

1 New Brunswick Board of Commissioners of Public Utilities

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3 In the Matter of an application by the NBP Distribution &

4 Customer Service Corporation (DISCO) for changes to its

5 Charges, Rates and Tolls - Revenue Requirement

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7 Delta Hotel, Saint John, N.B.

8 January 24th 2006

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13 CHAIRMAN: David C. Nicholson, Q.C.

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16 COMMISSIONERS: Jacques A. Dumont
17 Patricia LeBlanc-Bird
18 H. Brian Tingley
19 Diane Ferguson Sonier
20 Ken F. Sollows
21 Randy Bell
22 David S. Nelson

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24 BOARD COUNSEL: Peter MacNutt, Q.C.

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26 BOARD STAFF: Doug Goss
27 John Lawton

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30 BOARD SECRETARY: Lorraine Légère

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33 CHAIRMAN: Good morning, ladies and gentlemen. This is the
34 continuation of Disco's application. Could I have
35 appearances please? For the Applicant?

36 MR. HASHEY: Thank you, Mr. Chairman. This morning with us
37 at the front table for the initial part of this hearing
38 are myself, Mr. Morrison, Ms. Clarke, Mr. Gorman. And
39 Mr. Marois is with us as well.

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And immediately behind me are the team that will be dealing with the Rogers issue. And they are in the order, as I believe they are sitting, is Mr. Peter Ruby, Ms. Clare Roughneen, Tony O'Hara and Bridger Mitchell.

CHAIRMAN: Thank you, Mr. Hashey. Canadian Manufacturers and Exporters, New Brunswick Division? Conservation Council? Eastern Wind? Enbridge Gas New Brunswick? The Irving Group of companies? The Jolly Farmer? Mr. Gillis? Rogers?

MS. MILTON: Leslie Milton for Rogers Cable Communications Inc. I have with me Clinton Lawrence and John Armstrong to my far right. Behind me Christiane Vaillancourt, Roger Ware and Don Ford.

CHAIRMAN: Thank you, Ms. Milton. The self-represented individuals? The Municipal Utilities?

MR. GORMAN: Good morning, Mr. Chairman. Raymond Gorman appearing on behalf of the Municipal Utilities. This morning I have with me Richard Burpee, Dana Young, Darren Lamont, Bob Bernard and Dan Dionne. And I do anticipate before the morning is out that I will have Charles Martin, Pierre Roy and Mike Coutourier from Edmundston.

CHAIRMAN: Thanks, Mr. Gorman. Vibrant Community Saint John? Public Intervenor?

MR. HYSLOP: Good morning, Mr. Chairman. Peter Hyslop with

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Mr. O'Rourke, Ms. Power and Ms. Young.

CHAIRMAN: Thanks, Mr. Hyslop. Any of the Informal
Intervenors here that want to go on the record?

MR. MERCIER: Sylvain Mercier from Hydro Quebec.

MS. SAM: Helen Sam with the Canadian Electricity
Association.

CHAIRMAN: Thank you. I'm even afraid to ask it. Are there
any preliminary matters?

MR. HASHEY: Yes, Mr. Chairman. There are a couple of
preliminary matters. But we don't believe that they
should take a great deal of time.

CHAIRMAN: Oh, I forgot Mr. MacNutt again. I'm terribly
sorry. Mr. MacNutt, who do you have with you today
representing Board Staff?

MR. MACNUTT: I have Doug Goss, Senior Advisor and John
Lawton, Advisor. Thank you, Mr. Chairman.

CHAIRMAN: Thanks, Mr. MacNutt. My apologies. Go ahead,
Mr. Hashey.

MR. HYSLOP: Thank you, Mr. Chairman. At noon today the
rate proposal will be filed. In relation to that there
was a discussion amongst counsel, as was suggested by the
Board.

And it was agreed that on Friday, January 27th, I believe
it is this week, there will be a Technical Session

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2 in Fredericton for Intervenors and Board Staff that will I
3 hope help the process to move along. It will hopefully
4 avoid some unnecessary IRs.

5 But in any event, with the approval of the Board, the
6 various counsel have agreed that there would be an IR
7 process on that with the following dates. And that would
8 be the Intervenors would send IRs to Disco on February 2,
9 2006. Disco would respond on February 9, 2006. And
10 Intervenor evidence, if any, would be filed on February
11 17, 2006.

12 CHAIRMAN: You met with all counsel, Mr. Hashey? Or were
13 there just certain select counsel there?

14 MR. HASHEY: No. Everyone that had a counsel was invited.
15 And they all participated and actively participated.

16 CHAIRMAN: I guess what I'm looking for, are all the parties
17 in agreement with that schedule, I guess is what I'm
18 asking?

19 MR. HASHEY: Yes. All the parties were in agreement with
20 that schedule.

21 CHAIRMAN: Okay. Any problems with it? If so speak now or
22 forever hold your peace. Okay. We will go with that
23 schedule.

24 MR. HASHEY: I would make one caveat on that. As you know,
25 our panel is here on February 6th. And hopefully we will

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2 be able to manage both things at the same time. And if there
3 isn't during February 6th, we can speak to people. But it
4 looks to me like it is a very workable schedule.

5 CHAIRMAN: Yes. Okay.

6 MR. HASHEY: Now I have two other short issues. The other
7 issue, as a result of the meeting that we had with counsel
8 last Friday, a proposal, albeit it is tentative, was made
9 in relation to the witness panels and the timing of these
10 panels. And I have copies of that. I do not know if the
11 Board has received copies from the staff.

12 But we do believe that we can work to the schedule and
13 that it is workable. And everyone has agreed to the
14 timetable and who we would have. And it will give the
15 Board some heads-up as to the intent of the panels.

16 Do you wish extra copies of that, Mr. Chair? I have
17 copies.

18 CHAIRMAN: I have a copy. Mr. MacNutt shared it with the
19 Board. But I'm just wondering if everyone else here has
20 them, that is all.

21 MR. HASHEY: I circulated that amongst all the participants
22 the other day. I didn't circulate it to Rogers. They are
23 not part, I don't believe, of that hearing, but --

24 CHAIRMAN: Well, they are an Intervenor here.

25 MR. HASHEY: I'm happy to give them one and also to give

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2 extra copies to the Board if they would like.

3 CHAIRMAN: We will take your extras then, Mr. Hashey. That
4 is great.

5 MR. HASHEY: Thank you, Mr. Chairman. The final issue is
6 that yesterday a letter was sent to the Board by Mr.
7 Hyslop, the Public Intervenor. I look at his Professional
8 Corporation when I read from it. I would withdraw that,
9 even a compliment of that nature.

10 In any event, there were four items listed on his letter
11 to the Board. I'm pleased to say that item 4 is no longer
12 necessary. The Board's order is being complied with.
13 That was given I believe on the 11th of January.

14 Documents will be filed in the Board office. There have
15 some been filed already. Others will be filed today.

16 CHAIRMAN: We don't have a copy of that letter in front of
17 us, Mr. Hashey. So I would appreciate it if you just read
18 off what Mr. Hyslop said and again what you agree to.

19 MR. HASHEY: Well, he was concerned about the redaction of
20 certain information that might have been contained in his
21 item 4, to make it very simple.

22 And he was saying for the purpose of his PROMOD expert he
23 needed all the information. And that has now been
24 resolved. So there is no issue there. I don't think we
25 need really to go further on that one.

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2 And if Mr. Hyslop wishes to intervene or speak up at
3 anytime on that, if I'm off base, he might wish to comment
4 individually on those items.

5 CHAIRMAN: Yes. Want to proceed that way, Mr. Hyslop?

6 Well, just before you do, on the sheet that you have
7 handed out, you have got panel members -- I see in the
8 second week there is a Mr. Makholm. Is that the Public
9 Intervenor's witness?

10 MR. HASHEY: Yes. The intent there on the second week was
11 that we would deal with the ROE net income items. And
12 that is the Public Intervenor's expert on the ROE issue.
13 I thought it would be convenient.
14 Our personnel on that, as you can see, are principally
15 Sharon MacFarlane and Kathy McShane. And we can discuss
16 the ROE back to back. It seemed like that would be a more
17 satisfactory way. And this was a time when Mr. Makholm
18 could be here.

19 CHAIRMAN: Okay. The Board and I have no problem with
20 proceeding in that fashion. The one practical difficulty
21 that may loom in the future is that when you start
22 splitting up panels and trying to limit cross examination
23 of the same people to certain weeks and things like that,
24 why you may be asking for trouble.
25 We can go ahead and try it. But if something occurs

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2 in week two and somebody wants to ask some additional

3 questions of Sharon MacFarlane for instance in reference

4 to capital spending or something of that nature, why I

5 would be hard put not to allow that questioning.

6 MR. HASHEY: Yes. I think the schedule will allow the

7 flexibility for that to happen. As you can see, there are

8 comparable people on the panels. And I'm sure we can

9 adjust days. If something ends quicker we can move people

10 ahead and vice-versa. There is space. There is

11 flexibility in there.

12 CHAIRMAN: Okay. And I have absolutely no difficulty when

13 your experts are only available in a certain time period

14 and that sort of thing. But if it is a corporate witness

15 then certainly their availability is easier to arrange, I

16 guess.

17 MR. HASHEY: They will be available whenever required.

18 CHAIRMAN: Okay. Good. Carry on, sir. That was Mr. Hyslop

19 I guess is going to address the other.

20 MR. HASHEY: Sorry. That was the point four. I don't know

21 that there is any need to address that specifically. And

22 I'm going in reverse order because there are a couple of

23 them that we have disposed of. I don't think -- unless

24 Mr. Hyslop wishes to intervene, I think that's what the

25 arrangement is on his last point.

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CHAIRMAN: He doesn't want to intervene on that.

MR. HASHEY: Okay. Then the other point -- the third point, there is an issue of Mr. Hyslop's expert reports. He is going to file three or four expert reports, as I understand, that will be amended -- this flows from the last Board ruling where there was an issue about redaction.

From what I am hearing, we may not be having as much redaction as we may have addition. But in any event it was agreed yesterday with Board staff and Mr. Hyslop, subject obviously to the Board's approval, that the issue of expert reports, whether they are acceptable by the Board, and, you know, whether they are appropriate to this hearing would be argued on the 6th when the hearing opens, because we don't have these reports yet and it seems that there was not room for another motions day. But the issue of those expert reports should go to that morning, because we expect some argument on those.

CHAIRMAN: I wonder if it's -- rather than trying to do all that on the 6th, what about -- well of course it has to go -- well you can share the expert's reports with the parties opposite and then the status of that report can be subject to argument when you start dealing with the subject matter of that report, could it not?

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MR. HASHEY: Yes. One time or the other would seem appropriate to me.

CHAIRMAN: I am just looking at it and if the panel has not read the reports, then all of a sudden we are into a bit of a quagmire. If in fact we limit to the current panel's expert reports as to mark them all for identification and then as an exhibit expunging certain things, if you want to. But it becomes terribly cumbersome from our point of view to try and rule on four or five reports and what sentences are objectionable or whatever. Mr. Hyslop?

MR. HYSLOP: In addition to what Mr. Hashey just indicated to the Board, Mr. Chair, a couple of things might assist.

One, as soon as I have these reports, I am going to be filing -- and two of them are ready now, and we will be giving copies to the Intervenors and to the Applicant forthwith.

Second, I did understand from our conversation yesterday that after the parties have had a chance to review them, if they have objections they will let me know before February 6th. And there is a good chance we may work a lot of it out, or if we don't we will know very specifically what the issues are and can lay them before the Board at that time.

I'm in good faith with the order. It's just where do

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2 you draw the line a little bit between, you know, where does
3 it look like I'm trying to get at whether the cost is
4 unreasonable and where am I actually dealing with comment
5 on the PPAs themselves. And it's a fine line sometimes
6 and I am trying to abide by it.

7 I think if those other precautions then we should be in
8 pretty good shape by the 6th. We can put it in and there
9 shouldn't be -- hopefully there won't be very much at
10 issue if we use that process.

11 CHAIRMAN: Thank you. And thank you for your optimism. We
12 have been ruling and ruling and ruling since -- when was
13 it -- last May some time. I guess I will just leave that
14 with counsel and you go ahead. I have given you my
15 personal remarks on it and how it becomes difficult if you
16 have got five expert's reports in front of you to try and
17 sift through.

18 You have got to read the whole report to see the context
19 in which something is said. As to whether or not -- as
20 Mr. Hyslop has just said, it goes to whether or not those
21 costs are reasonable or it goes to an appreciation or
22 understanding of how the PPAs work. Anyway, we will
23 simply leave it with counsel and you work through it as
24 best you can.

25 MR. HASHEY: Thank you, Mr. Chairman. Those will really be

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the issues too, I think, on those reports. I agree with Mr. Hyslop's idea. I'm pleased that he is going to give them to us in advance and we certainly will have no problem getting back to him as to what our concerns are.

CHAIRMAN: Okay. Good. Thank you. You are working backwards.

MR. HASHEY: Yes.

CHAIRMAN: Where are you now?

MR. HASHEY: I am now -- Mr. Hyslop has two issues that he wishes to raise with the Board here by way of motion this morning and I would turn back to him and say that Mr. Morrison will be responding to him.

CHAIRMAN: Go ahead, Mr. Hyslop?

MR. HYSLOP: Thank you, Mr. Chair. I shouldn't be long. In our letter to the Board yesterday, we asked for the following two items. First, we are asking that the Board order the Applicant to include in its panels dealing with an overview of the structure of the electricity market and the role of the purchase power agreements in such market an industry expert or financial advisor who was involved in advising the Department of Energy and/or the Department of Finance with respect to the same. And we are asking that the Board make a request to the Minister of Energy and/or the Minister of Finance to

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provide to the Board copies of all reports, documents, outlines, opinions that were provided by the financial advisors and industry experts to the Department of Finance or Energy with respect to the restructuring of the electricity energy and the role of the PPAs in such restructuring.

These documents were requested from Disco in IRs Disco PI IR-2(2) and 5(5) on November 14th. The answers we received were to the effect that Disco did not have such documents and in IR-5 the answer was to the effect that the PPAs were really documents that were prepared and developed through these departments.

Now the significance of these is not absolutely paramount, but I do point out that the Board does seem to be interested in as much information as it can possibly glean about the theory, where the purchase power agreements fit into this restructuring. And in that regard there are a couple of points that will come up I think during the hearings.

And this competitive market thing, although we don't have it now, the extent to which we really do anticipate this developing -- or as we might suggest during the course of the hearing, we might be suggesting that this whole reorganization has more to do with the accelerated

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recovery of the provincial debt, within a context that what role is the regulator to play.

And I think some of these documents might be very useful during the course of the rate hearing to find out where we are going. And I will be putting that into context with some of the evidence we will be putting before the Board. So, you know, where do these energy experts and financial advisors address the role of the regulator? What is the background here? And what type of information and background do these people bring to the whole question of the role of the regulator? And I think this information might be useful to the Board.

Is it absolutely critical? Probably not. If you were to ask me, I will tell you frankly it isn't. We can certainly probably deal with these issues within the context of the White Paper and the Electricity Act.

But I point out something very important about the Electricity Act. I have gone through it several times and I have used one of those search vehicles that you can get with your computer now, and the words purchase power only appear twice in the whole Electricity Act.

They appear in section 80 and it refers to purchase power agreements with the generation company and the

2 nuclear company. And then the words purchase power contracts
3 appears in Section 156. And that's the extent that the
4 Electricity Act deals with what we call purchase power
5 agreements.

6 And I contrasted that for example to the concept of
7 transfer orders which is a whole division in the
8 Electricity Act. It starts at page 12 -- or section 12
9 and goes through to section 32. And these concepts are
10 really developed. And as a result, you know, anything
11 with these transfer orders isn't really an issue at this
12 hearing.

13 But we don't have a lot in the Act itself that deals with
14 purchase power agreements and I thought some of this
15 background material, if the Ministers were prepared to
16 respect a request from the Board, might be useful, and
17 perhaps one of these people that apparently didn't advise
18 Disco much but advised the government on these issues
19 might be able to add something to clarification of the big
20 picture that we are dealing with these PPAs in.

21 So that's the reason for my two motions, Mr. Chair. I'm
22 not going to beat it to death, but I do so in the view
23 that it's in the public interest that the record be as
24 full and complete as possible.

25 CHAIRMAN: Mr. Hyslop, you know, the analogy that leaps to

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mind is somebody trying to refer this panel to what was said during the House debates in reference to the passage of a piece of legislation, and you and I know that that's not how you interpret legislation. And the Interpretation Act of New Brunswick is rather specific about that, and so is the common law.

It strikes me that I personally don't -- I don't care what advice the Minister did or didn't get. It's either the law of New Brunswick or a statement of government policy.

And that comes in the White Paper or it comes in the legislation and the regulations under it. I would like you to address that for me.

