



ONTARIO ENERGY BOARD

FILE NO.: EB-2015-0004 Hydro Ottawa Limited

VOLUME: 1 PUBLIC REDACTED

DATE: September 30, 2015

BEFORE: Emad Elsayed Presiding Member

Allison Duff Member

Christine Long Member

THE ONTARIO ENERGY BOARD

Hydro Ottawa Limited

Application for electricity distribution rates for
the period from January 1, 2016 to December 31, 2020.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Wednesday, September 30, 2015,
commencing at 9:40 a.m.

VOLUME 1

BEFORE:

EMAD ELSAYED	Presiding Member
ALLISON DUFF	Member
CHRISTINE LONG	Member

A P P E A R A N C E S

MAUREEN HELT	Board Counsel
CHRISTIE CLARK CEIRAN BISHOP	Board Staff
FRED CASS CASEY MALONE	Hydro Ottawa Limited
LESLIE MILTON JENNIFER McALEER	Rogers Communications Partnership, TELUS Communications Company and Quebecor Media ("the Carriers")
DAVID PEAKER ADRIAN MacDONALD	Allstream
MICHAEL PIASKOSKI	Rogers Communications
RUTH GREEY	Consumers' Council of Canada (CCC)
MARK RUBENSTEIN	School Energy Coalition (SEC)
MICHAEL JANIGAN	Vulnerable Energy Consumers' Coalition (VECC)

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1 Wednesday, September 30, 2015

2 --- On commencing at 9:40 a.m.

3 DR. ELSAYED: Good morning. Please be seated.

4 Good morning, everyone. My name is Emad Elsayed, and
5 with me on the Panel are my fellow Board members, Ms.
6 Christine Long and Ms. Allison Duff.

7 The Ontario Energy Board is sitting today on the
8 matter of an application by Hydro Ottawa with the OEB filed
9 on April 29th, 2015 under section 78 of the Ontario Energy
10 Board Act.

11 The application, which is filed as a custom incentive
12 rate application, seeks approval of changes to the
13 electricity distribution grids to be effective January 1st,
14 2016 and each year thereafter up to December 31st, 2020.

15 The Board assigned this application file number EB-
16 2015-0004.

17 The public record sets out the various procedural
18 steps that have taken place so far, including a
19 presentation by Hydro Ottawa, interrogatory responses, a
20 transcribed technical conference, and a settlement
21 conference.

22 As a result of the settlement conference, a settlement
23 proposal was submitted by Hydro Ottawa to the OEB on
24 September 18, 2015. According to the proposal, all issues
25 were settled by the parties, with the exception of two
26 issues: The pole attachment rate and the working capital
27 allowance.

28 The working capital allowance issue is awaiting the

1 completion of a lead/lag study by Hydro Ottawa and will be
2 updated by way of agreement or OEB decision after that
3 study is produced and reviewed.

4 The purpose of today's hearing is to provide an
5 opportunity for the Panel to ask questions about the
6 settlement proposal. Following that we will address the
7 pole attachment rate issue.

8 I just want to go over a brief summary of four sub-
9 issues that we will be discussing today under the heading
10 of "pole attachment rate". We will start off with an in
11 camera session, where we will be discussing the invoices
12 that we have seen, invoices that Hydro Ottawa has submitted
13 and have been classified as confidential documents. So
14 that will be the first item and will be, as I said, in
15 camera.

16 Following that, we will be talking about the Hydro
17 Ottawa motion regarding costs recovered by the Carriers
18 from third parties.

19 If you recall, there were seven questions, I believe,
20 that were identified in the technical conference where the
21 Carriers refused to answer, and the motion was to -- for
22 the Carriers to provide those answers. So we will be
23 hearing submissions from both Hydro Ottawa and the Carriers
24 about the relevance of those questions.

25 And we mentioned in Procedural Order No. 8 that then
26 the Board will make a decision based on those submissions
27 on the relevance of those questions. We are not likely to
28 make that decision today, but we will probably issue that

1 in writing on a date to be determined.

2 Then the last item today would be regarding the
3 reciprocal agreements that Hydro Ottawa has with Bell
4 Canada and Hydro One, and again, if you recall, there was a
5 question posed to Hydro Ottawa, which they answered
6 regarding those reciprocal agreements.

7 What we will do today is to see if there are any
8 questions that anybody has on Hydro Ottawa's answer to that
9 question. We did determine that the agreements themselves
10 were not relevant to this proceeding, but there was one
11 question that we wanted to get an answer for, and we have
12 an answer for that. We will address that under that item.

13 So that will be the scope of what we intend to do
14 today. Procedural order No. 8 provided for this oral
15 hearing to continue on Friday, if required, and also that
16 procedural order cancelled a hearing day that was scheduled
17 for October 16th. However, based on what I just said about
18 the scope of what we're going to do today and based on
19 correspondence that we received from various parties
20 yesterday, we are now planning to conclude the aspects that
21 I just described today. We will cancel Friday's session
22 and re-establish the October 16th date to address two
23 specific issues.

24 The first one is to provide for cross-examination of
25 both Hydro One -- Hydro Ottawa and the Carriers' witness
26 panels on the issue of pole attachment rate; and the second
27 one is to address questions related to cost recovery from
28 third parties by the Carriers, if the OEB decides that

1 these questions are relevant. Then following that, the
2 argument in-chief will be heard in writing on a date to be
3 determined by the Board.

4 First of all, any questions about the process that I
5 just described?

6 MS. HELT: Mr. Chair, just for the clarity of the
7 record, I believe you mentioned that the invoices -- which
8 were Undertaking JTC3.3 -- were filed by Hydro Ottawa.
9 While they're in fact Hydro Ottawa documents, they were
10 filed by the Carriers, so I just wanted to clarify that for
11 the record.

12 DR. ELSAYED: Thank you, Ms. Helt. That is true.

13 Okay. If there are no questions, may I have
14 appearances, please.

15 **APPEARANCES:**

16 MR. CASS: Good morning, Fred Cass for Hydro Ottawa
17 Limited.

18 DR. ELSAYED: Good morning, Mr. Cass.

19 MS. GREY: Ruth Grey, Consumers Council of Canada.

20 DR. ELSAYED: Good morning.

21 MR. RUBENSTEIN: Mark Rubenstein, counsel for the
22 School Energy Coalition.

23 DR. ELSAYED: Good morning.

24 MR. JANIGAN: Good morning, Michael Janigan, counsel
25 for the Vulnerable Energy Consumers Coalition.

26 DR. ELSAYED: Good morning.

27 MR. MALONE: Casey Malone, Hydro Ottawa.

28 DR. ELSAYED: Good morning.

1 MS. McALEER: Good morning, Jennifer McAleer, counsel
2 for the Carriers.

3 DR. ELSAYED: Good morning.

4 MS. MILTON: Leslie Milton, counsel, the Carriers, and
5 those Carriers, when we say that, mean Rogers, Telus, and
6 Quebecor.

7 DR. ELSAYED: Good morning.

8 MR. PIASKOSKI: Good morning, Michael Piaskoski for
9 Rogers Communications.

10 DR. ELSAYED: Good morning.

11 MR. PEAKER: David Peaker for AllStream Inc.

12 DR. ELSAYED: Good morning.

13 MR. MACDONALD: Adrian MacDonald from AllStream Inc.

14 DR. ELSAYED: Good morning.

15 MS. HELT: Maureen Helt, counsel with the Board, and
16 with me I have Christie Clark, case manager, and Ceiran
17 Bishop, also with Board Staff.

18 DR. ELSAYED: Thank you.

19 I guess the next step is to -- any preliminary matters
20 before we affirm the witnesses, or...

21 MR. CASS: No, Mr. Chair. We have a group of
22 witnesses here ready to answer the Board Panel's questions
23 about the settlement proposal. If you wish, before they're
24 affirmed, I can introduce them for the record to the Board
25 Panel.

26 DR. ELSAYED: Yes, please.

27 MR. CASS: Sitting furthest away from me on the panel
28 of witnesses is April Barrie. She is manager, rates and

1 revenue with Hydro Ottawa. Next to her is Greg Van Duesen.
2 He is interim director, regulatory affairs. Then we have
3 Mr. Geoff Simpson. He's the chief financial officer of
4 Hydro Ottawa. Beside Mr. Simpson is Bill Bennett,
5 director, distribution asset management. And finally,
6 Angela Collier, who is director of finance. So they're all
7 ready to be affirmed, Mr. Chair, thank you.

8 DR. ELSAYED: Good morning.

9 MS. DUFF: You can remain seated.

10 MS. HELT: Mr. Chair, prior to the witness panel
11 answering questions, Ms. Milton is trying to get your
12 attention, but I don't believe her microphone is working.

13 MS. MILTON: Yes. My button is missing.

14 My apologies. I just wanted to clarify the position
15 of Rogers, Telus and Quebecor on the settlement proposal
16 that is before you, because when I read the documents I was
17 somewhat confused.

18 So Rogers, Telus and Quebecor are not parties to the
19 settlement proposal. They were not included in any of the
20 discussions around that proposal. They were not copied on
21 drafts of that proposal, and they were not in fact served
22 with the filed proposal.

23 We did obtain, from the OEB website, a copy of the
24 settlement proposal. We have reviewed it, and we've
25 noticed that the proposal provides for the creation of a
26 deferral account for any revenues Hydro Ottawa might earn
27 from wireless pole attachments and, as we understand the
28 proposal, if those revenues exceed a certain threshold,

1 they would be refunded to Hydro Ottawa's electricity
2 customers.