MR. HYSLOP: Points well taken from the Board, Mr. Chair.

And I would only caution by saying that throughout these not only interrogatories we referred to but throughout these hearings, it seems to me every time we get to a point where we are trying to really get at the nub of the issue in this reorganization, we run into Disco saying look, we don't really know that much about it.

Your point though I suggest is -- and I do respect the point as being well taken -- but I also think as a regulator -- and perhaps I might refer to in Disco PI IR-2 where I ask for these documents. Disco does not have them.

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The next question was "Please set out the current status of meeting each of these requirements." And this was the competitive market type of thing. And Disco identified some things. But then Disco did something I thought was kind of interesting.

It said that under the Electricity Act, Section 127 (1) -- and this is Disco's answer, not mine -- said "The Board shall monitor the electricity sector and may report to the Minister on the state of the electricity sector", et cetera. I'm sure you know the section.

And I guess my point is in view of that and in view of the fact that Disco even takes the position that as part of your responsibility you may want to weigh that against the very clear point about Ministerial advice that you did quite properly bring back to me. So I would leave it at that, Mr. Chair.

CHAIRMAN: Good. Thanks, Mr. Hyslop. Mr. Morrison?

MR. MORRISON: Thank you, Mr. Chairman. I will start where Mr. Hyslop ended. And that is with respect to Section 127. Yes, this Board has the power to monitor the electricity market.

But let's put this in context. This is a Revenue Requirement Hearing. If you want to do a review of the electricity market and the functioning of the market, you

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can do that anytime. And I suggest it shouldn't be part of this particular hearing. This is a Revenue Requirement Hearing.

CHAIRMAN: DO you think we can do it on our own motion?

MR. MORRISON: I haven't looked at Section 127 in connection with that. But you have the ability to monitor the electricity market. But let's put this in context. This is a Revenue Requirement Hearing. We are talking about for one year what the Revenue Requirement is.

There is no question that our witnesses, Disco witnesses will be able to fully explain how the PPAs operate, how they function on an operational basis, which I think is what the Board is interested in.

What the PI wants to do, he wants to go beyond that. And he's looking at -- I think, Mr. Chairman, you hit the nail on the head. These are really policy issues that belong in a completely different form than the form we find ourselves in today.

And with respect, I mean, how many times do we have to argue Section 156. I thought the Board's ruling on January 11th was quite clear. What the PI is suggesting goes well beyond what I consider the Board's ruling is on Section 156 in terms of getting into why the PPAs are what they are. The policy reasons behind them, I think in my

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view the Board has been clear on that.

This is really -- quite frankly, it is not a Disco issue.

We answered those IRs. And we said we don't have the information. And we can't give what we don't have. It is a matter between the Public Intervenor and the government departments of finance and energy.

We only received Mr. Hyslop's letter yesterday. So I don't know whether he has given notice to those government departments, whether they are going to have an opportunity to be heard. And quite frankly, it is not my place to comment on that.

What I am going to comment on is we are very, very concerned about possible delay. And we do not want to lose the regulatory schedule for a fishing expedition which I would consider a fishing expedition on policy reasons behind the PPAs.

With respect to the actual merits of the motion, if the Board decides it is going to summon a witness from either the Department of Finance or Department of Energy, that is fine. We don't want that witness to be imposed on one of our panels.

If the Board wants to summons a witness and ask questions, we don't -- it is not part of Disco's case. It may be something that the PI is interested in if the Board

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goes down that road.

But we would not -- we would strenuously object to having such a witness part of the Disco panel. We should be able to put our panels before the Board and present our case in the manner in which we feel is most appropriate.

So those are all my comments, Mr. Chairman. Thank you.

CHAIRMAN: Thank you, Mr. Morrison. My Hyslop, you have one other motion to make, I think?

MR. HYSLOP: No. I combined the two.

CHAIRMAN: You combined the two, have you?

MR. HYSLOP: There is 1 (a) and 1 (b) as opposed to 1 and 2, Mr. Chair.

CHAIRMAN: All right. Now any other Intervenors any comments? Okay.

The Board will recess for 10 minutes.

(Recess)

CHAIRMAN: I'm sorry about the lengthy ten minutes. Mr. Hyslop, we of course would be extremely interested in hearing what the advice of the experts were and reading the voluminous documentation that would have been produced. However, we don't believe that that information which you have requested, nor the witness that you have requested, are relevant in this proceeding. Therefore

2 your motion is denied.

3 Any other preliminary matters? I guess then --

4 MR. HASHEY: No preliminary matters.

5 CHAIRMAN: Okay. So are you going to put your panel up?

6 MR. RUBY: We are. Mr. Chairman, if I could just introduce
7 myself for a moment since I have not had the honour of
8 appearing before this body before. My name is Peter Ruby.

9 I am a member of the bar of Ontario and I appreciate this
10 Board allowing me to assist Disco to present its evidence
11 with respect to I think what many of us have been calling
12 the Rogers matter.

13 Mr. Hashey has been kind enough to familiarize me with
14 some of the PUB procedure, the fact that there is no
15 leading of direct evidence, but we are going to put
16 forward witnesses to rebut new evidence that has not yet
17 been responded to before cross examination. That is the
18 procedure we are planning on following.

19 I can make -- we have had some discussion with counsel for
20 Rogers and have a bit of a proposal for the Board about
21 how to proceed with this piece of the hearing. We are in
22 a bit of an odd situation since although Disco is formally
23 the Applicant, it's Rogers who applied for a rate with
24 respect to pole access.

25 So that has resulted in Rogers actually filing its

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2 reply evidence last, which Disco has not yet responded to.

3 But Disco has agreed to go first today in the hearing as
4 the Applicant and put forward its Panel first. And what
5 we have agreed to is to have on behalf of Disco two panels
6 of one, if you will. First Mr. O'Hara and then Dr.
7 Mitchell.

8 So it would be Mr. O'Hara followed by cross examination,
9 and then Dr. Mitchell followed by cross examination, and
10 then Ms. Milton has advised me that she will be putting up
11 a panel of four on behalf of Rogers, followed by cross
12 examination altogether. If that's acceptable to the Board
13 obviously.

14 CHAIRMAN: I'm loathe to say it's your case. If counsel has
15 agreed to that then we will proceed in that fashion until
16 we have difficulty. Go ahead, Mr. Ruby.

17 MR. RUBY: Thank you. The only other preliminary matters
18 just on this particular -- the only other preliminary
19 matters on -- a matter really of housekeeping is there are
20 two pieces of Rogers pre-filed evidence that do not yet
21 have exhibit numbers. So perhaps we should take care of
22 that up front.

23 And Ms. Milton obviously will correct me if I am wrong,
24 but I understand that the reply evidence filed by Rogers
25 on December 28th I believe should be RCC-3, and its

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interrogatory response as filed on January 16th should be RCC-4.

CHAIRMAN: This is indeed an unusual procedure, Mr. Ruby, where you are introducing Rogers' exhibits for them.

MR. RUBY: Well we are just trying to cover off the pre-filed evidence at the beginning. Everybody has got it. The Board has it. But we are just trying to make sure we all have the same numbers right off the bat.

CHAIRMAN: All right. Does the Board Secretary have those two exhibits? So the additional evidence of Rogers Cable Communications Inc. dated December 28th, 2005, is the first of these two exhibits to be marked?

MR. RUBY: Yes, sir.

CHAIRMAN: Okay. And as you had I think anticipated will be RCC-3. And the interrogatory responses of Rogers Cable Communications Inc. dated January 16, 2006, is RCC-4. Go ahead, Mr. Ruby.

MR. RUBY: Thank you. We are also both sides very conscious of the fact that there are time constraints on this part of the hearing and we have given some thought how to streamline the entering of evidence. And I would like to offer to the Board an issues chart that the Board Secretary has that I have exchanged with my friends and the other interested Intervenors. Perhaps if the Board

1
2 would accept it, this might be a useful guideline, a one page
3 summary of the case, if you will, that will help us move
4 through the evidence in an efficient manner.

5 CHAIRMAN: Any objections to that being given to the Board,
6 Ms. Milton?

7 MR. MILTON: No. Clearly the issues are crafted in a manner
8 that is Disco's understanding of the issues. So I may be
9 modifying that understanding somewhat but I don't mind
10 starting with that.

11 CHAIRMAN: Okay. I'm having a little difficulty in hearing
12 you. Perhaps you could draw your mike in a little closer.
13 Thank you. We have that now, Mr. Ruby.

14 MR. RUBY: Thank you, Mr. Chairman. Mr. O'Hara I anticipate
15 will address this chart in evidence, but all I would point
16 out is on the left side are the elements of the evidence
17 that have been introduced. The first few are cost
18 elements and then you can see below there are a few other
19 things, allocation approach and so on. And the right side
20 is in Disco's view what the remaining decision points for
21 the Board are.

22 So although there is a great deal of evidence on this
23 issue, in our view it can all come down to a few points of
24 decision for the Board and a rate will flow out of those.

25 So using this chart we hope that we can make it easier

2 the Board to follow through with the evidence.

3 The other suggestion I have for the Board is that in
4 reading the evidence, the Board will have noticed there is
5 a great deal of evidence where the parties have agreed
6 will accept this or that element of the cost data, and
7 then there appears to be some -- but we are being very
8 generous by doing that. And that's on both sides. My
9 suggestion to the Board is that to get through this
10 efficiently that the Board accept the concessions made by
11 the parties and not to worry too much about who is being
12 generous and who isn't. Both parties make the same sorts
13 of claims, I can freely admit that.

14 So unless there are any other issues on process, Mr.

15 Chairman, I would like to call the first witness.

16 MR. MILTON: I would just like to -- I'm not sure what I
17 understand about the last -- that I understand the last
18 comment on being generous, but we will see how the
19 evidence goes in and if there is any issue we can address
20 it then.

21 CHAIRMAN: You are being given an opportunity to prove that
22 you are generous. Go ahead and call you witness, Mr.
23 Ruby.

24 MR. RUBY: Thank you, Mr. Chair. If I may then call Mr.
25 O'Hara to the stand and ask that he be sworn.

1 - 2971 - Mr. O'Hara - Direct -

2 TONY O'HARA, having been duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. RUBY:

4 Q.1 - Can you please introduce yourself to the Board?

5 A. My name is Tony O'Hara. I'm the Director of Engineering
6 and Operations for New Brunswick Power Distribution and
7 Customer Service.

8 Q.2 - Are you the lead Disco employee responsible for joint
9 use of Disco's poles?

10 A. Yes. That's correct.

11 Q.3 - And was the evidence under your name filed in this
12 proceeding prepared by you or under your direction?

13 A. Yes. That's correct.

14 Q.4 - Do you adopt that evidence for the purpose of this
15 hearing?

16 A. Yes, I do.

17 Q.5 - Can you please give to the Board, Mr. O'Hara, a brief
18 summary of your evidence today?

19 A. My evidence before the Board today provides information
20 with respect to an overview of joint use in New Brunswick
21 as well as some information with respect to other
22 provinces.

23 I deal with some of the engineering issues involved in
24 joint use. I provide information concerning Disco's pole
25 costing information and data and some discussion on the

2 practical application of joint use poles.

3 Q.6 - Mr. O'Hara, I see in your evidence at the last page of
4 your evidence is your résumé. This is at the end of
5 exhibit A-63.

6 Are you a Professional Engineer and Certified Engineering
7 Technologist?

8 A. Yes. That's correct.

9 Q.7 - And for how many years have you been involved with
10 Disco's joint use poles?

11 A. I have been involved with Disco's joint use poles directly
12 for 12 years in my career just with NB Power.

13 Q.8 - What aspects of joint use have you been working on?

14 A. All aspects of joint use from administration of the poles
15 through the engineering, design, construction and
16 maintenance of those poles.

17 MR. RUBY: Mr. Chair, I would ask that Mr. O'Hara be
18 accepted as not just a lay witness on behalf of Disco but
19 an expert with respect at least to the engineering aspects
20 of joint use.

21 CHAIRMAN: Any problem with that?

22 MS. MILTON: I must say this is a surprise. His evidence
23 wasn't characterized at anytime as expert evidence. My
24 understanding was he was a lay witness. But I mean, I
25 accept that he is an engineer. I'm not sure I would

2 qualify him as an expert witness.

3 Have you ever appeared before another Board,

4 Mr. O'Hara?

5 WITNESS: No, I have not.

6 MS. MILTON: I would prefer not to slow this down with
7 procedural gambit. So we will accept that he is an expert
8 in engineering. But I must say I'm concerned by having
9 this introduced at the last minute.

10 CHAIRMAN: Well, I'm glad you did that. I could feel some
11 people stiffening up up here when you were talking about
12 engineers and what not.

13 Go ahead, Mr. Ruby.

14 MR. RUBY: Thank you, Mr. Chair.

15 Q.9 - Let me ask you one preliminary question, Mr. O'Hara. Do
16 you know if Aliant knows about this proceeding?

17 A. Yes, they do.

18 Q.10 - Okay. And I gather that there are a number of other
19 parties that attach to poles besides Aliant and Rogers?

20 A. Yes. That's correct.

21 Q.11 - And do you know what their interest in the outcome of
22 this proceeding is?

23 A. The other parties that we have talked to are the third
24 parties that expressed interest in being treated in the
25 same respect as what Rogers would be treated.

2 Q.12 - All right.

3 CHAIRMAN: Mr. Ruby, if this Board rules on pole attachment,
4 then -- it is a tariff item. And Disco can only charge
5 the tariff item. It is as simple as that.

6 So whatever we find in reference to Rogers is also
7 applicable to the one other cable company in the province
8 which I guess is in the Sackville area at the present
9 time. But that would be applicable.

10 MR. RUBY: Disco has no problem with that. We raise it only
11 because one of the other Intervenors had asked about a
12 number of other attachers. And clearly there are a very
13 small number of other attachers with a small number of
14 attachments --

15 CHAIRMAN: Yes.

16 MR. RUBY: -- who just are not here.

17 \ CHAIRMAN: Okay. Well, I just didn't want us to proceed
18 without realizing that it is beyond the negotiation of the
19 parties when you get a Board order. Because it is a
20 tariff item and must be charged to everybody.

21 MR. RUBY: Thank you, Mr. Chair.

22 Q.13 - Just so we are all on the same page, Mr. O'Hara, what
23 joint pole access rate is Disco seeking from Rogers?

24 A. \$30.61 per pole per year.

25 Q.14 - And have you reviewed the evidence filed by Rogers in

1
2 this proceeding?

3 A. Yes, I have.

4 Q.15 - And I take it the big picture issues are what should be
5 the cost components for ratemaking and then how those
6 costs should be allocated, is that right?

7 A. Yes. That's correct.

8 Q.16 - Okay. Is there consensus with respect to what cost
9 components should be used for ratemaking?

10 A. Yes. There is consensus on the factors that would go into
11 the ratemaking.

12 Q.17 - And is there consensus with respect to what cost
13 allocation approach should be used?

14 A. No. Currently the experts on both sides are applying a
15 different approach.

16 Q.18 - Now Mr. O'Hara, do you have with you a chart labeled
17 "Issues" with two columns, "Evidence" and "Remaining
18 Issue"?

19 A. No, I'm sorry. I do not.

20 Q MR. RUBY: And the Board should have a copy of that chart
21 now.

22 Q.19 - And what I propose to do with you, Mr. O'Hara, is start
23 at the top of the chart and work our way down, all right.

24 A. Yes.

25 Q.20 - And you can provide your rebuttal evidence to Rogers

2 evidence as we go through this, okay?

3 A. Certainly.

4 Q.21 - All right. But before we start with the chart maybe we
5 should clear something up. Rogers says in its evidence
6 that a rate higher than what it proposes would be what is
7 called a windfall to Disco.

8 Do you recall that evidence?

9 A. Yes, I do.

10 Q.22 - And do you agree with that statement?

11 A. No, I do not.

12 Q.23 - Are Disco's joint use revenues from Rogers to be
13 counted towards Disco's revenue requirement?

14 A. Yes. That's correct.

15 Q.24 - How do joint use revenues from Rogers affect Disco's
16 ratepayers?

17 A. Potentially those revenues could be used to offset rising
18 costs in other areas and reduce the effect to ratepayers.

19 Q.25 - So perhaps we should deal quickly with the numbers so
20 the Board has the scope of what we are talking about in
21 this proceeding.

22 In Disco's Revenue Requirement budget how much is Disco
23 estimated to receive from non-Aliant joint use access?

24

25

1 - 2977 - Mr. O'Hara - Direct -

2 A. Approximately \$3.3 million.

3 Q.26 - And if a rate is set at \$13.62, the number that Rogers
4 has put forward, what would be the difference in what you
5 have budgeted for and the amount you would be recovering
6 from Rogers and others in their situation?

7 A. It would be in the order of \$2 million.

8 Q.27 - So if Rogers is successful in getting the rate it
9 wants, how much would electricity ratepayers have to
10 contribute to make up that difference?

11 A. Approximately \$2 million.

12 Q.28 - And is that dollar per dollar comparison? You lose a
13 dollar from access to poles? It has got to be made up in
14 the revenue requirement from ratepayers?

15 A. Yes. That's correct.

16 Q.29 - Okay. Mr. O'Hara, can I ask you to pick up the Issues
17 chart. And let's start with this. And I see the first
18 two items, "Average Embedded Cost" and "Net Embedded Cost"
19 on the left, they have the same two issues marked next to
20 them on the right.

21 Is that what you see?

22 A. Yes. That's correct.

23 Q.30 - Can you please turn up appendix C to your evidence?

24 That is exhibit A-63. Do you have it there?

25 A. Yes, I do.

26

2 Q.31 - Can you explain to the Board how this spreadsheet
3 works?

4 A. This is information off of our financial records basically
5 broken into the columns as you see.

6 Column A on the lefthand side is just the fiscal year that
7 the records are for. Column B is the quantity of poles
8 that were considered to be still in service at the time
9 this report was run. The remainder of the columns provide
10 information with respect to the total installed cost and
11 the depreciation with respect to the poles, fixtures on
12 those poles and the easements and clearing of those
13 easements.

14 Columns 8 and 9 are important as they -- that is where we
15 represent where we have removed the cost component with
16 respect to power only fixtures on those poles.

17 And down in the righthand side at the bottom you will see
18 what rolls out of those numbers as the average net
19 embedded and average embedded cost of poles.

20 Q.32 - Mr. O'Hara, keeping a finger on that page, perhaps you
21 can turn up Appendix C of Dr. Mitchell's report, which is
22 exhibit A-68. And, Mr. Chairman, to make this easier, I
23 have provided the Secretary with an extra copy of the page
24 that is Appendix C, since that may be useful as we go
25 through some of the evidence.

2 MR. MILTON: And while you do that, can you just clarify for
3 the Board how this is in the nature of rebuttal evidence?

4 My sense is you are leading the witness through your
5 direct evidence.

6 MR. RUBY: Not at all. My very next question is to explain
7 what Rogers doesn't accept in this chart and why Rogers is
8 wrong.

9 Q.33 - Mr. O'Hara, do you have Appendix C of Dr. Mitchell's
10 report in front of you?

11 A. Yes.

12 Q.34 - This is the chart with Disco's calculation of what the
13 rates should be, is that right?

14 A. Yes, that's correct.

15 Q.35 - Can you tell me how this page, Appendix C of Dr.
16 Mitchell's report, and the Appendix C of your evidence,
17 intersect?

18 A. Yes, certainly. The average -- the average net and
19 average installed cost of poles from Appendix C of my
20 evidence are transferred over to the rows in the expert's
21 reports where that average embedded and net embedded cost
22 fits.

23 Q.36 - All right. So those fit together. Going back to
24 Appendix C of your evidence, the big spreadsheet, can you
25 tell me what Rogers have not accepted on this spreadsheet?

2 A. There is primarily two -- there is two things that Rogers
3 doesn't accept on this spreadsheet. The first being they
4 believe that the information should go back to 1964, the
5 second being they don't agree with the twenty-seven-and-a-
6 half percent removal from fixtures to account for power
7 specific components.

8 Q.37 - Now I see on this chart rows of data going from 1974 to
9 2005. Why have you gone back to 1974?

10 A. We have gone back to 1974 as that represents 32 years of
11 data. Based on our studies that were conducted in the
12 '90s, the life expectancy of a pole was 32 years.

13 Q.38 - And I gather from Rogers' evidence that it wants to use
14 data back to 1964, is that right?

15 A. Yes, that's correct.

16 Q.39 - And do you agree that the data should go back to 1964
17 for the purpose of setting a pole access rate?

18 A. No, I do not.

19 Q.40 - Why not?

20 A. Going back to 1964 I guess the primary objective within
21 this entire exercise has been to deal with what is
22 considered a typical pole. We know based on studies that
23 we have done in comparison with other utilities that the
24 typical life expectancy of a pole is 32 years. There are
25 some poles that last more than 32 years, there are poles

2 that last less than 32 years.

3 Poles -- the life expectancy of a pole is based on a
4 number of factors other than just how long the wood will
5 last in the ground. Factors such as road shifts or
6 upgrade requirements or even vehicle accidents or storms
7 can result in a pole not lasting 32 years at all.

8 So going back to 1964, what that would tend to do is take
9 into account potentially whatever poles there might be
10 still in the ground over that time period as ones being
11 that lasted longer than 32 years. However these records
12 don't account for the poles that lasted less than 32
13 years. When a pole is damaged or has to be removed in
14 less than 32 years, the value of that pole is written off
15 and Disco basically loses that value.

16 To appropriately go back those additional years you need
17 to have records that included all the cost of the poles
18 that were written off as well as the quantities. So for
19 that reason, the 32 years is very appropriate for this
20 exercise.

21 Q.41 - Looking at the pole count numbers on the lefthand side
22 of the spreadsheet, do they match up in some way with the
23 cost data that is in the rest of the spreadsheet?

24 A. Yes, they do.

25 Q.42 - Can you please explain to the Board how that works?

2 A. Basically the average embedded costs or the total
3 installed costs of the poles divided by the quantity of
4 poles that are still in service, and then the net embedded
5 cost would be that same calculation except taking into
6 account the depreciation that would have occurred.

7 Q.43 - So if we use the cost data that is in this chart we
8 have to use the matching pole numbers also in the chart,
9 is that right?

10 A. Yes, that's correct.

11 Q.44 - What kind of poles does Appendix C include?

12 A. Appendix C includes all Disco owned poles, all main line
13 poles, streetlight poles, service poles, overhead guy
14 poles. All poles.

15 Q.45 - Does Appendix C include any poles owned by Aliant?

16 A. No, it does not.

17 Q.46 - Now we have already talked about the first issue in
18 dispute on the pole chart, that is the number of years of
19 data to use. Can you remind us what the other Rogers'
20 concern is with this chart?

21 A. Their other concern is the methodology to remove the value
22 of power specific fixtures.

23 Q.47 - And have you removed the power only fixtures from the
24 cost data on this chart?

25 A. Yes, we have. That's done at columns 8 and 9 and the

2 resulting calculations at the righthand side of the page take
3 those cost removals into account.

4 Q.48 - Okay. How has Disco done that, that is, take out the
5 pole only components of fixtures -- or excuse me -- the
6 cost associated with power only components of fixtures?

7 A. Basically we used our line design software and created
8 designs for a bare pole, just a pole in the ground with
9 nothing on it, no common fixtures, no power specific
10 fixtures either. We then created designs of that same
11 pole except just with the power specific components on it
12 and looked at the percentage increase over their pole that
13 those power specific components caused, and then applied
14 that percentage against the fixture accounts to remove the
15 value of power specific components.

16 Q.49 - Has Rogers entered evidence seeking to try and remove
17 the power only cost some other way?

18 A. Yes, they have.

19 Q.50 - And can you tell us how they did that, and if there is
20 something wrong with the way they did it, what was wrong?

21 A. Rogers has provided information or recommendations
22 basically on three different methods. The first being
23 provided early on in the discussions which was apparently
24 a method that has been accepted elsewhere, and that was
25 basically to remove 15 percent of the costs from both the

1 pole and the fixture account.

2 The second method was I believe an attempt to apply the
3 methodology that at some point somebody applied to arrive
4 at that 15 percent. However, the data that Rogers was
5 using doesn't allow you to determine that.
6

7 In order -- if I may just may quickly -- in order to do
8 that, I need to design a pole that has not just a bare
9 pole the way the data -- which is what the data is that we
10 have submitted, but also that pole which required a joint
11 anchoring and guying, those types of things, common types
12 of fixtures.

13 And then what I would need to do is design a pole that has
14 the power specific components on it as well as the
15 anchoring and guying and those types of things. And the
16 exercise that you would then go through is look at what
17 percentage of this total pole -- of this total pole with
18 those power specific components comprised of that.

19 The problem with what Mr. Ford tried to do is all he was
20 dealing with is a pole that had none of these on it and
21 another pole that has just the power specific component.

22 And that doesn't produce the appropriate percentage
23 allocation versus a total pole with everything on it.

24 He further made a mistake in that calculation by --

25

2 the appropriate proper way here would be to determine the
3 percentage of the total pole that the power fixtures --
4 down here when Ford did his calculation on this he also
5 determined the percentage based on this pole over here,
6 which I'm not sure why because a page later in his
7 evidence he indicated clearly that to do this method you
8 would be calculating as a percentage of this pole right
9 here, although, like I said, he didn't have the right data
10 to utilize that methodology. So that is one.

11 The final methodology that was attempted by Rogers was
12 basically to take a listing that they had asked for which
13 had all of the material that was in the fixture account,
14 and then they looked at well what percentage of that
15 material is power specific and what percentage of it is
16 non-power specific.

17 They weren't able to do that because in the IR they ask us
18 to identify which was power specific and which wasn't.

19 The error with that is all the information that was in
20 this was the material cost and you need to deal with the
21 installed cost, which can be quite different from strictly
22 the material cost.

23 And that's exemplified in that he further indicates in an
24 IR that what he assumed was that the installed cost would
25 be proportional to the materials, which is a

2 seriously flawed assumption given that the common costs, such
3 as anchoring and guying, are very labour intensive versus
4 the power specific type components such as a cross-arm or
5 an insulator which is a bolt through the hole and away you
6 go.

7 With anchors and guying you have got to use specialized
8 equipment. It's similar to installing the pole itself.
9 You put the anchor in the ground. You have got to instal
10 the guy wire, tension it, make sure that that's -- it's
11 labour intensive. It's much more costly.

12 In fact in just quickly looking at a few examples, these
13 anchor and guying type items are about a .3 to 1 material
14 to labour required to instal a ratio, whereas the power
15 specific component such as cross-arms and insulators are
16 about a 1 to 1. So drawing a conclusion that the
17 installation costs of all the materials in that account
18 are proportionate to what the installed costs would be is
19 broadly incorrect.

20 There is however another method that he could have done
21 and the data was there in order to allow him to do it.
22 And that was -- we had provided the bare pole cost. I
23 will just call that BP for identification. We had also
24 provided a pole with power specific components on it. And
25 I will just call that fixtures electric.

1 - 2987 - Mr. O'Hara - Direct -

2 And from this we know what percentage increase this is and
3 it's 27 1/2 percent. So the cost of power specific
4 fixtures are .275 times whatever is in the bare pole
5 account. You could then take that number and subtract it
6 from our fixtures account and get the result that he was
7 looking for except he was doing it incorrectly.

8 And all of these results, this being done correctly, the
9 15 percent methodology, the methodology that we used, all
10 result in embedded costs that are within less than two
11 percent of one another. So I would suggest that done
12 correctly with the appropriate data, all of these
13 methodologies have merit.

14 Q.51 - Thank you, Mr. O'Hara. Rogers has also pointed to the
15 average embedded costs and net embedded costs of Nova
16 Scotia Power as some kind of comparator. First of all,
17 are you able to compare them to Disco's average embedded
18 costs and net embedded costs for poles?

19 A. If you had a full understanding of their codes of accounts
20 and whatnot, I suppose you could do somewhat of a
21 comparison. However, I do know for a fact their code of
22 accounts are a fair bit different than ours. Just as an
23 example, we have a fixture account that has certain
24 components in it. Their accounts include -- to have
25 accounts that would include all of those same fixtures,

2 they are spread across four accounts in Nova Scotia. So to do
3 a comparison you need to understand what the data is.

4 Q.52 - Very roughly speaking, is there anything you can do to
5 adjust the Nova Scotia Power data so that it would be
6 roughly comparable to the Disco data?

7 A. I do know the embedded cost -- the net embedded cost that
8 was produced by Nova Scotia Power had the result of \$342.
9 Just as an example of things that can affect that, since
10 1978 Disco has purchased nothing but fully treated poles.
11 Nova Scotia Power has not made that same decision.

12 In speaking with our pole manufacturer there is
13 approximately a 15 percent difference between a fully
14 treated pole -- the cost of a fully treated pole and the
15 cost of an untreated pole. If you apply that 15 percent,
16 for example, to the \$342 you will end up with an embedded
17 cost that is very, very similar to ours.

18 Q.53 - But again, that is just roughly speaking?

19 A. It is just roughly speaking. It is a factual component.
20 There is a difference in the price of poles depending on
21 what you specified.

22 Q.54 - All right. Mr. O'Hara, moving down the issues chart,
23 we have now dealt with the first two, average embedded
24 cost and net embedded cost. With respect to depreciation

2 costs -- and this is also in Appendix C, Mr. Chairman, of Dr.
3 Mitchell's report. You have got the extra page there.

4 Mr. O'Hara, does Rogers accept Disco's 32 year straight
5 line depreciation?

6 A. Yes, they do.

7 Q.55 - So all we need to do is apply that depreciation factor
8 to the average embedded cost to get the depreciation in a
9 given year?

10 A. Yes, that's correct.

11 Q.56 - All right. So if we move down the chart to capital
12 carrying cost, Rogers accepts Disco's 9.9 percent average
13 cost of capital, is that right?

14 A. Yes, that's correct.

15 Q.57 - So again, looking at Dr. Mitchell's chart, all we have
16 to do is apply it to the net embedded cost to get the
17 answer we are looking for, right?

18 A. Yes, that's correct.

19 Q.58 - Okay. Let's try one more easy one. The utility tax,
20 Rogers accepts Disco's 2.25 percent utility tax figure?

21 A. Yes, that's correct.

22 Q.59 - And all we do is apply that to the net embedded cost to
23 get the answer?

24 A. Yes, that's right.

25 Q.60 - Now we hit one that is a little more controversial.

2 The maintenance costs. But we can start I think with a common
3 point. Mr. O'Hara, does Rogers accept Disco's 4.6 million
4 dollar maintenance figure?

5 A. Yes, they do, as per their evidence.

6 Q.61 - Is that \$4.6 million to maintain all of Disco's poles?

7 A. Yes, that's correct. Disco's poles.

8 Q.62 - So how many poles are there? How many Disco poles are
9 there?

10 A. Approximately 310,000.

11 Q.63 - And why do you say there are 310,000?

12 A. Because that's how many poles that we would have in
13 service.

14 Q.64 - And Rogers, as I see it, says we should use 339,241
15 Disco poles. Should we be using that number instead?

16 A. No, we should not.

17 Q.65 - Why not?

18 A. Again, the 339,000 results from trying to utilize data
19 going back to 1964. We have information -- historically
20 within our joint use agreement, Aliant maintained records
21 -- operational records with respect to the quantity of
22 poles in the ground. And they did that to ensure that we
23 could maintain our ownership ratio.

24 As recent as 2001 we -- we obtained those records in 2001.

25 At that point in time there were just over 504,000

2 joint use poles. Aliant had also indication that there 10,652

3 Disco poles and approximately 13,000 Disco non-joint use

4 poles and approximately 13,000 Aliant non-joint use poles.

5 If you apply our 57 percent ownership ratio to the 504,000

6 and add in the non-joint use poles that were on the

7 records, that would provide NB Power with approximately

8 298,000 poles. That would have been in 2001. It's

9 reasonable to assume that in 2005 those pole numbers could

10 have increased and we are at 310,000.

11 Q.66 - And 310,000, that's the number that shows up on the

12 bottom lefthand corner of that spreadsheet we were just

13 looking at, Appendix C of your evidence, is that right?

14 A. Yes, that's correct.

15 Q.67 - And if -- to get the annual maintenance cost of a pole

16 -- help us do the math for a minute. You divide what by

17 what?

18 A. The annual maintenance cost of the pole is a division of

19 the costs associated with maintenance by the number of

20 poles that we are doing maintenance on.

21 Q.68 - So 4.6 million divided by 310,000 poles?

22 A. That's correct.

23 Q.69 - All right. If we can move on to the next item on the

24 issues chart, vegetation management. I gather Rogers

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2 accepts Disco's figure of \$8.39 per pole, is that right?

3 A. Yes, they do.

4 Q.70 - Okay. But I would like you to turn up on this point

5 one aspect of Mr. Ford's evidence, and this would be I

6 suppose RCC-3. This is Mr. Ford's evidence filed in

7 December which I think we just marked or gave it an

8 exhibit number. If you can turn up question 8 of that

9 evidence, Mr. O'Hara. Do you have it there?

10 A. Yes, I do.

11 Q.71 - Okay. On page 6 at line 3 do you see a sentence that

12 starts with Accordingly?