3 So to the extent that the parties to the settlement
4 proposal consider that by creating this deferral account,
5 wireless attachments or the revenues from those wireless
6 attachments are somehow removed from consideration of the
7 pole attachment rate, Rogers, Telus and Quebecor oppose
8 that portion of the settlement agreement.

9 DR. ELSAYED: Thank you.

10 MS. MILTON: You're welcome.

11 DR. ELSAYED: Go ahead, please.

12 **HYDRO OTTAWA LIMITED - PANEL 1**

13 **April Barrie, Affirmed**

14 **Greg Van Duesen, Affirmed**

15 **Geoff Simpson, Affirmed**

16 **Bill Bennett, Affirmed**

17 **Angela Collier, Affirmed**

18 DR. ELSAYED: Thank you. So with that, we will now
19 start with the first item, which is the settlement
20 proposal, and I would ask my fellow Panel members to ask
21 their questions on the proposal.

22 **QUESTIONS BY THE BOARD:**

23 MS. DUFF: I can start. Good morning. On page 22 of
24 the settlement agreement, there is a list of -- well, it's
25 21 and 22 -- the new deferral and variance accounts.

26 Just as an observation, I think that these accounts
27 seem to be based on principles that you have arrived at, in
28 terms of for future disposition.

1 I was wondering, is there any materiality thresholds
2 established in any of these accounts that would prohibit
3 entries being made into the accounts?

4 So, for example, the efficiency adjustment account.
5 This was based on the PEG study. If your cohort ranking
6 changes, then you're going to do a calculation in order to
7 determine the dollar amount to go in this account.

8 Would there be any threshold materiality lens which
9 you would apply before making an entry?

10 MR. SIMPSON: Just for -- so I am clear on the
11 question?

12 MS. DUFF: Hmm-hmm.

13 MR. SIMPSON: You're questioning if there is a
14 materiality to put a value into the account --

15 MS. DUFF: Yes.

16 MR. SIMPSON: -- or materiality related to clearing
17 the account?

18 MS. DUFF: I understand the clearing; it will always
19 be based on that. But in terms of -- there is a number of
20 new accounts. It is a change from your current rate-
21 setting, and the principles established for items that will
22 have subsequent disposition.

23 I'm just wondering do you apply a materiality? I
24 didn't see anything in the agreement, and I just wanted to
25 get your answer on that.

26 MR. SIMPSON: We had not considered a materiality
27 level for any of these accounts, no.

28 MS. DUFF: Just while I am on that one question about

1 the efficiency adjustment, I mean one of the assumptions is
2 that the PEG study had -- I think right now it has five
3 cohorts.

4 If it were to change -- like in the past, it's been
5 three cohorts or seven cohorts -- is there any
6 contemplation of how this settlement agreement would still
7 persist, given a structural change to the PEG analysis?

8 MR. SIMPSON: The understanding or expectation was
9 that this is based on the five cohorts as they currently
10 exist. And if we move within those cohorts, the mechanism
11 would apply.

12 There's been no -- to my knowledge, no discussion
13 related to should the cohorts change, how is that applied.

14 MS. DUFF: Okay, thank you. I have another question
15 regarding the earnings sharing mechanism.

16 The establishment of the -- the Board sets a ROE every
17 year, a return on equity that applies to all distributors
18 equally.

19 With the settlement that you have established here, it
20 seems to place some emphasis on that ROE being really the
21 ceiling before any sharing occurs.

22 So, in effect, by agreeing to that, the 300 basis
23 points dead band that the Board had previously established
24 as a possible trigger, how does that play with this
25 establishment of, if at all, the earnings sharing
26 mechanism?

27 MR. SIMPSON: As per the agreement, there is no dead
28 band for the earnings sharing mechanism, to the degree that

1 we exceed our ROE beyond the approved rate with no dead
2 band that we would share with the customers.

3 The 300 basis points dead band is not effectively
4 relevant to the earnings sharing mechanism.

5 MS. DUFF: Okay, thank you. And the asymmetry, the
6 principle; what is the principle behind the asymmetry in, I
7 guess, the control and the power that the utility has over
8 its own books and earnings?

9 Could you perhaps elaborate a bit on that?

10 MR. SIMPSON: Yes. In our original evidence, we had
11 proposed an asymmetrical earnings sharing mechanism.

12 Hydro Ottawa is comfortable with that proposal that
13 should we not achieve our return on equity, that that would
14 be on the company, let's say.

15 There is some risk to that. In the fullness of our
16 application and ultimately in the fullness of the
17 settlement, we believe that there is a good balance between
18 the risks that are to be taken by the company and the risks
19 being taken by the ratepayer, and we can accept the
20 asymmetrical nature of the mechanism.

21 MS. DUFF: Given the ROE is generic -- I'll use that
22 term -- for the average utility, how do you see yourself,
23 Hydro Ottawa, as being an average utility in which that is
24 an appropriate rate for you to create as a ceiling?

25 Is there anything distinct or unique about your
26 utility which should be taken into consideration?

27 MR. SIMPSON: Well, there are factors in our evidence
28 and that we've brought forward that at times that we do see

1 as unique for Hydro Ottawa.

2 Being the utility supplier to the nation's capital
3 brings certain challenges that while not unique, perhaps
4 are different than several across the province.

5 We do have a significant capital requirement, so we
6 face certain cost pressures that are perhaps different than
7 others in the province.

8 But this is not new for us. We've been managing that
9 for obviously a period of time, if not many, many years,
10 and we do believe that the agreement as set out is
11 appropriate for us.

12 MS. DUFF: Fine, thank you. On page 46 of the
13 settlement proposal, attachment 2 talks about outcome
14 reporting. And there's a few listed here, and they seem to
15 be related to SAIDI and SAIFI, some outages and causes.

16 But there is also in the settlement proposal a
17 discussion that you are going to meet with the stakeholders
18 subsequent to this proceeding, and discuss other metrics
19 that you could agree on in which to measure outcomes.

20 What relevance or significance does that have to the
21 Board, the OEB itself? So off-page in separate meetings,
22 there is going to be an agreement. Is that just an
23 agreement that Hydro Ottawa has with its partners?

24 And I will put the proposition to you that really that
25 has no relevance, in terms of the Board approving a
26 settlement proposal which does not include those metrics --
27 the spirit of why you agreed to meet afterwards and not
28 include specifics in this.

1 MR. SIMPSON:

2 MR. SIMPSON: In spirit, through the discussions, this
3 became a significant part of the discussions related to our
4 monitoring and reporting of our capital program
5 specifically.

6 There are aspects of the settlement agreement which
7 specifically cover how we will monitor and report on our
8 capital reporting.

9 And beyond that, this was an additional measure, an
10 additional discussion point, and something we're willing to
11 do to provide additional KPIs related to our capital spend
12 and our reliability measures.

13 Some of them, as you see on page 47, have already been
14 proposed. We are willing to work with the intervenors to
15 continue to refine. To the extent that is different or
16 beyond perhaps what a generic process from the OEB would
17 find, you know, by the agreement we're willing to go to
18 that level in our reporting. Whether it is required or
19 relevant or not to the OEB is, I guess, a different
20 question.

21 MS. DUFF: I just wanted --

22 MR. CASS: Sorry Ms. Duff, might I add a comment to
23 that?

24 MS. DUFF: Please.

25 MR. CASS: It would seem to me that it would be
26 relevant to the Board, in that if there is an outcome from
27 this discussion that results in additional metrics, that
28 would be available to a Board Panel in another case.

1 And even if there is not a successful outcome, a Board
2 Panel in another case would have the opportunity to know,
3 well, what happened, and why are there not more?

4 So I think the benefit to the Board would be knowing
5 the outcome of this discussion in some other proceeding.

6 MS. DUFF: Thank you. And that distinction I phrased
7 better than I was asking.

8 This particular settlement agreement encompasses these
9 metrics. If you establish a metric subsequent to this
10 proceeding on a best-efforts basis, agreed with your
11 partners and stakeholders to your community, that is really
12 quite separate and apart from this proceeding, and the
13 relevance would be to a future proceeding regarding the
14 achievement of those outcomes or not. I just wanted to
15 make sure that was your understanding.

16 MR. SIMPSON: Certainly.

17 MS. DUFF: I want to ask a few questions about the
18 working capital study that you are undertaking.

19 The terms of reference regarding that working capital
20 study, I take it, are based on your current processes that
21 you have in place regarding collections, revenue leads,
22 lags. Can you just confirm that, please?

23 MR. SIMPSON: That's correct.

24 MS. DUFF: And the OM&A, to the extent that you've
25 settled it and it is finalized in the settlement agreement,
26 do you foresee anything regarding that working capital
27 study that would affect the OM&A or the agreement that
28 you've settled in this settlement proposal?

1 MR. SIMPSON: No.

2 MS. DUFF: So there is no initiatives inherent in the
3 settlement proposal that you plan to undertake in the next
4 five years? There is nothing like a new billing system or
5 changes in your billing practices that has been envisioned?

6 MR. SIMPSON: No. Our new billing system and new
7 practices for billing are quite fresh. We have no plans to
8 change those in the coming term.

9 MS. DUFF: I was just using that as an example.

10 MR. SIMPSON: Yes. So no.

11 MS. DUFF: Thank you very much.

12 DR. ELSAYED: While we're on that subject, by the way,
13 can I ask what the status is of the lead/lag study, because
14 I think it was mentioned in the proposal that you expected
15 to complete it by the end of September?

16 MR. SIMPSON: Of course. The current status is, we've
17 commissioned Navigant Consulting. The work is well
18 underway. We expect to have a first draft of that report
19 this week, which we will then be reviewing internally, and
20 as I mentioned to OEB staff, I guess earlier this week or
21 perhaps last week, we expect to have that report ready for
22 distribution probably mid-October.