13 A. Yes, I do.

14 Q.72 - Can you read that to the Board, please?

15 A. Accordingly, if and only if Rogers' share of vegetation

16 management costs is in the order of 15 percent of the

17 total vegetation management cost per pole, would I

18 recommend their inclusion in the pole access rate.

19 Q.73 - All right. So he agrees to 8.39 if a certain condition

20 is met. Now can you tell me, at \$8.39 would Rogers' share

21 of the total vegetation management costs be in the order

22 of 15 percent?

23 A. Yes. In fact, their share of costs on a per pole basis

24 would be in the order of 15 percent, that's correct.

25 Q.74 - Can you explain to the Board how you reached that

2 conclusion?

3 A. The \$8.39 was developed based on the entire pole
4 population. It's the vegetation program spread across all
5 poles. If we take and look at what it cost to actually
6 cut a pole and if you take the \$8.39 and apply the
7 proposed allocation of 30 percent basically, that results
8 in a payment of \$2.53 from Rogers for pole vegetation
9 management.

10 If you look at the actual costs of doing vegetation
11 management we have a three-and-a-half million dollar per
12 year program planned maintenance that cuts in the order of
13 40,000 spans per year. 40,000 spans could be equated to
14 40,000 poles. If you divide those and then divide that by
15 a six year cycle, we don't cut poles every year, it
16 results in \$14.58 per year for poles that are actually
17 cut.

18 In addition to that we have \$1.2 million per year as a
19 result of storm damage and those types of things. We
20 don't know where that is, on which poles, that sort of
21 thing. So we spread that across the entire pole
22 population of 560,000, including Aliant poles. That
23 results in another factor of \$2.14. And if you add those
24 two factors together you get \$16.72, and if you multiply
25 that by 15 percent you get \$2.51, which is basically the

2 same as the \$2.53 that we are asking Rogers to pay.

3 Q.75 - All right. Thank you. So does Disco satisfy the
4 condition put forward by Mr. Ford?

5 A. Yes, we do.

6 Q.76 - Let's turn to the next item on the chart, loss of
7 productivity. There are a few issues with respect to this
8 particular item. And can you please turn up Disco/Rogers
9 IR-17. This is the December 16th IR responses.

10 Q.77 - So these are Disco's answers to Roger's responses.

11 MR. DUMONT: Which item?

12 MR. RUBY: IR 17.

13 Q.78 - Do you have it there, Mr. O'Hara?

14 A. Yes.

15 Q.79 - So this is the IR where Rogers asks you how did you
16 calculate loss of productivity? And you give your answer
17 and explain, is that right?

18 A. Yes. That's correct.

19 Q.80 - I'm not going to ask you to repeat it. But can you go
20 through your calculation and point out as you go where
21 Rogers went wrong in its evidence analyzing your answer?

22 A. Yes. We developed this based on two primary factors.
23 Part 1 as referred to in the IR is due to impeded access
24 as a result of communication facilities, their dropped
25 wires, additional anchoring and guying and whatnot,

2 causing difficulty with respect to climbing the poles or
3 manoeuvring the bucket around poles, those kinds of
4 things, or raising and lowering equipment.

5 Part 2 is related to non-outage trouble calls that we
6 respond to that can be corelated to the communication side
7 of the house.

8 So basically the calculation was done. The first thing
9 that is misinterpreted by Rogers I guess or it chooses to
10 misinterpret, a summary statement that indicates the
11 resultant for the part 1 calculation could be corelated to
12 two crew minutes per pole. That is intended -- like I
13 said, it's a summary statement across all joint use poles.
14 The actual calculation for that was based on taking -- we
15 know that we work on 9,500 poles per year. That is a very
16 conservative number. What that is derived from is between
17 Aliant and Disco each year we put about 9,500 new poles in
18 the ground.

19 So consider it conservative because it doesn't take into
20 account the poles that we need to do maintenance on,
21 maintenance of our equipment or upgrade of our facilities
22 or a pole -- we might need to work on an existing pole to
23 run a new service from, that sort of thing.

24 It is further very conservative because, although it's

2 identified as 9,500 poles, it is probably more appropriately
3 9,500 work sites, as a little better than 80 percent of
4 those poles are a replacement of existing poles. So in
5 fact at each of those work sites you have got two poles
6 that you are working on with facilities impeding access on
7 both of those.

8 So what we did was we took and we used the 9,500 number.
9 We applied crew cost to that and then spread that over the
10 entire population of joint use poles resulting in, like I
11 say, a factor that equates to about two crew minutes per
12 joint use pole, across all poles as the formula shows.

13 The part 2 assessment -- I guess first of all I would like
14 to point out there is an issue raised that while you have
15 assumed that everything is done after-hours -- well, in
16 fact 75 percent of the week is after-hours, 40-hour work
17 week versus 168 hours in the week. So there is, you know,
18 a high probability that a very significant portion of
19 these are done after-hours.

20 Secondly this assessment, as four point -- indicates, is
21 not based on the clearance of storm damage. It is based
22 on response to non-outage trouble calls. And those non-
23 outage trouble calls that we have focused on are non-
24 outage wires down and non-outage tree on the line.

2 So when we did that calculation we took and we assumed
3 that probably about half of those tree on the line could
4 be trees on our secondary with no outage, and attributed
5 the other half to the communication facilities.

6 The other component of these is non-outage wires down.
7 Obviously if wires are down there would be a power outage.

8 Those are all communications between, you know, any
9 communication attacher on the pole.

10 So for that reason -- the other piece of this, the other
11 25 percent that could occur during normal work hours, when
12 you are doing an assessment of loss of productivity, the
13 impact actually of these non-outage calls during normal
14 working hours is actually more than what is during after-
15 hours.

16 And the reason for that is you have got a crew that is
17 preforming work. He has to stop his work, tear down his
18 work site or make that work site safe, travel to where the
19 non-outage trouble call is, do whatever work that he needs
20 to do while he is there, which could include standing by
21 until the appropriate resources get there or, you know,
22 police or whatever to make sure that the site is safe.

23 Then they have to travel back to where they were working,
24 reestablish their work zone, finish their work.

25 And there will be work that they didn't get done that

2 day as a result of that interruption that either has to go
3 back in through the planning cycle or potentially it has
4 to be done on overtime anyway due to a customer commitment
5 or possibly attempting to work within the service delivery
6 criteria.

7 So based on that and knowing the quantities of those year
8 over year -- and I know those numbers because we track all
9 of these outage calls on our outage management system. I
10 can apply that to the after-hours call rate.

11 And again we spread that across all 560,000 poles to
12 account for the fact that we don't know where those
13 responses might be, to make sure that we have a fair rate
14 that is applied. The two of those added together result
15 in the \$6.80 loss of productivity factor.

16 MR. SOLLOWS: I might take advantage of the pause. I'm
17 looking at the IR 17 response, page 2, the calculations
18 you just outlined.

19 Under Calculations, Part 2, Loss and Productivity, can you
20 explain -- I see where the 13.79 came from and the 18.30.

21 The 261.90 seems to be two times the crew costs per hour.

22

23 So are you saying that there is two hours? Is that why it
24 is multiplied? I mean, you have got 261.90 multiplied by

25 2?

2 WITNESS: Yes. That's the minimum -- that's the minimum
3 after-hours response cost for us.

4 MR. SOLLOWS: Okay. The crew cost per hour including two
5 linemen in a vehicle is 130.95?

6 WITNESS: At regular time.

7 MR. SOLLOWS: At regular time. So the 261 is double time?

8 \ WITNESS: That's correct.

9 MR. SOLLOWS: And then the two hours is the response time,
10 is that --

11 WITNESS: Our policy and union agreements, the minimum that
12 we pay for a callout is two hours at double time. That's
13 correct.

14 MR. SOLLOWS: The Chairman points out that vehicles aren't
15 normally paid overtime. How much of the 130.95 is
16 attributable to the vehicle?

17 WITNESS: It's about 27.50 I believe.

18 MR. SOLLOWS: So we could correct that calculation to
19 account for that?

20 WITNESS: Well, this is a development of a factor associated
21 with loss of productivity. And, you know, we take that
22 down to a cost factor. But I believe that the impact of
23 these responses to these non-outage trouble calls is
24 appropriately reflected here. Because even though that
25 vehicle may be at double time in there, there are other

2 factors that aren't included in here.

3 For example the base cost of having on-call personnel
4 around the province is in the order of a half million
5 dollars per year. That would be the 10 hours per week
6 that each person on call receives whether they receive a
7 call or not. So there are other factors that could be
8 taken into account.

9 In addition when these people go out at night, if they are
10 out for extended periods of time, they may be on rest the
11 next day as a result again of the union contract.

12 Depending on how long they are out performing this work,
13 what time of the night it was they may have a rest period
14 the following day.

15 So those costs again aren't calculated in here. So I
16 believe these are a conservative and a reasonable cost.

17 MR. SOLLWS: Thank you.

18 Q.81 - Mr. O'Hara, just following up on that point, in the
19 evidence filed by Rogers' witnesses after these IRs were
20 put in, did any of the Rogers' witnesses raise any
21 objection to the \$130.95 rate?

22 A. No, they did not.

23 Q.82 - Some of the evidence put in by Rogers dealt with the
24 difficulties of replacing a pole that has communication's
25 wires on one side or both sides of the pole.

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2 Is that a problem, something that Disco counted towards
3 its analysis of loss of productivity?

4 A. No, we did not. That's insignificant.

5 Q.83 - And why is it insignificant?

6 A. That's a situation that occurs less than 1 1/2 percent of
7 the time, which adds a little less than \$50 to the
8 installation of a pole.

9 And as well that increased installation cost is included
10 in our embedded cost. Therefore it wouldn't be
11 appropriate to count it as a part of loss of productivity.

12 Q.84 - All right. Thank you. If we go back to our chart and
13 keep moving down -- this is the Issues chart -- for
14 administration cost Rogers accepts Disco's 55 cents per
15 pole, is that right?

16 A. Yes. That's correct.

17 Q.85 - Okay.

18 A. Although they do indicate that that is contingent upon
19 that including all engineering review costs. And we were
20 quite clear that that is the administrative portion of
21 engineering review, not the actual field engineering
22 review.

23 Q.86 - All right. Thank you. If we keep moving down the
24 chart then, that would be the end of the list of the cost
25 components that need to go into the rate. Now we get to

1
2 some of the cost allocation parts of the evidence.

3 Does some percentage of all the costs we have discussed
4 today have to be allocated to Rogers?

5 A. Yes. That's correct.

6 Q.87 - Are you going to deal with that? Or Dr. Mitchell is
7 going to deal with that?

8 A. Dr. Bridger Mitchell will deal with that.

9 Q.88 - Thank you. But let's deal with some of the facts
10 underlying that cost allocation approach. Is a Disco
11 joint use pole designed to accommodate cable television
12 facilities?

13 A. Yes. Since 1967 all joint use poles that we have put in
14 the ground were designed to accommodate third party
15 attachments.

16 Q.89 - So why is it that all of these joint use poles have
17 been built to accommodate cable television facilities?

18 A. Because we knew that cable television could potentially be
19 there. And in addition it's the most cost-effective
20 manner to do that for all parties involved. If we were
21 not to construct to the joint use standards that have
22 allowed for attachments, it would require a considerable
23 amount of work.

24 Potentially -- shortly thereafter when Rogers or some
25 other third party came along and wanted to attach to that

1
2 pole, we would end up having to perform make-ready work at a
3 cost to Rogers as well as a cost to us from a perspective
4 of tying up resources and things like that.

5 It impacts customers and landowners. Landowners by way of
6 us having to go work on their land, replacing poles on
7 their property or in close proximity to their property,
8 that sort of thing. So it has a negative effect on
9 everybody involved.

10 Q.90 - So you make room for them right up front?

11 A. Yes. That's correct.

12 Q.91 - Okay. What is the typical pole size that all parties,
13 or at least Rogers and Disco have been working with in
14 this hearing?

15 A. A 40-foot pole.

16 Q.92 - And are some poles taller than 40 feet and some shorter
17 in the real world?

18 A. Yes. That's correct.

19 Q.93 - So can you give us an example of why a pole would be
20 shorter than 40 feet or why sometimes it would be larger
21 than 40 feet?

22 A. There is a number of reasons. But basically it's a result
23 of the required ground clearance. And that is driven by
24 national standards and depending on where the pole is
25 constructed, whether it's in an area that is only

2 accessible to pedestrian traffic or whether it's in close
3 proximity to streets and highways and those types of
4 things.

5 The other issues that go along with that are things such
6 as terrain and that sort of thing can drive you to use
7 taller poles in order to achieve the appropriate ground
8 clearance.

9 Q.94 - And do those considerations you just mentioned apply to
10 constructing a pole regardless of who is on it?

11 A. Yes. That's correct.

12 Q.95 - So if you had a pole that was just power would you
13 still have to worry about clearances?

14 A. Yes. In fact you would have to worry about the exact same
15 clearances. Because the CSA standards requires the exact
16 same clearance for NB Power's -- or Disco's lowest wires
17 on the pole which are secondary wires, classified by the
18 CSA as zero to 750 volts.

19 The standards for communication facilities are the same,
20 the ground clearance requirements.

21 Q.96 - The same for telephone?

22 A. Yes. That's correct.

23 Q.97 - The same for cable television?

24 A. Yes. That's correct.

25 Q.98 - Okay. So everybody has got to be the same amount above

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the ground?

A. Yes. That's correct. It's a safety issue.

Q.99 - Okay. And working our way up the pole then, right to the top, for ratemaking purposes, how do you calculate the size of the power space on the pole?

A. Basically you start with the buried space, the required buried space on a 40-foot pole, the required clearance space, the communication space, the separation space, the space between the communication facilities and the power facilities. And for ratemaking purposes the remainder would be the power component. Just quickly -- so you have the varied space of 6 feet. In the province of New Brunswick they required attachment at the pole of 19 feet, the communication space of 2 feet. There is a separation space of 4 feet. And the remainder would be attributed to the power facility which is 9 feet.

Q.100 - Looking again at your chart you have just drawn for us, and looking at the ground clearance -- so what is the ground clearance on a typical 40-foot pole?

A. At the pole is 19 feet.

Q.101 - And why is it that it is 19 feet and not some other number? And I should ask you, Mr. O'Hara, while you are drawing that, what does Rogers say it should be, the clearance at the pole?

2 A. Rogers indicates that they typically attach between 17 and
3 19 feet.

4 Q.102 - What measurement though are they proposing in this
5 proceeding to use for ratemaking purposes?

6 A. 17 1/4 feet.

7 Q.103 - Okay. Thank you. But you say it is 19?

8 A. Yes. And in fact the photos that they have provided in
9 their evidence demonstrate that they are typically
10 attached at 19 feet and above.

11 The CSA standards, they are applicable in two different
12 places, at the pole such as the standard that requires a
13 certain amount of clearance space between communication
14 facilities and power facilities. And they also -- their
15 standard out at mid span.

16 So what needs to be taken into account, and the reason why
17 it's 19 feet, is the CSA standard at mid span at the
18 lowest point of the wires at their sag, under what they
19 refer to as maximum loaded conditions, fully loaded
20 conditions. And by that they are referring to the fact
21 that you need to take into account things that are
22 specific to your area such as the anticipated amount of
23 ice load that could accumulate on the wires, the snow
24 accumulation that could occur from below, the thermal
25 loading on the conductor and obviously your initial sag

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when you install it, this being the line of sight across here.

Rogers has agreed that this initial sag is about in the order of one foot. NB Power's construction standards on this initial construction is 18 feet. And the reason for that is to allow for that to sag a little more under ice load or thermal loading, those types of things, as well as account for snow accumulation that could occur, and to a point of where, in the recent publication of the CSA they have even included tables to provide you with the information as what you should assume as snow accumulation in your area. And in the province of New Brunswick it's about .8 feet.

This is something that we have taken into account historically because the CSA standard has always indicated that you need to take known or reasonably known factors into account. Just in their recent publication they have gone the extra step to tell you exactly what you should take into account.

So that .8 meters is about 2 1/2 feet. So you know, that will reduce this clearance down to 15 1/2 feet, leaving another foot as a margin there for additional sag and those types of things.

Q.104 - Mr. O'Hara, Rogers seems to say in its evidence that

2 the clearance at the pole may be different for existing lines
3 rather than newly constructed lines. Is that correct?

4 A. No, it's not. That's --

5 Q.105 - Can you explain to the Board why not?

6 A. That's an issue that keeps coming up. And there are
7 existing construction standards -- or sorry, there is
8 construction standards for new construction. And those
9 dictate to you basically where you will attach on the
10 pole.

11 And there are existing -- or standards for existing lines
12 which are basically a clearance standard out here at mid
13 span. So the CSA standard would have an amount of space
14 here. The CSA minimum is 3 1/4 feet. But we use 4 feet
15 for a reason I will explain later. But the -- I have lost
16 my train of thought.

17 Q.106 - You were dealing with the existing --

18 A. Right.

19 Q.107 - -- standards?

20 A. The existing standards are there to accommodate -- like I
21 said, the CSA standard is anticipated to be a clearance
22 that you would achieve under fully loaded conditions.
23 And under those conditions what they mean is this wire
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2 could have been loaded up with ice and stretched a bit. And
3 when it's stretched it doesn't go back to its normal
4 position.

5 So it may now be down somewhere below where it was when it
6 was initially installed. And what we do is allow for that
7 to -- we allow 2 feet for that. And now what you have got
8 is what would be considered a partially loaded cable.

9 So from that perspective, the existing clearance standard
10 would be 16 feet, taking into consideration that this is
11 going to stretch very little more, but still takes into
12 account the snow accumulation that may occur from below.
13 But the standard at the pole, the attachment point at the
14 pole never changes. It's always exactly the same. So
15 these existing construction standards are not for
16 construction of facilities. The tables are clearly
17 identified that way. They are purely a clearance standard
18 at mid span to be achieved once a cable has gone through a
19 cycle and become partially loaded or stretched.

20 Q.108 - Rogers seems to say in its evidence that sometimes its
21 lines are attached below 19 feet on the pole. How could
22 that be, given what you have just explained to us?

23 A. There are potentially areas, like I had indicated before,
24 where the CSA requires less of a standard for

1 - 3010 - Mr. O'Hara - Direct -

2 example in an individual's back yard to service to his home
3 where there is not going to be vehicular traffic and those
4 types of things.

5 So potentially it could be attached a little lower on
6 those poles. But certainly none of those poles are 40-
7 foot poles.

8 Q.109 - So could it happen on a 40-foot pole that you would be
9 attached under 19 feet?

10 A. No. That would be extremely rare if that were to occur.

11 Q.110 - Has Rogers built any of its own poles in New
12 Brunswick?

13 A. Yes, they have.

14 Q.111 - Where?

15 A. They have approximately a 40-kilometer line across the
16 Stewart Highway in northern New Brunswick.

17 Q.112 - And how much ground clearance did Rogers leave on
18 those poles?

19 A. We observed that line. The line is built with 30-foot, 35
20 and 40-foot poles, mostly 30-foot poles, where ever they
21 required, the 35s and 40s for some additional clearance at
22 areas where there were pulp trucks and things like that.

23 So just taking the 30-foot pole, being 5 1/2 feet in
24 the ground, that is the requirement, and observing that they

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2 are attached approximately 18 inches from the top, at the pole
3 they have 23 feet of ground clearance.

4 Q.113 - Thank you, Mr. O'Hara. Moving a little higher up the
5 pole to the separation space or what some have called the
6 neutral space, what space requirement or number is Disco
7 using for ratemaking purposes?

8 A. For ratemaking purposes we are using our minimum of 4
9 feet.

10 Q.114 - Okay. And what has Rogers proposed to use?

11 A. Rogers would propose to use the CSA minimum of 3 1/4 feet.

12 Q.115 - Okay. Can you please explain to the Board why Disco
13 is proposing to use 4 feet instead of 3 1/4 feet?

14 A. Certainly. The CSA has multiple standards. And they are
15 quite clear in there that you must meet all of the
16 standards that pertain to a particular installation.

17 They provide a minimum clearance at the pole for safety
18 reasons for communication workers to be able to attach on
19 -- for communication workers to be able to work on their
20 facilities.

21 However they also have another standard that requires
22 power wires to stay a certain distance away from what is
23 called the line of sight between the two attachment points

2 of the communication facilities. And that standard is 75
3 millimeters at the pole.

4 So you need to achieve both of these, a minimum of 3 1/4,
5 a minimum of 75 millimeters from the line of sight. In
6 order to do that, just as an example, our typical
7 secondary wire is 20 Triplex. Now that may not mean much
8 to somebody. But that's what it is.

9 And based on the information that the manufacturer
10 provides, based on engineering calculations, you can
11 determine quite precisely the initial sag of that based on
12 the recommended tension to install it initially, the sag
13 that will be created as a result of that ice load, as a
14 result of wind load. And that is determined to be at
15 those fully loaded conditions .98 meters for 20.

16 So in order to maintain that 75 millimeters I have got to
17 increase to something more appropriate than one meter out
18 here. Otherwise if I attached it right at the one meter
19 minimum, I would be into the line of sight and probably a
20 little bit below. Therefore we had to increase this as a
21 minimum.

22 This separation, in order to achieve both of these,
23 actually changes. And as the span length gets longer
24 there is more sag. And this separation requirement is
25 greater in order to keep our facilities away from this CSA

1 standard at the mid span.

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3 Q.116 - So Mr. O'Hara, do I understand you correctly that with
4 respect to separation space there are in fact two CSA
5 requirements, is that right?

6 A. Yes. That's correct.

7 Q.117 - And just to summarize, what are the two again?

8 A. A minimum of 3 -- or a minimum of 1 meter, 3.28 feet at
9 the pole and a minimum of 75 millimeters between Disco's
10 power wires and the line of sight between the two
11 attachment points of the communication facilities.

12 Q.118 - And do pole users have to meet both requirements?

13 A. CSA stipulates you must meet both requirements.

14 Q.119 - Okay. Does the same requirement apply to Aliant's
15 facilities on a joint use pole as well?

16 A. We must maintain the same separation between our
17 facilities and Aliant, the same as Rogers' facility.
18 That's correct.

19 Q.120 - Does having a transformer on the pole affect the size
20 of the separation space?

21 A. No, it does not. Having a transformer on the pole doesn't
22 affect the size of the separation space or the intent and
23 integrity of the separation space.

24 Q.121 - Can you explain why?

25 A. The CSA allows for, under certain conditions, the

2 condition associated with the transformer as being a grounded
3 piece of equipment, unenergized, the tank being grounded.
4 There is allowance for that to be into the separation
5 space without violating the safety requirements that the
6 CSA has established. The reason for that is you could
7 accidentally touch, you know, the can of the transformer
8 and not be injured.

9 Q.122 - Moving to a slightly different area, Mr. O'Hara,
10 Rogers has raised the issue of its involvement with the
11 design and planning of pole lines.

12 Do you recall that evidence?

13 A. Yes, I do.

14 Q.123 - Has Rogers ever asked to be involved in the design and
15 location of a Disco joint use pole?

16 A. No, they have not. Rogers has asked in the past for
17 information with respect to our planned capital
18 improvements, which we met with Rogers and provided
19 information.

20 Q.124 - But they never wanted to be involved in the
21 engineering, or planning, locating aspects of the job?

22 A. No.

23 Q.125 - What are the major factors that affect the design of a
24 joint use pole line?

2 A. The major factor is obviously the design of the poles
3 itself is driven by construction standards, established
4 construction standards. The location of poles is
5 primarily driven by existing municipal road right-of-way,
6 DOT road right-of-way, property lines for easements that
7 can be negotiated with private landowners.

8 In large developments, large subdivisions or other, you
9 know, types of developments, in fact the developer himself
10 is actually the one that approves the final design and has
11 a lot of input into even whether a subdivision for example
12 is going to be front lot, back lot or underground. And in
13 any case, no matter what design, that developer signs off
14 on the final product.

15 Q.126 - Mr. O'Hara, did you see in Rogers' December 28th
16 evidence that it only wants to pay 25 to 33 percent of the
17 regular joint rates, whatever this Board sets, but it only
18 wants to pay 25 to 33 percent of the rate for something
19 called service poles?

20 Did you see that?

21 A. Yes, I did.

22 Q.127 - So starting at basic principles, what is the range of
23 heights of joint use poles?

24 A. Joint use poles --

25 CHAIRMAN: Mr. Ruby, I will interrupt. Because I'm starting

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at something very basic like lunch. It sounds like this might be an opportune time. And then you can come back to service poles after lunch.

So we will break now and reconvene at quarter after 1:00.

MR. RUBY: Thank you, Mr. Chair.

(Recess - 12:00 p.m. - 1:15 p.m.)

CHAIRMAN: Good afternoon, ladies and gentlemen. Any preliminary matters?

MR. RUBY: No, sir.

CHAIRMAN: Good. Carry on, Mr. Ruby.

MR. RUBY: Thank you, Mr. Chairman.

Q.128 - Where we left off, Mr. O'Hara, was we were just beginning our discussion of service poles. So just to pick up where we left off, what discount is Rogers seeking with respect to service poles?

A. Rogers would like to pay 33 percent of the full rate for service poles.

Q.129 - And what is the range of heights for service poles -- excuse me, for joint use poles?

A. Joint use poles can be 30 feet to 50 feet with a very small number being beyond that for special structures at river crossings or things like that.

Q.130 - And are 30 foot poles the service poles?

1 - 3017 - Mr. O'Hara - Direct -

2 A. Yes, 30 feet is a typical service pole.

3 Q.131 - Okay. And what are 30 foot joint use poles -- or
4 service poles used for?

5 A. A 30 foot joint use pole is used to support service wires
6 for Aliant, third party attachers and Disco to provide
7 service to individual homes and businesses.

8 Q.132 - And those 30 foot service poles, is the data with
9 respect to them included in your Appendix C, that is
10 Appendix C to exhibit A-63?

11 A. Yes, that's correct.

12 Q.133 - Mr. O'Hara, is it fair to say that 30 foot poles are
13 cheaper than larger poles?

14 A. Yes. 30 foot poles are the least expensive poles that we
15 purchase.

16 Q.134 - And when you include those 30 foot poles in the chart
17 at exhibit C -- excuse me, Appendix C to your evidence,
18 what happens to the net embedded costs and the average
19 embedded cost?

20 A. They go down.

21 Q.135 - Mr. O'Hara, are you a member of the Canadian
22 Electricity Association Joint Use Task Group?

23 A. Yes, that correct.

24 Q.136 - And what is the membership of that group?

25 A. The membership consists of personnel from utilities

2 across Canada and the primary interest of that group is to
3 work with issues around the joint use of poles.

4 Q.137 - And have you spoken with the members of that group
5 about whether they provide any discounts for service
6 poles?

7 A. Yes, I have.

8 Q.138 - In which provinces is a discount for service poles not
9 given?

10 A. Based on the information I have received there is no
11 discount for service poles in British Columbia, Alberta,
12 Saskatchewan, Manitoba, some utilities in Ontario, Quebec,
13 Nova Scotia or Newfoundland.

14 Q.139 - So just to make sure we haven't left anybody out,
15 where are there discounts for service poles?

16 A. In Ontario there are some utilities providing a discount.

17 Q.140 - And is that discount imposed by regulation anywhere in
18 Canada?

19 A. No, it is not.

20 Q.141 - Now you mentioned that in Nova Scotia and Newfoundland
21 there is no discount for service poles. Did you see in
22 Rogers' evidence where they said there was a discount for
23 service poles in those two provinces?

24 A. Yes. In fact their evidence indicates they don't pay

2 anything for service poles in those two provinces.

3 Q.142 - And did you try and confirm that evidence?

4 A. Yes, I did.

5 Q.143 - And how did you do that?

6 A. I sent a fax to counterparts in Nova Scotia and
7 Newfoundland with a copy of the evidence, asking if they
8 could confirm that that was in fact true.

9 MR. RUBY: Okay. Mr. Chairman, we have provided to the
10 Board Secretary copies of that correspondence and provided
11 it to Rogers as well. And I would ask that those two
12 documents be entered as exhibits at this point.

13 CHAIRMAN: Any objection?

14 MS. MILTON: No.

15 CHAIRMAN: Mr. Ruby, help the Secretary out, please.

16 MR. RUBY: Mr. O'Hara, do you have copies up there with you?

17 A. Yes, I do.

18 CHAIRMAN: This document is a five page document and it will
19 be marked as A-70.

20 MR. RUBY: Mr. Chairman, if I ask, they are both very
21 similar documents. One should be addressed to Nova Scotia
22 Power to somebody named Gordon and the other one is to
23 Newfoundland Power and addressed to someone named Ralph.

24 CHAIRMAN: They certainly are very similar documents. A-70
25 is the one to Nova Scotia Power and A-71 will be the one

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2 to Newfoundland Power.

3 MR. RUBY: Thank you, Mr. Chairman.

4 Q.144 - Mr. O'Hara, starting with the Nova Scotia Power --

5 CHAIRMAN: Mr. Ruby, just give us a minute to catch up here.

6 Okay. Go ahead, sir.

7 MR. RUBY: Thank you, Mr. Chairman.

8 Q.145 - Mr. O'Hara, starting with the Nova Scotia Power

9 package, can you take the Board through that package of
10 documents, what you asked, what the response was?

11 CHAIRMAN: That is A-71, for the record.

12 Q.146 - A-70 is Nova Scotia Power.

13 CHAIRMAN: You see why I use the exhibit number, A-70.

14 MR. RUBY: Thank you.

15 WITNESS: Okay. It's a five page document. The first page
16 is simply the fax cover sheet, transmission report, dated
17 January 17th. The second is the cover sheet on the fax.
18 The third page is the formal letter which basically just
19 restates what is on the cover page of the fax. The fourth
20 page is a page out of Mr. Armstrong's evidence with a
21 section of it underlined where it indicates that in Nova
22 Scotia by agreement Rogers does not pay fees for use of
23 service poles owned by the hydro utility. The final page
24 is Gordon Woodworth's response to my inquiry as to whether
25 he could confirm that or not.

2 Q.147 - Mr. O'Hara, if you could then turn to exhibit A-71,
3 the Newfoundland Power package, and if you could go
4 through the same exercise with that package, please?

5 A. Yes. Again page 1 is the transmission report from the fax
6 machine dated January 16th. The next page is the fax
7 cover sheet with my handwritten request. The third page
8 is that same request except typed and in a formal letter.

9 The fourth page is again a copy of a page from Mr.
10 Armstong's evidence underlined in Newfoundland by
11 agreement Rogers does not pay fees for use of service
12 poles owned by the hydro utility.

13 And the final page is the response from the senior
14 engineer from Newfoundland Power, Ralph Mugford.

15 Q.148 - Mr. O'Hara, is there any principal justification for
16 discounting --

17 CHAIRMAN: Mr. Ruby, would you just go back. You started to
18 go through those jurisdictions which did not -- or sorry,
19 which did offer a discount. And my notes indicate that
20 the witness got through Ontario some and then we got into
21 -- in other words, what about Quebec and what about
22 Maritime Electric on PEI?

23 Q.149 - Thank you, Mr. Chairman. If we haven't gone through
24 that -- maybe, Mr. O'Hara, if you can start at Ontario and
25 move east and advise the Board for each of the eastern

2 provinces what the status of discounts for service poles is.

3 A. Beginning in Ontario there is a mixture where some
4 utilities provide a discount and others do not. There is
5 no discount in Quebec. There is no discount in Nova
6 Scotia. There is no discount in Newfoundland. I'm not
7 familiar with the information with respect to Maritime
8 Electric.

9 Q.150 - And just to complete the picture, Mr. O'Hara, in
10 Ontario the only place you mentioned there are discounts,
11 what is the lowest discount that you know of -- or maybe I
12 should put it as the highest discount, smallest number?

13 A. That would be 50 percent.

14 Q.151 - Do you know what the largest is in Ontario?

15 A. Yes. That would be Hydro One.

16 Q.152 - Do you know what discount it gives for service poles?

17 A. Hydro One gives a discount of 25 percent.

18 Q.153 - Thank you. Mr. O'Hara, is there any principal
19 justification for a discount on service poles in New
20 Brunswick?

21 A. No, there is not.

22 Q.154 - Why not?

23 A. 30-foot service poles are joint use poles, just like many
24 other poles that we have in the ground. They are

1 - 3023 - Mr. O'Hara - Direct -

2 designed as per the CSA standard specifications whereby you
3 need to take into account the strain and stresses on that
4 structure and design it accordingly.

5 They are included in our embedded costs. And they do in
6 fact support multiple utilities, facilities which by any
7 definition ever produced of a joint use pole, that is
8 included.

9 Q.155 - Thank you. Mr. O'Hara, can you please turn to Rogers'
10 answer to Disco's IR number 1. It is IR dated January 9,
11 2006. And that is RCC 4. That's IR number 1. And in
12 particular can you take a look please at Question A (ii).
13 Can you read that out to the Board what Disco was
14 requesting?

15 MR. TINGLEY: This is IR 1?

16 MR. RUBY: This is Disco's IR to Roger's number 1 dated --
17 the date on it is January 9, 2006.

18 MR. MACNUTT: Exhibit RCC 4?

19 MR. RUBY: Yes.

20 CHAIRMAN: And which of the questions are you referring the
21 witness to in that particular Interrogatory?

22 MR. RUBY: A (ii).

23 A. A what?

24 MR. RUBY: A (ii). Small Roman Numeral (ii).

25 CHAIRMAN: Okay.

2 Q.156 - So, Mr. O'Hara, can you just please read that?

3 A. In this question Disco requests, Please provide an
4 overview of Rogers' vegetation management program in New
5 Brunswick including -- and the section being referred to
6 is a list of Rogers' contractors engaged in Rogers'
7 vegetation management program for each of the past three
8 years.