23 DR. ELSAYED: Thank you.

24 MS. DUFF: And perhaps on more of a procedural matter,
25 that this file number would stay open pending the filing of
26 that in order to enable that to take place? That's fine,
27 Mr. Cass?

28 MR. CASS: Yes, that would be the case.

1 MS. DUFF: On that note, about this proceeding and
2 what is approved in this proceeding and what will happen
3 subsequent to it, I did have a question about the Y factor
4 deferral account, and it was the language that was used
5 that I am not too sure that I understand.

6 Will there be -- the language was used that "we will
7 file" for a rate rider in the future. Is that an
8 application? Is that an application for a rate rider? And
9 if I am not being clear enough, perhaps I will give you a
10 scenario.

11 In this decision, if the Board were to approve the
12 settlement proposal with the numbers established for the
13 new facilities, I guess the approval is that that is the
14 dollar amount that is being settled with the parties and
15 approved by the parties.

16 Is this panel in the settlement agreement also
17 agreeing that a rate rider will be established? Or is
18 there a subjective risk that a future panel would not
19 approve a rate rider, given a custom IR for five years?

20 MR. CASS: The latter was not my understanding, Ms.
21 Duff. It was not my understanding that there would need to
22 be an application with notice and a new proceeding and all
23 of those things. It was the former of the two things that
24 you said that would be my understanding of how it would
25 work.

26 MS. DUFF: So let me rephrase that. The Board, to
27 approve this settlement proposal, is approving that in the
28 future there will be a rate rider. The timing is

1 uncertain. The dollar amounts are uncertain to the extent
2 that you don't know your loss on disposals or gains on
3 sales.

4 But the dollar amount of the capital investment is
5 being approved -- would be approved as a part of the
6 settlement proposal?

7 MR. SIMPSON: As per the agreement, the dollar amount
8 of the -- you're correct. The factors that are not known
9 at this time would be the timing of when the Y factor would
10 be implemented and the dollar value of the capital
11 expenditure for our facilities plan, although within the
12 agreement there is effectively a cap on those capital
13 expenditures, which is the amount that we've budgeted
14 within the evidence.

15 To the extent that our capital costs should be
16 something less than that, that would be the amount that
17 would be refunded. If it's something greater than that,
18 the amount of the cap, as I will call it, is what would end
19 up in the Y factor account, and anything beyond that would
20 be subject to future review when we come back to rebase.

21 MS. DUFF: I'm just wondering if there are any -- is
22 there an opportunity for a discovery process based on the
23 information that you filed with that rate rider
24 information? The 73 million is known, but there are other
25 factors, determination of the gain or -- I'm just trying to
26 think of some other accounting issues.

27 The parties that agree to the settlement proposal,
28 would there be -- are you envisioning they would have an

1 opportunity to ask questions or interrogatories regarding
2 the information that would establish those rate riders?

3 MR. CASS: Again, that was not my understanding, Ms.
4 Duff. As long as the account and the rate rider are within
5 the parameters of the settlement document, that it would
6 not be subject to a discovery process.

7 MS. LONG: I'm sorry, Mr. Cass, so how does the rate
8 rider work? In 2017 Hydro Ottawa says we're ready, comes
9 to the Board not through a formal application, and the rate
10 rider is added on?

11 MR. CASS: Yes, it would be the clearance of the
12 account, Ms. Long, as in the case of clearance of other
13 accounts. The money goes into a deferral account and at
14 the appropriate time the account would be cleared, in the
15 same way that other accounts are cleared.

16 MS. LONG: Just while we're on this subject -- and Ms.
17 Duff, I will let you get back to your questions, but I am a
18 bit curious, I guess, as to why this is being handled
19 through a rate rider. It is certainly not common practice
20 for the Board to deal with a known, you know, a known
21 capital investment, such as a building, in this manner.

22 And other than I understand the reason being put forth
23 is the uncertainty with respect to timing, I'm a bit
24 unclear why this is the method by which you are seeking to
25 collect these amounts from your ratepayers.

26 MR. SIMPSON: From our perspective and as per our
27 original request, our original application, this is a five-
28 year ask on our part. We're looking to set our rates for

1 the next five years. Our facilities plan is significant.
2 It is generational. It is material. And it will occur
3 within those five years.

4 But as far as -- our belief had been coming in and
5 ultimately through the settlement agreement as well that,
6 because of the significance of it, for us to at this point
7 lock in, if you will, that a rate base would increase by
8 the value of the capital cost in 2017 when, in fact, we're
9 still in the process where we're hoping it is 2017, it may
10 not be until 2018 that we move in, there are three
11 different buildings in fact that we're talking about, there
12 is sale of properties that needs to happen, all of which
13 are dependent on numerous commercial factors before they
14 will happen, that it would be appropriate to separate that
15 from locking that into our rates over the next five years,
16 and rather add that situation to our rates at the
17 appropriate time and for the appropriate amounts, once
18 they're known.

19 MS. LONG: I'm going to think on that one, Mr.
20 Simpson, and come back.

21 MS. DUFF: I have one final question. Just from a
22 general perspective, looking at the deferral and variance
23 accounts that you've, I guess, proposed and settled, there
24 seems to be a bit of an evolution here where there's a
25 custom IR application in which OM&A is approved with a
26 dollar amount to start with, and an escalator factor in
27 future years.

28 But when it comes to capital, people want it to the

1 penny. They want to create these -- there's deferral
2 accounts that are exact, project-specific, and then even
3 trued-up.

4 Just from a utility perspective, is there something
5 unique about that aspect of your business, other than that
6 during that custom IR period needs to be so exact? I know
7 it is a tough question. But it is an observation that I
8 think is quite prevalent when I review this.

9 MR. SIMPSON: Hmm-hmm. The rationale -- a key
10 rationale for us in coming forward with a custom IR plan,
11 and why we believe the custom IR plan is appropriate for
12 us, is because of the nature and the significance of our
13 capital plan for the next five years.

14 We do detailed capital planning in that time frame on
15 a regular basis, through our Distribution System Plan and
16 our asset management plan.

17 We do monitor it closely, and it's a level of rigour
18 and a level of expertise, if you will, that we have in
19 forecasting and planning those needs and those asset
20 requirements over the five-year period.

21 And, as I say, it is a key tenet of us coming forward
22 looking for a custom IR plan for those five years.

23 For that reason, we are comfortable and we feel it
24 appropriate, if you will, that we commit to those
25 investments over the five years and with that, to lock-in
26 the rate base on the rates that are appropriate for that,
27 for purposes of appropriate collection at the time of the
28 investments. And that's why the custom IR does work for

1 us.

2 So I am -- we are comfortable with our ability to
3 plan. We're comfortable the investment levels that we
4 brought forward are appropriate and necessary to maintain
5 reliability in Ottawa, and the request is that our rates
6 are commensurate with that investment.

7 MS. DUFF: This is not really a question about the
8 settlement proposal per se, but just -- the Y factor
9 treatment, for instance, with that. If this was a price
10 cap IR, the Board has established this advanced capital
11 module where, you know, you've got a very large project,
12 that's unique, and you agree in principle to a capital
13 expenditure in the future.

14 With this custom IR and the use of this Y factor
15 deferral account, is that kind of a similar regulatory tool
16 where this Board is now in a custom IR proceeding approving
17 a future capital expenditure that is lumpy, uncertain in
18 timing, but yet the prudence review has already taken
19 place?

20 Is that an appropriate comparison? You don't have to
21 be an expert on advanced capital modules, either.

22 [Laughter]

23 [Witness panel confers]

24 MR. SIMPSON: Since you gave me the opening, I will
25 say that I'm not an expert in the price cap methodology.

26 MS. DUFF: We have yet to have one at the Board, so
27 nobody is right now.

28 [Laughter]

1 MR. SIMPSON: So again, I would reiterate that from
2 our perspective, as we were putting this together, the
3 comparison to how that would compare to a price cap
4 methodology, I'm not certain.

5 But we do believe that, as I mentioned with our
6 capital planning, we're comfortable and believe in our
7 ability to capital plan from a sustainment perspective.

8 The facilities plan is generational and different for
9 us and very significant, and in some ways unique -- meaning
10 we will do it once every 50 to 75 years.

11 So our proposed treatment for that is what is in front
12 of you now, which is that it comes in at the appropriate
13 time and for the appropriate amount.

14 Unfortunately, I can't really speak to how it would
15 compare to another regulatory option.

16 MS. DUFF: Yes, this is unique. It's a unique
17 treatment and we have seen in the past how settlement
18 proposals and Board decisions have some precedential value,
19 and that is why I was just asking your opinion about what
20 is unique about this project from your perspective, and
21 that it warrants a unique treatment outside of the custom
22 IR envelope-type approach.

23 MR. SIMPSON: And again I would state that for us, it
24 is unique, to use the word again. It is generational.
25 It's not something we've done in many years; it's not
26 something we will do again for many years.

27 And the concept of locking in those values and that
28 timing in the next five years didn't feel appropriate for

1 us.

2 We could do that. We could have come forward with
3 that, and obviously we're doing everything we possibly can
4 to stick to our budget and time frame as it has been laid
5 out. But we do know that there is numerous factors that
6 may impact that, primarily from a timing and cost
7 perspective.

8 And for that reason, the methodology that we've -- we
9 believe the methodology we have put forward is appropriate
10 for our situation.