9 Q.157 - And if you turn over to the next page to Rogers'
10 answer. Can you read that answer to the Board please?

11 A. The following contractors have been engaged in Rogers'
12 vegetation management program over the past three years, M
13 & R Construction, Fredericton Tree Service, CableCom and
14 Carter Bros.

15 Q.158 - Mr. O'Hara, are you familiar with those contractors?

16 A. Yes, I am.

17 Q.159 - In your view could Rogers implement an adequate
18 vegetation management program using those contractors?

19 A. Not with those contractors.

20 Q.160 - Why not?

21 A. They wouldn't have enough capacity to provide a reasonable
22 program. M & R Construction is a small contractor in the
23 Woodstock area with a couple of trucks and six employees.
24 Fredericton Tree Service does vegetation work in the
25 Fredericton area only.

2 CableCom and Carter Bros. are primarily line contractors
3 who may have some capacity to trim an incidental tree or
4 whatnot around a particular work site but certainly aren't
5 full-scale vegetation contractors. CableCom has never
6 been on any of NB Power's vegetation work. We looked back
7 the past five years.

8 And Carter Bros., although they maintain some capabilities
9 of doing vegetation work, has not indicated that they are
10 much interested in being in the vegetation business. They
11 prefer to focus on the line trade.

12 Q.161 - Thank you. Mr. O'Hara, I would like to deal with just
13 one final issue. And that is we have talked about what
14 the impact on Disco is of rate changes, in terms of an
15 impact on the ratepayers of Disco. But let's turn and
16 look at the impact on Rogers' customers.

17 Can you turn up Rogers' evidence, in particular the
18 evidence of John Armstrong? That would be, sorry, RCC
19 number 3, the evidence of John Armstrong at Question 7.

20 A. I believe that's also RCC 4.

21 Q.162 - Well, we are looking at the reply evidence of Rogers.

22 CHAIRMAN: The question which?

23 MR. RUBY: Question 7, page 7 of John Armstrong's evidence.

24 Q.163 - Do you have it there, Mr. O'Hara? It is the full
25 paragraph at the top of the page.

2 A. IR 7?

3 Q.164 - No, no, not IR. Question 7?

4 A. Yes, I do.

5 Q.165 - This is the paragraph that starts "The rate proposed
6 by Disco"?

7 A. Okay.

8 Q.166 - Now can you tell me what Rogers -- or Mr. Armstrong is
9 doing in that question and answer?

10 A. Mr. Armstrong is providing indication of what the impact
11 to a Rogers' ratepayer may be should Rogers choose to pass
12 on all the rate increase to their customers.

13 Q.167 - Do you accept how he has done it in that paragraph?

14 A. The principal way and that he has done it is fine.
15 Although he's utilizing the wrong number of attachments.

16 Q.168 - Okay. Let's go through it together then. And I would
17 like you to use the information you believe is
18 appropriate, even if it turns out that it means the
19 answers less favorable to Disco.

20 So first of all the \$21 increase listed by Mr. Armstrong,
21 is that a correct number?

22 A. Yes. That's correct.

23 Q.169 - Okay. And we have to spread that \$21 over how many
24 poles, that is how many Rogers -- sorry, how many poles to
25 which Rogers attaches to that are owned by Disco?

2 A. Approximately 109,000.

3 Q.170 - Sorry. 109' or 190'?

4 A. 109.

5 Q.171 - Thank you. And if you multiply the difference in
6 rates, that is the \$21 by the number of poles that Rogers
7 is on, what cost do you get, what dollar cost?

8 A. 2.289 million.

9 Q.172 - How many customers does Rogers have in New Brunswick?

10 A. Rogers says they have 165,000.

11 Q.173 - And if we divide that total cost of 2.3 odd million by
12 165,000 subscribers what would be the monthly increase
13 charge per Rogers customer if it was passed on entirely to
14 the customer?

15 A. \$1.16 per month.

16 Q.174 - Now can Rogers raise its rates just with respect to
17 customers that use facilities that are attached to Disco
18 poles?

19 A. No, they cannot.

20 Q.175 - Why not?

21 A. As Rogers has indicated they have no idea which poles are
22 owned by Disco and which are owned by Aliant.

23 Q.176 - So that \$1.16 you have just calculated would have to
24 be across all Rogers subscribers in New Brunswick?

25 A. Yes. That's correct.

2 Q.177 - Okay. Now if you wanted to find out what percentage
3 increase \$1.16 represented over the cost paid by Rogers
4 customers for Rogers services, how would you do that?

5 A. I would need to know what fees Rogers customers pay to
6 Rogers for the services they receive.

7 Q.178 - Okay. And did Disco ask Rogers that question in an
8 Interrogatory?

9 A. Yes, we did.

10 Q.179 - Can you turn up Interrogatory number 8? This is RCC
11 4, January 9th. Can you read to the Board question A and
12 Rogers' answer?

13 A. "What is the average total monthly charge exclusive of
14 taxes to Rogers Cable Communication Inc.'s subscribers in
15 New Brunswick across all services?

16 Q.180 - And what was the answer?

17 A. "The response provided was the information requested is
18 irrelevant and highly confidential."

19 Q.181 - All right. So given that Rogers wouldn't tell you how
20 much it makes from its customers, what did you do to try
21 to figure out the subscriber impact of any rate increase
22 to Rogers?

23 A. In order to determine what the fees were I went to Rogers'
24 outlet and requested those fees.

25 Q.182 - All right. And do you have in front of you two little

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Rogers brochures you picked up?

A. Yes, I do.

MR. RUBY: Okay, Mr. Chairman, we have copies of these for the Board and the Board Secretary has them and I ask that they be marked as exhibits.

MS. MILTON: Mr. Chair, we do have an objection to this.

There is no indication of how many customers would subscribe to each of these services. That is highly confidential information and it was not provided. And we just don't see the relevance, quite frankly. We are talking about a rate that is going to be applied to Disco. That is the issue here. We have provided some numbers on what the absolute impact would be on Rogers but we didn't go into percentages ourselves.

MR. RUBY: Well, with respect, my friend Ms. Milton is quite right, they didn't go into percentages. And what I think this witness will show is that the percentage is awfully small.

Now, if Rogers would have answered the IR it was asked, instead of saying it was irrelevant, then we wouldn't have to work with publicly available brochures. But since it refused to answer the interrogatory, I think it's only fair that the witness be able to work with the best information that is available.

2 And I should say that this is right out of their store.

3 There is nothing super confidential about this.

4 CHAIRMAN: We will allow those to go in.

5 MR. RUBY: Thank you, Mr. Chair.

6 CHAIRMAN: Okay. This pamphlet entitled "Your Guide to
7 Rogers Digital Cable Programming Options" will be given
8 exhibit number A-72.

9 MR. RUBY: Mr. Chair, if you could mark the second one,
10 which is called "Rogers Yahoo High Speed Internet",
11 please.

12 CHAIRMAN: That pamphlet will be A-73.

13 MR. RUBY: Thank you.

14 Q.183 - Mr. O'Hara, if we can start with the programming
15 pamphlet, A-72. If you want to pull that one out.

16 So Mr. O'Hara. you told us that you went into the Rogers
17 store. And what did you ask them and what did they tell
18 you?

19 A. I asked them to provide me some information on the
20 services that I might be able to acquire from them, both
21 in the area of TV and internet.

22 Q.184 - With respect to TV programming, what did you ask them
23 and what did they tell you?

24 A. They provided this information and indicated that the
25 basic digital programming options and the package that

2 they had for that, as well as they provided the items that
3 weren't included with that, items such as family channels
4 and music channels, learning channels, those types of
5 things that you would need to pay additional fees. And
6 they described the various internet services that they
7 have available and the costs associated with those.

8 Q.185 - Okay. Starting with the cable channels, if you wanted
9 to order the cable service that Rogers provides, I see a
10 whole bunch of channels here, what would you have to pay?

11 A. 89.95 per month.

12 Q.186 - And are there any channels that aren't included in
13 that 89.95?

14 A. Yes. There is a number of channels identified as theme
15 packages. Those like I say, include the children's
16 channels, learning channels, those types of things.

17 Q.187 - Okay. So if you wanted to take the -- I think it's
18 called at the top right, the ultimate package, with all
19 the theme packages, what would that cost you?

20 A. That would be 89.95 plus the 46.92 for all of the theme
21 packages.

22 Q.188 - And is there anything else you can buy from Rogers
23 with respect to cable television?

24 A. Yes. There are some special interest channels that I
25 wasn't interested in.

2 CHAIRMAN: I am going to interrupt there. I don't have
3 digital cable. I have analogue. And it is less expensive
4 than that. Where are we going with all of this?

5 MR. RUBY: Mr. Chair, if Rogers had answered the
6 interrogatory, and said on average --

7 CHAIRMAN: All right. Mr. Ruby, my question is where are you
8 going with this?

9 MR. RUBY: What I would like to do, Mr. Chair, is if we,
10 with Mr. O'Hara's assistance, add up the maximum charge
11 that a Rogers customer can expect to pay in New Brunswick.

12 And it is clear that not everybody gets everything, but
13 Rogers wouldn't give us that information. We can then --

14 CHAIRMAN: Okay. My suggestion is we will take a break.
15 Have him do his math. Give it to counsel opposite. If
16 she agrees on that, we will just take that figure, use
17 that figure, and get on with it. Okay? We will take a
18 break.

19 MR. RUBY: Okay. Thank you, sir.

20 (Recess)

21 CHAIRMAN: I was just telling my fellow Commissioners that I
22 got copies I believe of A-72 and A-73 in the mail. I
23 think you should put on a technical conference for people
24 like myself so I could follow it. Okay. Mr. Ruby.

25 MR. RUBY: Thank you. During the break as you requested we

2 tried to arrive at some agreement. I don't think we can agree
3 on what the numbers mean but we can certainly tell you at
4 least what the numbers are.

5 Q.189 - So, Mr. O'Hara, if we do this really simply, if you
6 take what it would cost a Rogers' New Brunswick customer
7 for the ultimate cable television pack, plus the extreme
8 high speed Internet from Rogers, what would that cost the
9 Rogers' customer in total?

10 A. In total without taxes that would be \$136.90 per month.

11 Q.190 - And if you added the \$1.16 to it that we have been
12 talking about as the potential increase due to pole
13 attachment, if the entire increase is passed on to
14 customers, what percentage increase would that be?

15 A. That would reflect a .85 percent rate increase.

16 MS. MILTON: Mr. Chairman, I have to object. This was not
17 the number that we agreed to. It's not the number that we
18 think is relevant. We had agreed that the numbers we were
19 willing to put in evidence were the rates for analogue
20 basic cable which is 24.99, and for digital basic cable
21 which is \$30.97. We do not believe this other number is
22 relevant.

23 CHAIRMAN: Well you have now got that on the record, which
24 is fine. As far as I am concerned, and I don't speak for

2 my fellow Commissioners, but you can argue about the relevance
3 of this in your summation, but I just want to get on with
4 it.

5 MR. RUBY: As I said, Mr. Chairman, we couldn't agree on
6 what the numbers mean but we can tell you at least what
7 the numbers are.

8 CHAIRMAN: Yes. Okay. Do you have any disagreement with
9 what Rogers has indicated the basic analogue cost would
10 be?

11 MR. RUBY: I can't agree or disagree. It's the first we
12 have heard of it and it doesn't seem to be in their
13 advertising pamphlet. So perhaps by the time I have an
14 opportunity to cross-examine the Rogers' witnesses we may
15 have some further information.

16 CHAIRMAN: Okay. I have to say that the witness obviously
17 has a dish because any of us who have been subscribing to
18 cable for any length of time in this province, we have
19 analogue and we have to say yes, we want digital. So when
20 we get advertising like that we say, no thanks. Anyway,
21 go ahead.

22 MR. RUBY: For Rogers sake I hope that changes over time.
23 Mr. Chairman, those are my questions on direct and the
24 witness is available for cross-examination.

25 CHAIRMAN: Thank you. Cross-examination.

2 MS. MILTON: Mr. Chairman, before I get started I wonder if
3 I could just talk about timing? I'm wondering what time
4 you are expecting to conclude today?

5 CHAIRMAN: We will rise at 3:00. Some of the Commissioners
6 have asked me too to get you to pull in your mike too a
7 bit further if you could, madam. We lose you every once
8 in a while.

9 MS. MILTON: My apologies. Is that better?

10 CHAIRMAN: Yes, it is. Thanks.

11 MS. MILTON: I'm sorry. All right. Just in terms of what
12 materials we might be referring to during my cross-
13 examination, we do have a smaller record than what is in
14 place for the rest of the proceeding but I thought I would
15 identify them up front.

16 I may be referring to Mr. O'Hara's evidence which is
17 exhibit A-63 and his responses to interrogatories which
18 are A-68. I may also be referring to Disco's responses to
19 Interrogatories in Exhibit A-19, and Rogers evidence which
20 is labelled exhibit RCC 1.

21 CHAIRMAN: We did not bring A-19 with us I don't think, so -

22 -

23 MS. MILTON: Well maybe I won't get to that today. I think
24 -- I was expecting -- the direct was much longer than I
25 was expecting but I'm thinking now I may not get to

1

- 3036 -

2 that part of my cross-examination.

3 CHAIRMAN: Okay. Maybe if we don't then you could just

4 provide us with a xerox copy of that. We now have -- well

5 you can see how many volumes we are up to.

6 MS. MILTON: Yes.

7 CHAIRMAN: Okay. Thank you.

8 CROSS EXAMINATION BY MS. MILTON:

9 Q.191 - Now, Mr. O'Hara, I understand that you are an

10 engineer. Do you consider yourself to be a costing expert?

11 A. No, I do not.

12 Q.192 - Do you have any knowledge of the cable market in New

13 Brunswick?

14 A. I am testifying here today with respect to joint use

15 poles.

16 Q.193 - That's correct. So you wouldn't know how many

17 subscribers there are through Rogers services in New

18 Brunswick for any of these services that were identified

19 in A-72 and A-73, is that correct?

20 A. Yes, that's correct.

21 Q.194 - And you wouldn't know how competitive the cable market

22 is in New Brunswick?

23 A. No, I would not.

24 Q.195 - Thank you. I just want to cover off some background

25 issues to begin with. Other than the invoicing and

2 payment of rental fees has anything changed in the manner that
3 Rogers is required to obtain permission to use Disco poles
4 since the joint use arrangement relating to third party
5 attachments with Aliant was terminated in 2004?

6 A. Rogers still applies through Aliant as an entry point for
7 the permit process. However, we have attempted to put in
8 place since then terms and conditions for attachment with
9 Rogers directly between Disco and Rogers.

10 Q.196 - But to this point the procedures are the same?

11 A. To this point the procedures are similar, yes.

12 Q.197 - All right. Now I understand that Aliant and Disco
13 have not historically tracked the number of Aliant poles
14 that Rogers or any other third party tenant has attached
15 to -- or I should say the number of communications
16 companies -- the number of poles that any communications
17 companies attach to that belong to Aliant and that belong
18 to Disco, is that correct?

19 A. I'm sorry. Could you please repeat that question?

20 Q.198 - I'm sorry. It was quite long. I understand that
21 Aliant has not historically tracked the number of poles
22 that for example Rogers has attached to that would belong
23 to Aliant and the number that would belong to Disco. They
24 have simply send out an invoice for the total number of
25 joint use poles that Rogers has attached to, would you

2 agree with that?

3 A. No, I wouldn't agree with that.

4 Q.199 - And why not?

5 A. Aliant did keep track of the breakdown of poles owned by
6 Disco and owned by Aliant that communications attachers
7 are attached to by way of the ownership ratio within the
8 joint use agreement.

9 Q.200 - But my understanding is that the invoices that you
10 have sent out since 2004 have simply taken the total
11 number of joint use poles that Aliant was billing for and
12 taken 57 percent of those poles and said those are Disco
13 poles, is that not correct?

14 A. That's correct. Those 57 percent would represent the
15 ownership of Disco poles within areas that they have
16 ownership in the province.

17 Q.201 - So there is no specific identification of poles. The
18 breakdown has been done on the basis of the percentages?

19 A. Yes, that's correct.

20 Q.202 - And so Rogers quite naturally doesn't know which poles
21 that it's on are Disco poles and which poles would be
22 Aliant poles, would you agree that's fair? I believe you
23 stated today that Rogers doesn't have knowledge of that.