11 MS. DUFF: Thank you very much. Those are my
12 questions.

13 DR. ELSAYED: Thanks, Ms. Duff. Ms. Long?

14 MS. LONG: I just have a few questions. I just want
15 to confirm that -- so building upon that, the \$73 million
16 would be what this panel would be approving and, to the
17 extent that there was a greater spend, that would come back
18 by way of a prudence review when you came back for 2020.
19 Is that your expectation?

20 MR. SIMPSON: That is our expectation and just for
21 clarity, it is the 73 million that is mentioned in the
22 settlement agreement that's -- we've already purchased the
23 land.

24 MS. LONG: Right.

25 MR. SIMPSON: So it is the \$73 million plus the value
26 of the land that we already purchased. But yes, as you
27 described it, that is our expectation.

28 MS. LONG: One other area I would like to canvas with

1 you -- probably you, Mr. Simpson -- is obviously we
2 understand that Hydro Ottawa has come before us with a
3 custom IR application, and the reason is because of the
4 capital expenditures that you are going to be making over
5 the next five years.

6 But one of the key tenets, I would say, of the
7 settlement agreement is that you have agreed to a
8 ten million dollar reduction in capital and, as I
9 understand the settlement, you are looking at how you are
10 going to reprioritize things.

11 But I would like to satisfy myself with respect to
12 that, and I am wondering what information you can give to
13 this panel now about where that 10 million dollar reduction
14 is coming from. The settlement agreement says that you are
15 going to be able to continue to provide safe and reliable
16 service, but can you tell us how you are doing that with a
17 ten million dollar cut?

18 MR. SIMPSON: It's a good question. Obviously we came
19 forward with our request for five years, believing that
20 that was the appropriate and proper amount for us to invest
21 over the five years.

22 Prior to coming forward with those amounts in the five
23 years, we had, as per the evidence, reduced some of those
24 amounts already to what we believed was an appropriate and
25 reasonable amount, with some balance between capacity to
26 deliver, reliability, and rates.

27 Through the settlement process, we are comfortable
28 that we can continue to achieve our goals related to our

1 capital planning and reliability with the ten million
2 dollar reduction in 2016.

3 We're not finalized on exactly where that will come
4 from. But as per the settlement agreement, we are in the
5 process of prioritizing those reductions. Reliability will
6 be a key factor in how those reductions are prioritized
7 and/or deferred over the course of the five-year period.

8 And in the context of a full and comprehensive
9 settlement agreement, we are willing to go forward with
10 that ten million dollar reduction, and ultimately we don't
11 believe it will have a material impact on reliability for
12 our customers.

13 MS. LONG: So are you able to provide us with any
14 specific detail as to where the reduction is coming from,
15 or is that just too early at this point?

16 MR. SIMPSON: It's a little early at this point.
17 We're continuing to work through it as a management team.
18 We have committed that we will file our revised capital
19 expenditure plan prior to, or with the timing of, the draft
20 rate order. So it is in progress and we will have it
21 certainly done before we complete our 2016 budget process,
22 but it's -- we don't have -- I don't have that detail
23 today.

24 MS. LONG: Okay, thank you.

25 I guess my final question is -- and obviously parties
26 can agree to what they want to in a settlement agreement
27 and put it before the Board. But do you have any concerns
28 with respect to there being no dead band with respect to

1 the ROE, and does that present any risk to the utility?

2 MR. SIMPSON: I don't see it as a risk that's -- I
3 don't see it as a significant risk. It is certainly a
4 consideration, something that we considered in the context
5 of the full settlement agreement. But ultimately we're
6 comfortable with the fact that there is no dead band.

7 MS. LONG: Thank you. Those are my questions.

8 DR. ELSAYED: Thanks, Ms. Long.

9 I have a few questions. If I can take you to page 11
10 of the settlement proposal. If I understand this table
11 correctly, the columns labelled "2017 to 2020 proposed" --
12 or, sorry, "2016 to 2020 proposed", these numbers -- when
13 they say proposed, this is as per the settlement proposal?
14 Is that correct?

15 MR. SIMPSON: That's correct.

16 DR. ELSAYED: It doesn't tell me in this table -- and
17 I am sure I can go back to your application and find that
18 out -- what these numbers would have been as per your
19 application prior to this settlement.

20 I would certainly be interested to know what they
21 would have been. In other words, I just looked at one
22 number -- I think if you look at the very first row -- I
23 may be wrong, but that last number under 2020 proposed, the
24 2,810, I think it would have been 3,515 or something under
25 your -- or based on your application.

26 But my question, I guess, is, in order to evaluate
27 from my perspective the impact of the settlement proposal
28 on the rates for the different classes, would certainly be

1 useful to see that information in the same format. Is that
2 possible?

3 MR. SIMPSON: Absolutely. That's a format that we
4 have been looking at ourselves, so I can understand your
5 requirement for it. That's something we could certainly
6 provide in a very short period of time.

7 DR. ELSAYED: Thank you.

8 MS. HELT: So we will note that as Undertaking J1.1.

9

10 **UNDERTAKING NO. J1.1: TO PROVIDE PRE-SETTLEMENT-**
11 **PROPOSAL DATA FOR THE TABLE AT PAGE 11 OF THE**
12 **SETTLEMENT PROPOSAL.**

13 DR. ELSAYED: Thank you.

14 On page 12 -- this is just a follow-up on Ms. Long's
15 question about the reduction of \$10 million in your capital
16 program.

17 Just, again, to understand the process, you have a
18 Distribution System Plan. You have a capital investment
19 program that was based on certain prioritization criteria,
20 and you established a program. You drew the line somewhere
21 and said: That is our program that we put forward.

22 So assuming that then constituted your -- the program
23 that you do require in order to maintain your reliability
24 and to achieve your objectives.

25 So my first question is, just so that I can put things
26 in perspective, this \$10 million reduction in 2016, what
27 does that represent in terms of percentage of your proposed
28 -- I don't want to put you on the spot, maybe you don't

1 have that number handy, but is that a significant
2 percentage of your ask for 2016?

3 [Witness panel confers]

4 MR. SIMPSON: Our original submission for 2016 capital
5 expenditures was approximately 145 million. In total for
6 the five years our total ask was 580 million, I believe.

7 DR. ELSAYED: But the reduction we're talking about
8 here, is it in 2016 --

9 MR. SIMPSON: It is all in '16, so --

10 DR. ELSAYED: That is about 10 percent or so of
11 your...

12 MR. SIMPSON: A little less --

13 DR. ELSAYED: A little less than 10 percent --

14 MR. SIMPSON: 7 or 8, perhaps, yes.

15 DR. ELSAYED: All right. So I guess my question then
16 is, what is the risk associated with that? Because the
17 words that concerned me a little bit is that you will
18 achieve that by eliminating some projects, or deferring
19 others.

20 Deferral I can understand, I guess, in terms of lower
21 priority. But eliminating, given that you have established
22 that list of projects in the first place by determining
23 that these are necessary, can you explain how you would do
24 that?

25 MR. SIMPSON: The wording in the settlement agreement,
26 you're correct, is "eliminating" or "deferring". We've
27 started the process of that review and reprioritization.
28 The eliminating is not likely to be a significant portion

1 of that 10 million. As we work through it, deferral is far
2 more likely the approach, and that will be that the
3 reduction in 2016 is a reduction in capital additions for
4 2016 and ultimately to rate base.

5 So there may be projects that were planned for 2016
6 which may now be deferred to 2017, and that would trickle,
7 you know, or cascade throughout the five-year plan.

8 So ultimately from our perspective we see that more as
9 a -- it is certainly a delay in the work that we planned
10 arising from the agreement for the \$10 million reduction in
11 2016, but that ultimately all of the planned work, subject
12 to potentially some small eliminations, that the planned
13 work would get completed, but perhaps on a different --
14 definitely on a different time frame in order to achieve
15 the 10 million reduction in capital additions.

16 This will be something -- and through the settlement
17 agreement you will see there's numerous reporting
18 mechanisms and deferral accounts related to what our plans
19 will be, so that will be full and open when we come back
20 and report on those.

21 And over the course of the five years, as we always
22 do, we'll be monitoring reliability and our capital spend,
23 and to the extent that in the outer years of the five-year
24 term we believe there is an expenditure or investment that
25 is required for purposes of that, it will get reprioritized
26 and potentially even happen if we deem it necessary.

27 So we believe we can work with this \$10 million
28 reduction in capital additions for '16. There will be some

1 deferrals in planned work, reporting on such deferrals, but
2 that ultimately the impact on our reliability for our
3 customers should not be significant.

4 DR. ELSAYED: Thank you. But also is the assumption
5 here that it would reduce your proposed capital in 2016 by
6 \$10 million, but maintain -- like, not increase your
7 capital program for the remainder of the plan period? Is
8 that correct?

9 MR. SIMPSON: That would be the intent at this point,
10 yes.

11 DR. ELSAYED: So in other words, you're not just
12 deferring it to another year by increasing the proposed
13 capital for another year. So it will have a ripple effect
14 on --

15 MR. SIMPSON: A ripple effect.

16 DR. ELSAYED: -- the rest of your plan.

17 MR. SIMPSON: Correct.

18 DR. ELSAYED: So you're reprioritizing the whole plan,
19 not just 2016?

20 MR. SIMPSON: That's correct.

21 DR. ELSAYED: Okay. Just a minor question. On page
22 18 you talk about -- this is the paragraph under table 5.
23 It said:

24 "The settlement of the issues herein assumes
25 revenue from the pole attachments of \$16 million
26 and change."

27 What rate is that based on?

28 MR. SIMPSON: That is based on our submitted rate of

1 \$57.