24 A. Yes, that's correct. Rogers has said that in their
25 evidence.

2 Q.203 - Are you aware that under the terms of the support
3 structure licence agreement with Aliant which was the
4 agreement that Rogers was working on under -- until
5 recently -- that there is no charge for service poles?

6 A. That's an agreement between Aliant and Rogers that -- and
7 Disco is not party to. We are not named in that agreement
8 anywhere nor are we signed in it anywhere.

9 Q.204 - So you don't know whether or not Aliant tracked the
10 number of service poles?

11 A. Whether or not Aliant tracked the number of service poles?

12 Q.205 - Yes. That Rogers was on?

13 A. No, I don't know if Aliant tracked that. No.

14 Q.206 - Do you know the number of service poles that Disco
15 owns that Rogers is on?

16 A. We have estimated the number of service poles based on
17 typical estimating standards, the ratio of service poles
18 to main line poles that Rogers would be on.

19 Q.207 - But those are estimates. You don't know which poles -
20 - you don't know the number?

21 A. It's an estimate. There is no question that there is a
22 requirement for both Rogers and Disco to participate in an
23 actual field audit to ascertain the precise number that
24 should be billed going forward, that's correct.

1 - 3040 - Mr. O'Hara - Cross -

2 Q.208 - All right. So as I understand it what you are
3 proposing is that on some poles that Rogers is on Rogers
4 will pay 9.60 or maybe zero depending on what they pay for
5 service poles if the poles are notionally attributed to
6 Aliant, but they will pay \$30 per pole if the poles are
7 notionally attributed to Disco, is that correct?

8 A. Rogers will pay the appropriate cost -- the appropriate
9 share on Disco owned poles, that's correct.

10 Q.209 - Based on the percentage?

11 A. Based on the actual field audit, once we complete that in
12 conjunction with Rogers. Currently, today the best
13 information is based on the percentage and that's based on
14 a long-term historical maintenance of the number of poles
15 in the province being owned, 43 percent Aliant, 57 percent
16 Disco, based on ownership -- defined ownership areas in
17 the province.

18 Q.210 - All right. So you are proposing to do an audit?

19 A. Absolutely. Yes.

20 Q.211 - Now you have indicated in your evidence there are
21 communications users other than Rogers and Aliant that
22 have attachments on Disco poles, is that correct?

23 A. Yes, that's correct.

24 Q.212 - Would you agree with me that it's possible that the
25 number of communications companies that use your poles

2 could increase in the future?

3 A. Potentially that could occur, sure.

4 Q.213 - And would you agree with me that the number of poles
5 they attach to could increase in the future?

6 A. Yes.

7 Q.214 - Now I understand that in July of 2004 you met with
8 Rogers and proposed that Rogers pay an annual pole rate of
9 \$28.51 per year, is that correct?

10 A. No, that's not correct.

11 Q.215 - What did you propose?

12 A. The rate proposal was 28.05.

13 Q.216 - All right. So you proposed \$28.05. And I understand
14 that rate proposal was based on a proportionate sharing
15 methodology which is the CRTC approach and the approach
16 that Rogers has proposed in this proceeding, is that
17 correct?

18 A. No, not in its entirety.

19 Q.217 - But in terms of the allocation of common costs was
20 that the approach?

21 A. Yes. But it was -- for the CRTC method -- it was adjusted
22 to account for the fact that there are -- that 40 foot
23 poles are considered a typical pole, however, they are
24 less than 40 percent of the pole population in the
25 province. And we have allocated across all size poles

2 because we have that information.

3 We also allocated the various space requirements on those
4 poles based on our standard construction practices and
5 applied the allocation appropriately that way.

6 Q.218 - I understand. So you had different pole allocations
7 but you were proposing to do a proportionate sharing of
8 the common cost based on different pole allocations, is
9 that correct?

10 A. Yes, that's correct, at the time. Without the assistance
11 of expert that was the proposal we were moving forward
12 with.

13 Q.219 - Now in this proceeding you proposed a rate, you said
14 this morning \$30.61 I believe, but you did say thereto you
15 might accept a rate based on Rule 1 or Rule 3. So I
16 believe that's a rate of \$27 and change up to \$30 and
17 change. And then that would be based on the equal sharing
18 methodology, is that correct?

19 A. That's a discussion I think should be better with Dr.
20 Mitchell.

21 Q.220 - All right. Can you confirm though that you did
22 propose a range in rates? There was a \$27 and -- up to
23 \$30.60?

24 A. No. We proposed the rate of \$30.61.

25 Q.221 - All right. Did you believe in July of 2004 that you

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were proposing a fair and reasonable pole rental rate to Rogers?

A. Yes, we certainly did.

Q.222 - But you are now of the view that the methodology used then was not -- is not fair. Is that correct?

A. We applied, to the best of our abilities at the time, a methodology that was being used to some degree and in an attempt to make it as least confrontational as possible, we attempted to utilize that methodology.

Again, we were taking that at the time and developing a rate proposal in the context of negotiations.

Q.223 - Now you have indicated that you have changed your methodology because you received additional advice since that time. Is that correct?

A. The things have evolved in this area of ratemaking as far as joint use attachments go, there has been decisions made that can be looked at and yes, we have engaged the help of an expert to determine what is the best methodology to use.

Q.224 - Are you aware that in the CRTC proceeding that resulted in decision 99-13, the power companies proposed an equal division of common costs?

A. Yes, I am aware of that.

Q.225 - Are you aware that the OEB proceeding was commenced in

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December of 2003?

A. Yes, thereabouts.

Q.226 - And in that proceeding, the power utilities proposed an equal sharing of common costs. IS that correct?

A. Yes, the power utilities proposed an equal sharing of common costs.

Q.227 - And are you familiar with the Nova Scotia Board decision with respect to a pole rental rate for Nova Scotia Power?

A. Yes, I am.

Q.228 - And are you aware that Nova Scotia Power took the position in the proceeding that an equal division of common costs was appropriate, but that for the purpose of the proceeding, they would go with a proportionate sharing model for other reasons?

A. In that decision, the NSUARB took that approach but also identified that they didn't have all the information required to make a decision on an alternate method.

Q.229 - I believe you expressed the opinion in your written evidence that the CRTC approach to rate setting is obsolete following the OEB decision. Would that be correct?

A. Yes, that is correct. I believe that there are better methods available today.

2 Q.230 - Other than this proceeding, are you aware of any
3 applications by pole owners since the release of the OEB
4 decision in March of last year for a change in their
5 rates?

6 A. No, I am not.

7 Q.231 - Would you agree with me, Mr. O'Hara, that if the pole
8 rental rate exceeds the incremental cost to Disco of
9 Rogers' use of its poles, then Disco is not incurring any
10 additional costs when it rents the pole space to Rogers?

11 A. No, I wouldn't agree with that.

12 Q.232 - And why is that, sir?

13 A. Because Disco builds all poles, all joint use poles to a
14 standard that allows for Rogers to attach onto it. For
15 that fact, we are incurring additional capital costs that
16 we otherwise wouldn't have to if we weren't building to
17 that standard.

18 Q.233 - We are going to talk about that in a minute. But what
19 I said is, if all the incremental costs of Rogers using
20 the pole are covered by the rental rate, would there be
21 any costs that aren't recovered through the rate that
22 would be incurred by Disco?

23 A. No. That is correct.

24 Q.234 - So there would be no cross-subsidization. Is that
25 correct?

2 A. No, there wouldn't be any cross-subsidization, that is
3 correct.

4 Q.235 - Now I understand that based on Disco's evidence, Disco
5 considers the incremental cost to Rogers' use of the pole
6 to be 55 cents, which is the administrative expense. Is
7 that correct?

8 A. That is one component of the incremental cost, yes.

9 Q.236 - Well when I look at the chart that I believe was used
10 to day to identify the areas of agreement and
11 disagreement, we have A through G to get total annual pole
12 costs. And as I understand Disco's methodology, those are
13 all considered to be common costs, which are going to be
14 allocated amongst the three users of the pole. Is that
15 correct?

16 A. Yes, that is correct.

17 Q.237 - And so K is the incremental cost which you have
18 identified which is 55 cents per pole?

19 A. Yes, that's correct.

20 Q.238 - Do you agree with me that the pole rental rate formula
21 proposed by Rogers in this proceeding requires that the
22 rental rate cover all of Disco's incremental costs of
23 renting space on the pole to Rogers plus a contribution to
24 Disco's common costs of the pole structures themselves?

25 A. Yes, I do.

2 Q.239 - All right. Can you confirm for me that Disco is
3 required to build poles pursuant to its obligation to
4 serve?

5 A. Yes, that's correct.

6 Q.240 - And this has nothing to do with Rogers or anybody else
7 attaching to its poles, correct?

8 A. The mandate to serve is not associated with Rogers, no.

9 Q.241 - Can you confirm that your joint use agreement with
10 Aliant requires you to build poles with two feet of
11 communication space plus a separation space?

12 A. Yes, that's correct. That's the standard joint use
13 design.

14 Q.242 - So all poles are built with two feet of communication
15 space regardless of whether or not there is any user other
16 than Aliant, of any communications user other than Aliant?

17 A. Yes, that's correct and it's done so in anticipation of
18 other parties connecting to that pole.

19 Q.243 - Well let's look at that for a minute. I wonder if we
20 could go to the joint use manual which I believe has been
21 included in exhibit A-68.

22 CHAIRMAN: All right. Good.

23 MS. MILTON: And it is page --

24 CHAIRMAN: There is only one copy of that. It was filed

2 with the Board. And so the panel doesn't have it. It is
3 rather a large document, isn't it? How many sections are
4 you going to be referring to in that?

5 MS. MILTON: Well, it depends on how things work out. But I
6 do a number of reference to them. Why don't I -- I will
7 move this section as well I think to tomorrow. And I will
8 try to figure out --

9 CHAIRMAN: Okay. If you could do that that would be
10 appreciated.

11 Q.244 - All right. So if there are 2 feet of communication
12 space on a pole, and those 2 feet are on the pole
13 regardless of whether or not Rogers is there, you are
14 required to do it because Aliant is there. How would
15 Disco's pole structure costs be any different without
16 Rogers?

17 A. First of all, we are not required to do the 2 feet because
18 Aliant is there. Because Aliant is there, that space
19 could be one foot or even 6 inches.

20 Q.245 - Well, let's talk about that. Do you ever build a 39-
21 foot pole?

22 A. Excuse me?

23 Q.246 - Do you ever build a 39-foot pole?

24 A. No, we don't.

25 Q.247 - Have you ever seen a 39-foot pole?

2 A. No, I have not.

3 Q.248 - All right. So my understanding is that it is your
4 evidence that poles only come in 5-foot increments, is
5 that correct?

6 A. That's correct.

7 Q.249 - All right.

8 A. And because of that, that doesn't mean that in order to
9 have one foot or even 6 inches of communication space that
10 you would end up having to have a 39-foot pole. They are
11 dependent on the clearance requirements, those types of
12 things, you could easily go to a 35-foot pole and
13 accommodate.

14 Because in a lot of cases in fact when you look across the
15 average numbers of poles that we put in, the height
16 requirement tendency is -- or when you look -- when you
17 average all the pole heights that we put in, the height is
18 in the 36 to 37-foot range. Because of that we are
19 required to put in a 40-foot pole.

20 If we were able to reduce the requirement of the pole by
21 even a foot or a foot and a half, we could reduce to 35-
22 foot poles quite easily and still accommodate Aliant's
23 facilities.

24 Q.250 - All right. We are going to talk about pole allocation
25 later. And I will bring this issue up again when we have

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2 some pages of the joint use manual that I can work through
3 with you.

4 I want to turn now to your joint use arrangements. It is
5 my understanding that under the joint use arrangements
6 between what were formerly NB Tel and NB Power and now are
7 Aliant and Disco, the companies originally agreed to a
8 joint use agreement in 1967 whereby NB Tel owned 40
9 percent of the poles and NB Power owned 60 percent of the
10 poles, is that correct?

11 A. Yes. That's correct. But could you please take me to
12 where you are referencing that?

13 Q.251 - It is actually in your own evidence. Do you want to
14 go there?

15 A. Yes.

16 Q.252 - All right. I believe it is exhibit A-63 at page 8 and
17 beginning on line 7.

18 A. Thank you.

19 MS. MILTON: It is exhibit A-63, page 8 beginning on line
20 7.

21 Q.253 - And it is also my understanding that those
22 arrangements were renegotiated in 1996 such that Aliant
23 now owns 43 percent of the poles and Disco owns 57 percent
24 of the poles, is that correct?

25 A. Yes. That's correct.

1 Q.254 - Now would you agree with me that the joint use

2 - 3051 - Mr. O'Hara - Cross -

3 arrangement was a commercial arrangement that was reached

4 through commercial negotiations between NB Tel and NB

5 Power?

6 A. Yes. It's a business partnership in order to reduce costs

7 and ultimately improve the situation in the province of

8 New Brunswick.

9 Q.255 - And would you agree with me that those negotiations

10 were likely affected by a wide range of factors?

11 A. I didn't participate in those original negotiations. So

12 I'm not sure what wide range of factors you would be

13 referring to.

14 Q.256 - Well, for example would NB Tel's and NB Power's desire

15 to own poles be affected by differences in their cost of

16 capital?

17 A. I'm not sure.

18 Q.257 - You are not sure? What about different revenue

19 potential for each of them from the use of their poles?

20 A. The revenue potential at the time was probably not a

21 factor, no.

22 Q.258 - The revenue potential was not a factor. How much

23 revenue you would gain from your services was not a

24 factor?

25 A. Both utilities were well-established utilities with a

1 customer base. And I don't think that that was a factor

2 - 3052 - Mr. O'Hara - Cross -

3 that caused the ownership ratio to be affected no.

4 Q.259 - No. But you were a party to those negotiations?

5 A. No, I was not.

6 Q.260 - All right. Would they have different corporate

7 objectives, one being a telephone company and one being an

8 electrical utility?

9 A. No. I don't believe they would have different corporate

10 objectives.

11 Q.261 - You don't think so? All right.

12 A. They obviously are providing a different service to their

13 customers. But their overall corporate objective was to

14 provide that service to the province of New Brunswick.

15 Q.262 - Was the regulatory regime identical for each company

16 in 1996?

17 A. No, it was not.

18 Q.263 - In fact they had different regulators, isn't that

19 correct?

20 A. Yes. That's correct.

21 Q.264 - All right. Would you agree with me that under the

22 joint use arrangements access is effectively paid for in

23 kind? And by that I mean that in return for accessing the

24 power space on all poles, Disco pays for 57 percent of the

25 poles and builds poles with 2 feet of communication space

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2 and separation space.

3 And similarly, in respect of Aliant, in return for
4 building or accessing communication space on all of the
5 poles, Aliant would build poles that include a separation
6 space and a power space. So in effect access is paid for
7 in kind. Would you agree with that?

8 A. Yes. That's correct.

9 Q.265 - Now it is also my understanding that under the joint
10 use arrangements that were in place from 1967 to 1996, all
11 of the revenues from third party rental of communication
12 space was retained by NB Tel. Is that correct?

13 A. Yes. That is correct.

14 Q.266 - Would you agree with me that that is consistent with
15 the notion that the 2 feet of communication space on all
16 joint use poles is Aliant space?

17 A. No. I don't believe that's the case.

18 Q.267 - You don't -- the fact that they retained all the
19 revenues wouldn't be consistent with that?

20 A. That's an area that at the time Disco was more interested
21 in developing the relationship with their Telco
22 counterpart. And revenue attachments that they were able
23 to receive was not something that was of great
24 significance to Disco.

25 Q.268 - So they really didn't consider the communication space

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was of interest to them? It was Aliant space, is that correct?

A. It was space where Aliant and other communication attachers would attach to the poles. Aliant doesn't own 43 percent of every pole. They own 43 percent of the poles in the province --

Q.269 - I understand that.

A. -- in specified ownership areas. Disco owns 57 percent of the poles in specified ownership areas. There is no sharing on an individual pole.

Q.270 - I understand that, sir. But I think you confirmed that access was effectively paid for in kind. So in return for its investment in a portion of the poles, Aliant gets usage of all of the poles, is that correct?

A. Yes. That's correct.

Q.271 - All right. Now as I understand it in 1996 the joint use arrangements were renegotiated. And following that renegotiation it was -- Disco has received a portion of the revenues from rental space in the communications portion of the pole, is that correct?

A. Yes. That's correct.

Q.272 - Would you agree with me that the value of the communication space to Aliant was reduced by this sharing of revenues?

2 A. No, I would not. And I answer that way with respect to
3 the -- the overall joint use arrangement of business
4 partnership has a number of things involved that are
5 outside just specifically the ownership of poles.
6 There is a number of other services that over the years
7 one party has done for the other or one party has taken on
8 all services, for example collection of contributions from
9 customers or there has been reciprocal sharing of
10 applications such as work planning systems, things like
11 that.