2 DR. ELSAYED: The proposed rate.

3 MR. SIMPSON: Yes.

4 DR. ELSAYED: Proposed rate. Thank you, those are all
5 of my questions.

6 MR. SIMPSON: Sorry, just for clarity, that is our
7 2016 rate of \$57, escalated over the five years, yes.

8 DR. ELSAYED: Yes, understood. Thank you. Any other
9 questions on the settlement proposal? Mr. Rubenstein?

10 MR. RUBENSTEIN: Not a question, obviously. A number
11 of the questions from the Panel went -- asked questions not
12 necessarily about how Hydro Ottawa on a practical
13 operational level will implement some of the changes, but
14 some of the interpretation issues. And Hydro Ottawa
15 provided, in some cases, their views.

16 But since it is really an agreement between the
17 intervenors and Hydro Ottawa with respect to that, I was
18 wondering -- I know I have a few comments to make. But in
19 fairness to my friends, I would like to be able to quickly
20 discuss them with them, just to ensure we're both on the
21 same page of what some of the understandings, so we can
22 better answer, I think, some of the questions that you
23 provided.

24 So I was wondering if we could do that and possibly
25 take a short break.

26 DR. ELSAYED: Yes. We were going to take a break at
27 this point anyway and resume with the in camera session.

28 So maybe when we come back, we can find out if you

1 have any comments before we go into the invoices issue.

2 So we will take a 15-minute break and come back at ten
3 to ten. Thank you.

4 --- Recess taken at 10:35 a.m.

5 --- On resuming at 11:07 a.m.

6 DR. ELSAYED: Please be seated.

7 As discussed before the break, I think I will go to
8 Mr. Rubenstein first for his comments.

9 **SUBMISSIONS BY MR. RUBENSTEIN:**

10 MR. RUBENSTEIN: Thank you. I have had a chance to
11 discuss with my friends, including Hydro Ottawa, about some
12 of the...

13 Sorry. I have had a chance to discuss with my
14 friends, including Hydro Ottawa, some of the questions that
15 you have asked that go to what the agreement -- how means
16 and how it will be operationalized from a regulatory
17 perspective, and I would like to add some additional
18 comments.

19 There is a first question about, if the cohorts
20 change, so they're currently five, but if, say, in the
21 future there are ten cohorts and there are greater
22 granularity, how that would be implemented.

23 And if I could just -- I will just direct your
24 attention to the example that was provided on page 17 about
25 how this works. I think it is important to step away from
26 the label of group 1, 2, or 3, because each group is
27 assigned a stretch factor number that comes with it. So
28 group 3 is 0.3, and it would be our understanding that if,

1 say, there is ten groups and there is greater granularity,
2 putting aside where the labels are, what will be used to
3 compare from the starting point would be whatever the
4 stretch factor that Hydro Ottawa has placed in the new
5 cohort system is at that time.

6 So if there's a new -- you know, if .4 is a new number
7 that is not -- doesn't exist now and it is group A, then
8 that would be used to be compared with. And I think my
9 friends agree with that understanding as well.

10 There was some questions about the monitoring and
11 reporting, specifically the work with intervenors, to come
12 up with metrics going forward, and there was a question
13 about, well, what does that mean with respect to the relief
14 that they're seeking and that the Board would be ordering
15 in this case.

16 I think it goes to a number of things. Firstly, I
17 think working with intervenors to provide additional
18 metrics goes to, I think, customer engagement, going to
19 outcomes-based approach that's under the RRFE, and I think
20 including in that agreement first shows to the credit of
21 Hydro Ottawa their willingness to work towards this, and as
22 well the settlement agreement, if approved by the Board,
23 becomes a binding document.

24 So essentially my friends have to work with on a best-
25 efforts basis and on a reasonable basis to work with
26 intervenors, and I think that is important.

27 And I would just say one of the issues about why this
28 is a preferable approach than necessarily just including

1 new metrics in the settlement agreement in some cases is,
2 it is hard on-the-fly sometimes to come up with metrics.
3 There are different circumstances of different utilities
4 that can't be -- that may need investigation.

5 So this approach, I think, is beneficial for all
6 parties and for the Board.

7 There were some questions about the Y factor
8 treatment, and one was about, will Hydro Ottawa require an
9 application to have the rate rider that they're seeking
10 implemented, and it is our position that they would. Just
11 from a practical, legal perspective, they cannot put a rate
12 rider on for whatever amount whenever they want; that
13 requires an order of the Board.

14 So we would see it would simply be when they make --
15 there is a number of other annual adjustments that they
16 would be making for retail transmission rates and so on
17 would be in the same process that they would seek a rate
18 rider for the Board's approval, and that panel would
19 essentially be looking at this settlement agreement to
20 ensure that it is within the confines of what was agreed
21 upon there.

22 We don't see there being discovery in the sense that
23 the prudence of that initial amount has been approved for
24 now, and for things such as disposition and all those
25 issues, because they're being placed in a deferral account,
26 they will -- all those issues and the discovery will take
27 place when that account is to be cleared, which my
28 understanding is would be upon the next rebasing

1 proceeding.

2 And then there was a question about, is it similar to
3 an ACM, and I would say in terms of its regulatory
4 treatment, yes, in the same way, my understanding, of the
5 purpose of the ACM, you would have initial capital amounts
6 approved now but at some point there would still have to be
7 an application to have that rate rider amount included in
8 the rates.

9 I would say the benefit of the rate rider approach is,
10 first, including it as a rate rider instead of within
11 distribution rates whenever that amount would be included
12 is, it provides transparency. This is a specific issue,
13 and it would be put in place for the rate rider. It is
14 actually similar to how my understanding of what the ACM is
15 done by way of a rate rider.

16 But why this amount should be considered as a Y factor
17 instead of just being placed into rates as other forecast,
18 I think the magnitude of that -- the magnitude of the
19 expense separates it out.

20 And if it was included just within rates, it would be
21 captured by the capital variance account, but because that
22 amount is not to be cleared until the other -- until
23 rebasing, and the expectation is hopefully there would be
24 no variance generally with their capital program --
25 customers would have to wait a large amount of time for
26 what could be a very material -- to get the credit back for
27 their amounts.

28 So this allows for when we know -- when Hydro Ottawa

1 knows it's going to be in service, that is when it will
2 actually affect rates, so minimize any intergenerational
3 equity concerns.

4 And those are the comments I had with respect to the
5 -- some of the questions that you asked regarding the
6 settlement agreement.

7 DR. ELSAYED: Any questions on that?

8 MS. DUFF: No.

9 MS. LONG: No.

10 DR. ELSAYED: Thanks. Okay. So I think now we will
11 go into the in camera session.

12 MS. HELT: Mr. Chair, just prior to going in camera, I
13 understand that Mr. Peaker, counsel for AllStream, would
14 like to make some comments on the record, and then we can
15 go in camera after that.

16 DR. ELSAYED: Thank you. Please go ahead.

17 **SUBMISSIONS BY MR. PEAKER:**

18 MR. PEAKER: Thank you. And my comments are really
19 just on the process and some clarification about the in
20 camera session itself.

21 So first of all, I will just note for clarity that
22 AllStream is participating independently in this
23 proceeding; that is, separately from the other carriers.
24 So that is a general comment.

25 For the in camera session itself, the invoices or at
26 least more particularly some information on the invoices of
27 Rogers that we understand will be discussed is
28 confidential, and it is confidential from competitors such

1 as AllStream.

2 So clearly we will have to leave the room for that
3 section of the hearing. It would be preferable if, to the
4 extent that general topics related to the invoices and
5 billing and that sort of thing are discussed, it would be
6 preferable if we were in the room, but we understand that
7 is not likely a practical solution.

8 So we discussed at the break, and perhaps the best way
9 forward is to allow that -- this next session to occur with
10 AllStream out of the room and, after the session is done,
11 to the extent that there are more general issues on which
12 AllStream may wish to make comments arise, I think Ms.
13 Milton, counsel for the other Carriers, has undertaken to
14 discuss those in general terms without discussing any
15 confidential information, after which point, if indeed
16 there is anything else that AllStream would like to add to
17 the record -- and there may not be -- we could do that
18 after, which would be perhaps the next session following
19 the break.

20 So if that is acceptable to the Panel and to the other
21 carriers, that is our proposal for going forward.

22 DR. ELSAYED: Yes, that's fine. Thank you.

23 MR. PEAKER: Thank you.

24 --- On commencing in camera at 11:16 a.m.

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26 Page 36, line 25 to page 85, line 23 inclusive
27 have been redacted.

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4 Page 36, line 25 to page 85, line 23 inclusive
5 have been redacted.

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24 --- Resuming public session at 12:40 p.m.

25 DR. ELSAYED: Thank you. We will do that first after
26 we complete -- we are now going to complete the in camera
27 session and we will be back at 1:40.

28 --- Luncheon recess taken at 12:40 p.m.

1 --- On resuming at 1:51 p.m.

2 DR. ELSAYED: Please be seated.

3 So I trust that Mr. Peaker has been briefed on the
4 general aspects of the discussion that took place during
5 the in camera session, and I understand you may have some
6 comments?

7 MR. PEAKER: Thank you, and I have only a very few
8 comments.

9 So I was briefed on what happened in the in camera
10 part of the discussion this morning. I gather there was a
11 considerable discussion on the general manner of billing
12 for various components of a carrier's attachment. It is
13 unfortunate we weren't able to contribute to that
14 discussion and help clear up any misunderstandings or
15 confusion that might exist.

16 I'm a little surprised to hear that these matters were
17 of interest in this proceeding. I think in our view there
18 is a poles -- a current poles attachment rate which is
19 based on the general province-wide rate, and there are a
20 few other types of rates that are sort of based on that,
21 they're a portion of that, and I thought all that was in
22 issue in this proceeding was Hydro Ottawa's general pole
23 rate and that any other aspects -- any other rate, such as
24 an overlash rate or a grandfathered overlash rate, would
25 simply follow on as a natural course from any new rate that
26 is established.

27 So that is all I have to say on that, just registering
28 my surprise.

1 As a general housekeeping matter, I gather there was
2 an undertaking made on behalf of Carriers this morning.
3 I'm not sure whether AllStream was intended to be part of
4 that undertaking. My understanding is it has to do with
5 whether numbers of attachments were provided rather than
6 invoices, and I think our response to the initial
7 undertaking was to provide numbers rather than invoices.

8 So I would think that we're covered on that, but if
9 anyone has a contrary view, perhaps they could let me know.

10 DR. ELSAYED: Thank you.

11 So now we can proceed to the submissions on Hydro
12 One's -- Hydro Ottawa's motion regarding the costs
13 recovered by the Carriers from third parties. And just to
14 remind everybody, this is linked to questions 4 to 10 that
15 were asked at the technical conference and were not
16 answered by the Carriers.

17 So we will now go to submissions, I guess starting
18 with Hydro Ottawa, and then the Carriers regarding this
19 motion.

20 **SUBMISSIONS BY MR. CASS:**

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

22 Mr. Chair, for the purposes of the submissions I am
23 going to make, I put together very quickly a small package
24 of the things I would be referring to.

25 We could have had them pulled up on the screen, but I
26 just thought having them all in the one place would be just
27 an effective way for me to go through my submissions. I
28 think I will be actually very quick in my submissions with

1 the benefit of this very small package that has been handed
2 around. I am sorry it is quite inelegant. I just actually
3 put it together personally myself quite quickly.

4 DR. ELSAYED: We should probably give that a reference
5 number.

6 MS. HELT: Yes. I have confirmed that the Carriers
7 and none of the parties have an objection to these
8 documents. So we can mark it as K1.1. And that will just
9 be a set of documents provided by Hydro Ottawa for the
10 purpose of its submission on the motion.

11 **EXHIBIT NO. K1.1: SET OF DOCUMENTS PROVIDED BY HYDRO**
12 **OTTAWA RE: MOTION.**

13 DR. ELSAYED: Thank you.

14 MR. CASS: And for additional clarity, Mr. Chair, as
15 we go through you will see there is some underlining and
16 marking a little bit on these. That is entirely mine,
17 again, just in the hope that it will streamline these
18 submissions. It is certainly not from the original
19 document, as would be apparent. It is my marking.

20 So the first of the items in Exhibit K1.1 is just a
21 particular page from the decision that's been talked about
22 already, RP-2003-0249, plus the cover page, and in each
23 case I've done that. I have included a particular page
24 from a document that I want to refer to, plus the cover
25 page.

26 So beyond the cover page of that decision is the page
27 that I wanted to refer to. The reason for that is really
28 just to set the stage for why we are here with this issue

1 about pole attachment charges. Nothing more than that.
2 And my underlining and other marks here are for that
3 purpose, to really set the stage as to why we are here.

4 So in that decision, the Board considered a number of
5 issues going to potential pole attachment charge and the
6 methodology for such a charge.

7 As you will see from page 8 of the decision that I
8 have reproduced here, one of the things the Board
9 considered is whether there should be a province-wide rate,
10 and having reached its decision on that, in the second
11 paragraph on page 8 the Board added some additional
12 comments.

13 This is not to say that there should not be relief
14 available for electricity distributors who feel the
15 province-wide rate is not appropriate to their
16 circumstances. Any LDC that believes the province-wide
17 rate is not appropriate can bring an application to have
18 the rates modified -- and I have attempted to emphasize
19 these words on page 8, because I think they deserve
20 emphasis -- based on its own costing.

21 So that's why we're here. Hydro Ottawa has proceeded
22 under this paragraph of the decision I am discussing to
23 have an appropriate rate determined based on its own
24 costing.

25 Now, in my submission, there's much on the record here
26 that, in my -- in my submission, is not actually relevant
27 to Hydro Ottawa's own costing, and I have included just one
28 example of that as the next attachment in this small group

1 of materials.

2 There is probably many things I could refer to that
3 have been brought forward by the Carriers, but this is an
4 example. So what I've reproduced as the second item is
5 Appendix A from the evidence of AllStream. So you will see
6 the cover page from the evidence, and you will see Appendix
7 A.

8 And what is in Appendix A is numbers for a number of
9 different entities. And my point to the Board is, in my
10 submission, the whole reason we are here is for Hydro
11 Ottawa to bring forward its own costing.

12 These attempts to look at costing of other entities
13 are -- they're not just irrelevant. They're contrary to
14 the purpose we are here for, which is for Hydro Ottawa to
15 bring forward its costing.

16 And I will come back and tie these points together
17 after I finished going through these materials. I just
18 wanted to bring forward this as an example of many things I
19 believe have been put on the record of this case that are
20 not really relevant to Hydro Ottawa's own costing.

21 Now, the next item in the record is -- sorry, in this
22 Exhibit K1.1 is a page from the technical conference, where
23 Hydro Ottawa's counsel -- that's me -- had an opportunity
24 to ask some questions of the Carriers.

25 And what I have marked on page 26 of the transcript is
26 the question that actually gave rise to the further
27 questions that were objected to. So this was really the
28 initial question, and then the questions that are the

1 subject of this motion followed from it.

2 So this is also a pretty key element of why we are
3 here today. At page 26, line 16 -- or line 17, you will
4 see the question:

5 "Now, in respect of the attachments that Rogers
6 pays Hydro Ottawa for, for the ability to access
7 on Hydro Ottawa's poles, does Rogers then, in
8 turn, charge other companies for the opportunity
9 to take advantage of that by overlashing?"

10 The answer from the witness on behalf of Rogers was:

11 "I believe there is costs that are passed on for
12 a third party to Rogers' strand."

13 So what I would like to bring out about this
14 particular answer is, these are the words that the Rogers
15 witness used when he was asked this question. He said the
16 costs -- there are costs that are passed on.

17 So unlike, for example, the second item in this little
18 package I put together, which is costs of some other
19 utility which, in my view, are really not very relevant,
20 these are the costs we are talking about here. These are
21 the Hydro Ottawa costs, and the evidence of Rogers' witness
22 was they are passed on for a third party to Rogers' strand.

23 So in my submission, unlike looking at costs of other
24 utilities, these costs that are Hydro Ottawa's costs and
25 are being passed on to third parties are quite relevant.

26 And then the final item in this little package is the
27 point about why these costs are relevant. It's an excerpt
28 from the issues list for this case, and the particular

1 issue is included here. It is issue 4.11: Are the costs
2 underpinning the proposed new charges for the specific
3 charge for access to the power poles appropriate?

4 In my submission, with the evidence about these costs
5 being passed on by one of the parties paying them to third
6 parties, there's little that could be more relevant to
7 deciding whether those costs are appropriate to find out to
8 what extent that party is actually able to recoup its costs
9 from others.

10 And it is certainly far more relevant than looking at
11 the costs of other utilities when these are actually Hydro
12 Ottawa's costs, charged to a carrier like Rogers, that it
13 itself says it is passing on.

14 Now, we heard this morning in fact that Rogers -- or a
15 carrier could have a situation where, on a Hydro Ottawa
16 pole, it has more than two potentially third parties to
17 which it can pass on costs. We also heard that it could be
18 potentially 50 percent of the costs to one individual
19 party.

20 If that's the case, if it's more than two and they're
21 paying 50 percent of the costs, Rogers is making money on
22 what it is paying to Hydro Ottawa. How could that not be
23 something that would be relevant for the Board to consider
24 in deciding whether what Hydro Ottawa is charging is
25 appropriate within the wording of the issues list, if
26 Rogers is actually making more money than it is paying when
27 it charges more than two overlashers 50 percent of the
28 Hydro Ottawa charge?

1 In my submission, it is hard to think of something
2 that could not be more relevant for the Board to know about
3 when it's considering whether these costs are appropriate.

4 Now, we don't know the answers to the questions,
5 because of course they were objected to. The questions
6 were to find out what is charged to the third parties, and
7 that sort of information. We weren't able to find that
8 out. But, in my submission, it is very relevant.

9 Now, because we weren't able to get answers to the
10 questions, we have looked through what we do know. Mr.
11 McKeown, in his evidence on behalf of the Carriers, refers
12 to a decision from New Brunswick. And we have dug around
13 in New Brunswick a little bit, and we found there is a much
14 more recent case than the one he is referring to, New
15 Brunswick Power 2015-2016 general rate application -- this
16 is on the public record.

17 And there, a party named F6 Networks has filed
18 information about what it pays for overlash, and it says:
19 "Rogers overlash, half of current rate." So half of what
20 the current rate is in New Brunswick is paid for
21 overlashing.

22 So again, we don't know the answers to the questions
23 here because they were objected to. But in my submission,
24 again, if there's some possibility that Rogers is charging
25 half of what it pays to Hydro Ottawa to more than two
26 parties, surely the Board must consider that relevant
27 information when it considers whether Hydro Ottawa's
28 charges are appropriate.

1 Those are my submissions.

2 DR. ELSAYED: Thank you, Mr. Cass.

3 MS. LONG: Mr. Cass, can you elaborate on that last
4 point for me? How is it relevant to the Board? Is it
5 based strictly on a cost function? Is that what your
6 argument is?