12 So there are other factors involved besides strictly the
13 ownership of the pole.

14 Q.273 - Agreed. But before 1996 Aliant got revenues from the
15 communication space on all of the poles. After '96 it
16 only got 43 percent of the revenues, is that correct?

17 A. No. That's not correct.

18 Q.274 - It only got a portion of the revenues? Since 1996 it
19 has only got a portion of the revenues?

20 A. That's correct.

21 Q.275 - That is correct. Whereas before '96 it got all of the
22 revenues?

23 A. Yes. That's correct.

24 Q.276 - All right. And Disco before '96 didn't get any
25 revenues from the communication space, correct?

2 A. That's correct.

3 Q.277 - And since '96 it has obtained revenues from the
4 communication space, correct?

5 A. Yes, it has, as a result of discussions when that
6 negotiation took place in 1996. And both parties looked
7 at the various services that were being exchanged back and
8 forth. That became a component that flowed through to
9 Disco.

10 Q.278 - And if you get the rate increase that you are seeking
11 in this proceeding your revenues from the communication
12 space will go up very significantly, isn't that correct,
13 from 9.60 to \$30.61?

14 A. Yes. They will go up.

15 Q.279 - Have there been any discussions with Aliant about a
16 change in the ownership ratios of the two companies?

17 A. There is -- we continually have discussions around the
18 partnership. Has there been discussion specifically on
19 the ownership ratio? Not at this point, no.

20 Q.280 - All right. I wonder if we could go to the revenue-
21 sharing formula that was negotiated in '96. It is
22 contained in RCC 1 at appendix K.

23 MS. MILTON: At page I-26 of that appendix.

24 CHAIRMAN: What was the page again?

25 MS. MILTON: Page I-26.

2 WITNESS: Excuse me. Which page was that?

3 MS. MILTON: It's Appendix K and it's I-26.

4 WITNESS: I don't have that.

5 Q.281 - Do you have that, Mr. O'Hara?

6 A. Yes, I do.

7 Q.282 - At the top of the page as I understand it that's the
8 formula that was established between NB Tel and NB Power
9 for the sharing of pole rental revenues, is that correct?

10 A. Yes, that's correct, although there is a typo in your
11 copy.

12 Q.283 - Well you can correct -- do you want to correct the
13 typo right off the top?

14 A. The --

15 Q.284 - This was provided to us by you by the way.

16 A. Yes. The capital recovery on telco is -- well as you can
17 see the numbers add up to more than \$9.60. The capital --

18 Q.285 - Yes. But I think -- okay. But isn't that because of
19 the strand allowance of 3.21?

20 A. No. This is in error. It has absolutely nothing to do
21 with that. Or sorry, it's an error.

22 Q.286 - But my understanding is that --

23 MR. RUBY: Mr. Chairman, I don't interrupt but I think the
24 witness said there was a typo. Maybe he should point it

2 out for all of us first.

3 CHAIRMAN: Yes. I don't understand what is in error?

4 WITNESS: The capital recovery that is shown in here at
5 \$2.67 for NB Tel is supposed to be \$3.11. The capital
6 recovery for Power showing here at -- it looks like 3.55 -
7 - is also supposed to be \$3.11. And the strand allowance
8 shouldn't be included in here. This is intended to
9 demonstrate a cost sharing of the \$9.60 paid as pole
10 attachment fees from third parties.

11 Q.287 - Okay. Working from the top, there is an
12 administration amount for NB Tel of 88 cents, is that
13 correct?

14 A. Yes, that's correct.

15 Q.288 - And would you agree with me that that would be the
16 cost to NB Tel of administering the rental regime, issuing
17 permits and that kind of thing?

18 A. Yes, that's what that's related to.

19 Q.289 - And then there is a line called Additional Work Tel
20 and Additional Work Power. Would you agree with me that
21 those are productivity costs to NB Tel and NB Power that
22 result from having third party attachments on the pole?

23 A. I can't answer that. I wasn't part of the negotiation on
24 this split.

25 Q.290 - You are not aware of what those lines mean?

2 A. I can't tell you if they are specifically associated with
3 loss of productivity or not.

4 Q.291 - But it is additional work presumably caused by the
5 pole rental regime?

6 A. Yes, presumably.

7 Q.292 - And the number for NB Power is 93 cents, is that
8 correct?

9 A. Yes, that's correct.

10 Q.293 - Are you aware that Mr. Ford has proposed based on the
11 costing data that you filed in this proceeding an amount
12 for productivity costs of \$1.01 that is attributable to
13 the presence of third party attachments on poles?

14 A. Yes, I am aware of that. But unfortunately Mr. Ford's
15 number is based on incorrect facts.

16 Q.294 - Well we will be getting to that. And then there is a
17 loss in space of 13 cents which is presumably a measure of
18 the loss to Aliant of not having the space available to
19 it, would you agree with that?

20 A. Again, I wasn't party to these discussions, so I can't
21 specifically say what each of those is.

22 Q.295 - All right. And you have corrected the remaining
23 numbers, is that correct?

24 A. Yes, that's correct.

25 Q.296 - Are you aware that in Aliant's tariff for support

2 structures there is a strand rental fee?

3 A. Yes, I am aware of that.

4 Q.297 - And that the strand rental fee is \$3.21 when you
5 adjust for distances?

6 A. I am aware there is a perimeter fee in their tariff. I'm
7 not aware that it's \$3.21.

8 Q.298 - So you adjust for normal span lengths? You haven't
9 done that calculation?

10 A. No, I haven't. Span lengths vary quite a bit.

11 Q.299 - All right. But clearly you have to work from
12 averages?

13 A. What span length would that be associated with?

14 Q.300 - 40 meters, sir. Would that be a reasonable average
15 span length in New Brunswick?

16 A. No, it is not.

17 Q.301 - What in your view is an average span length in New
18 Brunswick?

19 A. I know based across the entire pole population the average
20 span length of Disco's facilities is in the order of 60
21 meters.

22 Q.302 - 60 meters. Thank you. All right. I would like to
23 talk a little bit about how various parties with
24 attachments on Disco poles are treated. Starting out with
25 Aliant, is Aliant required to seek permission from Disco

1
2 to attach its facilities to the communications based on Disco
3 poles?

4 A. No, it is not, unless there is requirement to do work to
5 that pole in order to facilitate attachment.

6 Q.303 - All right. But otherwise it doesn't need to seek
7 permission?

8 A. No, that's correct.

9 Q.304 - Now I wonder if we could go to the proposed licence
10 agreement that NB Power has put to Rogers for a pole
11 attachment. It's contained again in RCC 1 at tab M. And
12 it's page 4 of that agreement. In the first full clause
13 at the top of that page at 2.3 it reads, the owner shall
14 provide to the licensee use of poles where spare capacity
15 is available except where such use will unduly interfere
16 with the rights of Aliant or any other licensee. In all
17 circumstances the owner and Aliant have priority access to
18 poles in order to meet their current and anticipated
19 future service requirements.

20 Would you agree with me that this provision ensures that
21 Aliant has priority access to Disco's poles in order to
22 meet its current and anticipated needs?

23 A. I would just like to read the last sentence of that
24 paragraph as well where it states, the owner shall not
25 unreasonably deny the licensee access to the poles.

2 Q.305 - That's correct, sir, but by saying in the sentence
3 before that Aliant has priority access for all its current
4 and anticipated needs, that would be a reasonable reason
5 for denial, would it not, sir?

6 A. As per Aliant's rights as an incumbent utility here,
7 that's no different than what the CRTC themselves would
8 stipulate, that Aliant must demonstrate that they have a
9 requirement for space on the pole prior to being able to
10 deny access as a result of that.

11 Q.306 - Well the CRTC regulates Aliant poles. Does it
12 regulate Disco poles?

13 A. The CRTC regulates the relationship between Aliant and
14 Rogers.

15 Q.307 - Can you point how it does that?

16 A. Aliant can't unduly interfere with Rogers ability to
17 provide their business. There is avenues through the CRTC
18 to address those concerns.

19 Q.308 - Well what service would Aliant be providing to Rogers
20 in this case? If it's a Disco pole what
21 telecommunications service is Aliant providing to Rogers?

22 A. They are not providing any service.

23 Q.309 - Correct. So what jurisdiction would the CRTC have
24 over Disco?

25 A. They have jurisdiction over the relationship between

2 Aliant and Rogers.

3 Q.310 - With respect to Disco poles?

4 A. The intention is that they would continue to govern that
5 relationship between Aliant and Rogers.

6 Q.311 - If that is correct, sir, why don't we just leave the
7 room and stay with the \$9.60? We are talking about Disco
8 poles, based on Disco poles.

9 A. I'm not talking about the tariff. I'm talking about the
10 relationship between those two parties and the fact that
11 Aliant can't unduly interfere with Rogers ability to be
12 able to do their business.

13 Q.312 - Only if Aliant is providing a telecommunication
14 service to Rogers. What telecommunication service is
15 Aliant providing with Rogers when we are dealing with
16 space on Disco poles?

17 A. They are not providing any service.

18 Q.313 - And I think you have agreed with me that Aliant has a
19 priority access to the poles and that has been recognized
20 by the CRTC as well I believe you just said, is that
21 correct?

22 A. Yes. Aliant has priority access to the poles as an
23 incumbent utility.

24 Q.314 - Thank you. Now I understand that Aliant manages the
25 communication space on Disco poles, is that correct?

2 A. Yes, that's correct.

3 Q.315 - So any use of the communication space by Rogers or any
4 other third party tenant has to be approved by Aliant, is
5 that correct?

6 A. Aliant will do a review to ensure that everybody within
7 that space is constructing and doing things as per the
8 required standards. There needs to be -- when you have
9 multiple attachers within a certain space on a pole
10 somebody needs to be able to govern that relationship --
11 that area, to make sure -- like I say to make sure that
12 people are doing as per the standards and whatnot and not
13 posing risks to one another.

14 Q.316 - And Aliant presumably will be checking to see if there
15 is spare capacity given its current and anticipated needs,
16 would that not be correct?

17 A. Yes, that's correct.

18 Q.317 - And I understand that both Disco and Aliant determine
19 where Rogers can place its facilities on a Disco pole, is
20 that correct?

21 A. Disco ultimately determines where Rogers can place a
22 facility.

23 Q.318 - And Aliant plays no role in that?

24 A. Aliant provides feedback as to what their anticipated
25 plans are, those types of things, but ultimately all

2 permits and attachments are approved by Disco prior to third
3 parties attaching.

4 Q.319 - But if Aliant told you that it wanted the facilities
5 attached in a certain position, would you not tell Rogers
6 that they had to be placed on a position where Aliant was
7 comfortable with them being placed?

8 A. Yes, that's correct. And --

9 Q.320 - In fact I think in one of your responses to
10 interrogatories you have confirmed that, it's Disco Rogers
11 IR-2. Do you want to go look at that or can we leave it?

12 A. Sure. Where is that?

13 Q.321 - That would be A-68. It's Disco Rogers IR-2?

14 A. Yes.

15 Q.322 - In response to the third section of that question it
16 says in the last line, Aliant may or may not identify
17 where within the communications base Rogers should attach
18 its cables?

19 A. Yes, that's correct.

20 Q.323 - Correct? All right. Now are you aware that Aliant or
21 NB Tel has frequently required Rogers to place its
22 facilities on the field rather than the roadside of joint
23 use poles in New Brunswick, including on Disco poles?

24 A. I am aware that Rogers is attached on the field side of
25 poles. They are also attached on the front side of poles

1
2 and they are also overlashed on Aliant's own strand.

3 Q.324 - That's correct. Are you aware that the requirement to
4 work on the field side of the pole increases Rogers' costs
5 of placing its facilities on the pole by in the order of
6 25 percent?

7 A. No, I am not aware of that.

8 Q.325 - Does Rogers have any control over the physical
9 configuration of Disco's poles?

10 A. The physical configuration of Disco's poles is driven
11 primarily by the CSA standards and our construction
12 standards.

13 Q.326 - You have absolutely no flexibility?

14 A. No. We have established standards and we must meet the
15 CSA standards.

16 Q.327 - What if you decide to exceed those standards, who
17 determines that?

18 A. Yes. There is an opportunity to exceed standards. And
19 in fact the CSA would encourage that if you have
20 reasonable -- reason to believe that there may be a
21 necessity to exceed those standards.

22 Q.328 - Who would determine -- in the case of joint use poles
23 in New Brunswick, who would determine whether or not you
24 would exceed the CSA standards?

25 A. On Disco poles, Disco would determine whether you

2 wanted to exceed those standards or not. That would be done
3 very carefully given that there would be additional costs
4 associated with that. So there would have to be very good
5 reasons as to why we would want to exceed existing
6 standards.

7 Q.329 - And who determines pole height?

8 A. Again pole height is primarily driven by the CSA
9 standard. The requirements for that pole height need to
10 take into account the terrain, the span length, various
11 other concerns, where the poles are being constructed.
12 And that's the primary driver behind the pole height.

13 Q.330 - But if you determine to exceed those standards, would
14 Rogers have any input into that?

15 A. No, they would not.

16 Q.331 - What about span length is there any flexibility on
17 span length?

18 A. Not as much as one might think. Span length is
19 primarily driven by property lines.

20 Q.332 - Well in rural areas would there not be some
21 flexibility on span lengths?

22 A. In a rural area, it's always best to maximize the span
23 lengths in order to reduce the number of poles and reduce
24 the costs. And that is the approach that Disco takes.

25 Q.333 - Now, I understand that you have looked at the pole

2 line constructed by Rogers in New Brunswick, is that correct?

3 I believe you said so this afternoon?

4 A. Disco resources have looked at that pole line, that's
5 correct.

6 Q.334 - You have not?

7 A. I have not personally, no.

8 Q.335 - So were you aware that the span length on those poles
9 is in the order of 150 metres?

10 A. Yes, I am.

11 Q.336 - And the longer the span length that would reduce the
12 number of poles, is that correct?

13 A. Yes, that's correct. It will reduce the number of
14 poles.

15 Q.337 - Does Rogers have any control over Disco's pole costs?

16 A. Disco ensures that our pole costs are as minimal as
17 possible. We negotiate and maintain long term contracts
18 with in-province pole manufacturer in order to make sure
19 that we are getting the best value with respect to
20 purchase of poles.

21 Q.338 - But Rogers would have no control over those costs
22 would they?

23 A. No. But it's certainly in the best interest of Disco
24 to maintain those costs as low as possible so Rogers does
25 benefit from that.

2 Q.339 - Can you confirm that Disco is a tenant on a small
3 number of poles in New Brunswick?

4 A. Yes, that's correct.

5 Q.340 - And as I understand it, these poles are owned by Saint
6 John Energy and the City of Edmundston, is that correct?

7 A. Yes, that's correct.

8 Q.341 - And I understand that you pay no fee for the use of
9 these poles, is that correct?

10 A. Yes, that's also correct.

11 Q.342 - Were these terms negotiated between parties with equal
12 bargaining power?

13 A. Those are unique situations. For example, the city of
14 Edmundston, the city boundaries were expanding and they
15 had a very much an interest to own facilities within their
16 city boundaries as well as the customers. As a result of
17 those expansions and Disco wanting to allow them to do
18 that, we sold facilities to Perth Andover and one of our
19 substations remained within the city limits. A substation
20 -- or not Perth, sorry -- the City of Edmundston -- a
21 substation that the City of Edmundston leases a portion
22 of. And there are approximately 71 poles that allow us to
23 get our lines out of the city feeding customers that are
24 external to the city limits. It's a unique situation.

25 Q.343 - All right. Back to my question. There is nothing to

1
2 believe that there wasn't equal bargaining power the parties
3 in those negotiations as far as you are concerned?

4 A. I am sorry, the question again?

5 Q.344 - Is there anything to suggest to you that there wasn't
6 equal bargaining power between the parties in those
7 negotiations?

8 A. That there wasn't equal bargaining power?

9 Q.345 - That's correct.

10 A. No, there is not.

11 Q.346 - And I think you are telling me that there were other
12 commercial factors which affected the ownership position
13 taken, is that correct? You have described a number of
14 factors?

15 A. Yes, that's correct.

16 Q.347 - Now, I believe you have stated in your evidence that
17 owning poles is a financial burden, not a benefit, is that
18 correct?

19 A. Yes. Owning poles is a very expensive proposition.

20 MR. MILTON: Mr. Chairman, it's 3:00 o'clock. It will
21 probably take me another 10 minutes to get through this
22 section. Would you like me to stop?

23 CHAIRMAN: I would like you to stop. We will break until
24 tomorrow morning at quarter after 9:00.

25 (Adjourned)

26 Certified to be a true transcript of this hearing, as recorded
27 by me to the best of my ability.

28 Reporter