7 MR. CASS: Well, Ms. Long, as we all know, to the
8 extent that Hydro Ottawa recovers these costs, these
9 charges, they reduce rates for other ratepayers, they go to
10 reduce the revenue requirement.

11 Surely if some other party is taking advantage of its
12 access to hydro poles to actually recover more money that
13 potentially could be used for the benefit of Hydro Ottawa's
14 ratepayers, surely the Board would want to know that.

15 I can't see why the Board would not want to know what
16 charges are potentially out there that could be going to
17 the benefit of Hydro Ottawa's ratepayers.

18 MS. LONG: So your argument is with respect to revenue
19 offset as opposed to what the actual costs are? I mean, if
20 this Panel is strictly considering what the costs are, I
21 would say it is a very different argument.

22 MR. CASS: I would agree with you, Ms. Long. This
23 Panel can take a very, very narrow view of the first item
24 in the package I handed out, where it says, based on Hydro
25 Ottawa's own costing.

26 This Panel can take the view we're not going to hear
27 anything, anything at all except Hydro Ottawa's own
28 costing.

1 But on my submission to you, if you take that view,
2 much of what the Carriers have been saying is irrelevant.
3 In fact, I would suggest to you nobody in this room, no
4 witness in this case knows more about Hydro Ottawa's own
5 costing than Hydro Ottawa.

6 So if you take that narrow view that it is all we're
7 going to look at is Hydro Ottawa's own costing, it is not
8 going to be a very long case, because Hydro Ottawa can tell
9 you better than anyone else what their own costing is.

10 But the Carriers want you to look at other things.
11 They want you to look at, okay, let's look at what these
12 other utilities may be charged, even though it is supposed
13 to be on Hydro Ottawa's own costing.

14 And I say to you if you're going to step outside Hydro
15 Ottawa's own costing the way these Carriers would like you
16 to do, this issue, this information about how those costs
17 are passed on is far more relevant than the costing of some
18 other utility that could have a completely different cost
19 structure.

20 MS. LONG: Thank you.

21 DR. ELSAYED: Just a clarification on that, Mr. Cass.
22 The rate that is being proposed by Hydro Ottawa in this
23 proceeding is based on Hydro Ottawa's costing.

24 MR. CASS: Yes, it is.

25 DR. ELSAYED: I just wanted to make that clear.

26 MR. CASS: Yes, indeed. And again, as I've said, if
27 the Board is going to take that very, very narrow view that
28 it's nothing other than Hydro Ottawa's own costing, then

1 fair enough.

2 But I would submit to the Board that much of what is
3 on the record in this proceeding is irrelevant, if we're
4 taking that very narrow view.

5 Again I would submit to the Board that if it's Hydro
6 Ottawa's own costing, Hydro Ottawa's witnesses know more
7 about that than anyone else. We don't have any experts in
8 electricity costing, other than Hydro Ottawa's own
9 witnesses, if we're taking that narrow view.

10 DR. ELSAYED: Thank you. Questions?

11 Okay. We will go to Ms. Milton for her argument -- or
12 sorry, Ms. McAleer.

13 MS. MCALEER: Thank you, Mr. Chair. I will be making
14 submissions on behalf of the Carriers in response to Hydro
15 Ottawa's motion, but I would suggest that the other
16 intervenors go before us because, as I understand it, their
17 position is that they support the motion that Hydro Ottawa
18 has before you. So in fairness to the Carriers, I would
19 like to hear their arguments before responding, since I
20 won't have a right of reply.

21 DR. ELSAYED: Okay, thank you. Mr. Rubenstein?

22 **SUBMISSIONS BY MR. RUBENSTEIN:**

23 MR. RUBENSTEIN: We adopt the submissions of Mr. Cass.

24 I do -- it is our view there is an additional reason
25 why this information is relevant, and it goes to the
26 specific methodology that is being proposed and the reasons
27 for that methodology that is being proposed by the
28 Carriers.

1 If I could take you to Mr. McKeown's expert report at
2 -- you may not need to turn it up, but at page 23, in
3 paragraph 112 and 113, with respect to using either the
4 equal sharing or the proportional use allegation, which my
5 friends from the Carriers is seeking, one of the reasons --
6 one of the aspects why they believe a proportional use is
7 more appropriate is what they say is -- and I am quoting:

8 "the overlooked are the advantages of pole
9 ownership as compared to pole tenancy".

10 And this draws upon Mr. Richard's -- this is Rogers'
11 evidence at pages 1 through 3, paragraphs 4 through 6,
12 where they list a whole set of reasons why pole ownership
13 has an advantage over pole tenancy.

14 The issue then becomes -- one of the benefits, it
15 appears, of pole tenancy that the Carriers have is they're
16 able to charge an amount for overlashing, whereas we don't
17 know that set of costs.

18 We do know all of the costs that Hydro Ottawa is
19 allowed to charge for an entity to attach itself; that is
20 set out by the Board or by things that were discussed this
21 morning.

22 But we don't know those same types of costs, and I
23 would say it goes to that issue. Is there an advantage or
24 not between pole ownership and pole tenancy which, the
25 Carriers submit, they believe there is an advantage in pole
26 tenancy and that is why you should use a different
27 methodology to split the common costs, as was set out in
28 the CCTA decision. Those are our submissions.

1 DR. ELSAYED: Thank you. Mr. Janigan?

2 **SUBMISSIONS BY MR. JANIGAN:**

3 MR. JANIGAN: Thank you, Mr. Chair. We've approached
4 this issue with the view that the task that is before the
5 Panel is more or less identical to the task that was before
6 the panel in the RP-2003-0249 case, which set the rate for
7 pole attachment at that time.

8 I think it is very relevant to take a look at the test
9 that was used to set those rates.

10 For that, I apologize, I must use the evidence of the
11 Carriers' expert witness, David McKeown, to quote from the
12 decision. But he states in his page 1, paragraph 5, that:

13 "The current rate for communication pole
14 attachment for hydro poles in Ontario was set by
15 the Ontario Energy Board in its 2005 decision and
16 order RP-2003-0249. In that decision, the Board
17 recognized that for the purpose of communication
18 attachments, power poles were essential
19 facilities, and in these circumstances non-
20 discriminatory access must be provided at just
21 and reasonable rates."

22 That is the test here. Just and reasonable rates, not
23 the costing of Hydro Ottawa.

24 He goes on to quote from the Board that:

25 "The Board agrees that the power poles are
26 essential facilities. It is well-established
27 that the principle of regulatory law that, where
28 a party controls essential facilities, it is

1 important that non-discriminatory access be
2 granted to other parties. Not only must the
3 rates be just and reasonable, there must be no
4 preference in favour of the holder of essential
5 facilities. Duplication of poles is neither
6 viable nor in the public interest."

7 So extending that argument, it would be difficult in
8 these kind of circumstances for the party coming forward
9 seeking just and reasonable rates to say that, well, only
10 one component of just and reasonable -- the only component
11 we want to look at is the costing of the utility. What I
12 am going to get after getting that access is not something
13 the Board wants to look at in setting just and reasonable
14 rates. It strikes me that is not a tenable argument.

15 If the Carriers want to come forward on a strictly-
16 business basis and obtain something that is a market-based
17 rate and then say, "What we do at this point in time with
18 it is up to us. We're operating in market-based
19 principles. We're going to go out and get what business we
20 can, and it is none of your business after you give us the
21 charge what we do with it." That is one thing.

22 But in this case they come forward under the same kind
23 of rubric of looking for just and reasonable rates. If
24 they're looking for just and reasonable rates they have to
25 come forward in the circumstances that show that in all of
26 the circumstances what Ottawa Hydro chooses to charge is
27 not -- is not just and reasonable, and part and parcel of
28 that is their own circumstance.

1 So we would suggest that -- we would agree with Mr.
2 Cass and adopt his submissions with respect to cost, that
3 the -- they must come forward with all the information that
4 enables the Board to make the appropriate decision.

5 MS. LONG: Mr. Janigan, I'm sorry, I just want to
6 understand your argument.

7 Your argument is, because Rogers may be charging a
8 rate to other companies overlashing, and at the same time
9 they're challenging the rate that Ottawa is putting
10 forward, somehow they're not able to do that? Is that the
11 gist of your argument?

12 MR. JANIGAN: Well, I'm suggesting that what the
13 Board's task is is to obtain and to determine a just and
14 reasonable rate for their attachment. Part of that is
15 based on their status as an essential facility and the fact
16 that access to essential facilities is something that the
17 Board has -- has both recognized and, in fact, set the
18 standard as just and reasonable rates, rather than what is
19 the maximum amount we can get here, or what -- or any other
20 consideration that is separate and apart from just and
21 reasonable rates.

22 They stand with every other ratepayer where that test
23 exists, to go forward to request just and reasonable rates
24 from the Board. But part and parcel of that is the certain
25 circumstances of the ratepayers themselves. When just and
26 reasonable rates are determined, the fact that, you know,
27 for example, a ratepayer may be able to use the facilities
28 to generate revenue on their own to -- and to support other

1 services that may well be in excess -- well in excess of
2 what they're being charged by the holder of the essential
3 facilities, that is pertinent information for the Board
4 when you are setting just and reasonable rates.

5 It is not simply the costs associated with the owner
6 of the essential facilities. It also goes to what is just
7 and reasonable, based on the idea that these are essential
8 public services.

9 Now, I mean, if the Carriers are content to go forward
10 without the benefit of that kind of consideration by the
11 Board that in fact they're essential public facilities and
12 that they're entitled to just and reasonable rates, that is
13 one thing. But in this circumstance what I'm saying is
14 that if you want to set rates in the same fashion that was
15 set by the 2005 order, you have to consider the
16 circumstances of the Carriers as they come forward.

17 MS. LONG: Thank you for clarifying that for me.

18 MR. JANIGAN: Okay. I hope I did.

19 DR. ELSAYED: Thank you. Anyone else?

20 **SUBMISSIONS BY MS. HELT:**

21 MS. HELT: Board Staff just has a short submission.
22 Board Staff's submission is in support of the motion made
23 by Hydro Ottawa for production of these documents.

24 And essentially, the position is set out in our
25 previous submission, but there are really two main points
26 to it, that the charge that the Carriers are requesting for
27 overloading is a rate that the OEB does not regulate. We
28 don't know what that is.

1 The other counsel have already stated that, you know,
2 they could be profiting or earning more than what they are
3 paying to Hydro Ottawa for attaching.

4 And it is Staff's submission that failing to take into
5 account the value of the revenue earned through this
6 practice of the Carriers could harm and, in Staff's
7 submission, would harm the OEB's ability to make a
8 determination of what might be just and reasonable rates
9 for this practice, or for the attachments.

10 DR. ELSAYED: Thank you, Ms. Helt. Anyone else?
11 Okay. Now back to the Carriers.

12 **SUBMISSIONS BY MS. MCALEER:**

13 MS. MCALEER: Thank you, Mr. Chair.

14 Before I respond to the submissions of the parties on
15 the particular argument, I just want to review the facts
16 that we learned from the panel that we heard from this
17 morning, because I think that prior to the evidence this
18 morning there may have been some confusion about the
19 charges arriving from overlashing and to whom charges are
20 levied.

21 So based on what we have heard this morning it should
22 be clear at this point that every overlasher has to make an
23 application to Hydro Ottawa for approval. So one can't
24 simply approach the strand owner, be it Rogers or Bell, and
25 say I want to overlash; you actually have to go to Hydro
26 Ottawa and get approval.

27 In addition to that, there is a fee that Hydro Ottawa
28 levies on the overlashers, and we heard again this morning

1 that since March of 2005 that's been the full pole
2 attachment rate and that there are some parties that were
3 in place prior to March of 2005, and they have been
4 grandfathered at 25 percent.

5 But in any event, for each overlasher there is, in
6 fact, an approval process and a fee that is paid to Hydro
7 Ottawa.

8 Now, the impact of overlashing is, in our submission,
9 a win-win result. Specifically, it results in increased
10 revenue for Hydro Ottawa, and it also results in a more
11 efficient use of the scarce essential services; that is,
12 the space within the communications space on the pole.

13 Now, turning then to the specific request that Hydro
14 Ottawa has made of the Carriers, the information sought by
15 Hydro Ontario (sic) on its motion relates to the
16 confidential arrangements between the overlashers, who are
17 -- and the owners of the strand.

18 But it's not all owners of the strand. They are only
19 seeking the information that relates to the Carriers and
20 the relationship or agreements that the Carriers who are
21 represented here have with the certain overlashers.

22 So it is not all overlashing and it is not all owners
23 of strand. It is only the carriers. So even if you were
24 to grant the request, you would only be getting a very
25 small piece of the information.

26 Our submission, though, is that in any event it is not
27 relevant to an assessment of Hydro Ottawa's pole attachment
28 rate, as it provides no information whatsoever with respect

1 to Hydro Ottawa's costing.

2 Hydro Ottawa has asked for information on the rates
3 and other terms in these agreements, and it has also asked
4 for the names of the customers. Well, first of all, they
5 have the names of the customers, because, as I have
6 indicated, they get requests -- the overlashers have to
7 request directly of Hydro Ottawa and they have to pay a fee
8 to Hydro Ottawa. So they know who they are. There is no
9 issue there.

10 But with respect to the rates and the terms, they
11 simply are not relevant. And that's because, as Mr. Cass
12 has made clear in his submissions, this is about Hydro
13 Ottawa's costs. It is a costing methodology. It's not a
14 revenue-based methodology.

15 Certainly there have been no submissions, no evidence,
16 with respect to whether or not the Carriers have the
17 ability to pay the rate that this Board is going to impose.
18 It is not about how or if we are able to offset our own
19 costs or how we do that. Obviously, there are different
20 mechanisms by which the carriers might do that.

21 Certainly having some revenue come from those who
22 overlash might be one stream of revenue, but there is no
23 information before you as to whether or not that would be
24 profitable.

25 Even to find out what these overlashers are paying to
26 the Carriers wouldn't tell you whether or not that is
27 profitable. You would need information about the strand
28 and how much it costs to put up the strand to decide

1 whether or not the rates that the carriers then pass on --
2 and those are the carriers' costs that they're passing on.
3 It is not Hydro Ottawa's costs that are being passed on.

4 With all due respect to Mr. Cass, I think he was being
5 a little bit -- I will be careful how I put this -- I think
6 he was twisting a little bit Mr. Richard's evidence with
7 respect to how he responded to that question.

8 He said in his evidence, well, we're passing on the
9 costs. They're passing on the Carriers' costs, not Hydro
10 Ottawa's costs. We're not out there acting as an agent on
11 behalf of Hydro Ottawa to try and recoup their costs, Hydro
12 Ottawa's costs.

13 That is not what we're doing. We're trying to recoup
14 our own costs, and there are different ways in which the
15 Carriers may do that, and requesting that those who
16 overlash and use our strand pay a fee might be one way of
17 doing that.

18 But as I said, there is no evidence before you as to
19 whether or not that is even profitable. And certainly, if
20 we are going to get into an analysis as to whether or not
21 the Carriers are able to pay the rates they're being
22 levied, that is a completely different methodology and a
23 completely different analysis.

24 And that's completely inconsistent with what this
25 Board decided in 2005, in the decision that Mr. Cass gave
26 to you.

27 He didn't give you the whole decision and you may not
28 have it before you, but let me read to you from the

1 decision, and if you would like a full copy of it, we're
2 happy to give it to you, although I know the Board has
3 access to it.

4 Mr. Cass put before you to page 8. I'm going to refer
5 you to page 6, because back in 2003 this argument was made.
6 "The Canadian Electricity Association argues," and I am
7 quoting from the decision.

8 "The CEA argues that electricity
9 distributors should be allowed to raise the rates
10 charged to the cable companies because cable
11 companies are now generating 'massive new sources
12 of revenue' from use of electricity distribution
13 plant. In particular, they point out that the
14 revenues from high-speed Internet service have
15 increased from zero dollars in 1995 to over \$900
16 million annually by 2003. The CEA requested that
17 the Board infer that a large portion of these
18 revenues are from Ontario cable operations. The
19 Board notes that there is very little evidence on
20 this issue."

21 And here is the very important line:

22 "Moreover, the Board believes that the
23 methodology used to determine rates should be
24 based on cost recovery, not some form of revenue
25 sharing."

26 And all of the proceeding to date, until today, has
27 all been about cost recovery. It's been about deciding
28 what is fair and reasonable based on Hydro Ottawa's costs.

1 It's the cost input, the methodology with respect to
2 proportionate versus equal share allocation, but nobody has
3 suggested that this idea of cost recovery is on the table.
4 Certainly there's no evidence to that effect, and there
5 have been no submissions to that point until today.

6 So our submission to you is that it is a -- Mr. Cass
7 may think it is a very narrow view. But in fact, that is
8 true; we agree it is a narrow view. The issue is one of
9 cost recovery and what are Hydro Ottawa's costs, not
10 whether or not the Carriers are able to recoup some of
11 their own costs through agreements with overlashers.

12 Now, Mr. Cass mentioned in his submissions some
13 numbers that he got by looking up on the web with respect
14 to New Brunswick proceedings. With all due respect, none
15 of that evidence is before you. You should not take that
16 into account. Those are simply submissions by Mr. Cass.
17 That evidence is not part of the record and, with all due
18 respect to the Board, it is not something that you should
19 be basing your decision on. It is anecdotal at best.

20 There's also a suggestion by Mr. Cass that the
21 Carriers are somehow seek to take advantage of their
22 position. With all due respect, I think that is actually
23 quite offensive to the Carriers, and there is no evidence
24 to support anything that they have done or any position
25 they have taken before this Board is in any way trying to
26 take advantage of their position.

27 With respect to the point Mr. Rubenstein makes with
28 respect to Mr. Richard's evidence, it is true that in Mr.

1 Richard's evidence he has addressed what he sees as the
2 advantages of pole ownership. With all due respect,
3 finding out what revenue the Carriers may obtain from
4 overlashing will not address any of these points Mr.
5 Richard has raised.

6 He has indicated in his evidence that Hydro Ottawa can
7 pass penalties, that they can request security, that they
8 can fail to accommodate. There is a whole list of things
9 Mr. Richard addresses.

10 But determining whether or not, or to what extent the
11 Carriers receive revenue from overlashers is not going to
12 address any of the issues that Mr. Richard has raised in
13 his evidence.

14 So in conclusion, our understanding from the very
15 beginning of this proceeding is that it has been focussed
16 narrowly, as Mr. Cass has admitted, with respect to the
17 costing issues and to now. At this point, to get into an
18 analysis as to whether or not the Carriers are able to pass
19 on any of their own costs and to what extent they're able
20 to generate revenue as a result of being attached to Hydro
21 Ottawa poles, will take this whole proceeding down a
22 completely different path, which I don't think is the way
23 the Board wants to go at this point in time.

24 So unless there are any questions, those are my
25 submissions.

26 DR. ELSAYED: Thank you. Any questions? Mr. Cass?

27 MR. CASS: I just had two areas in reply --

28 DR. ELSAYED: Sure.

1 MR. CASS: -- to those submissions. Oh, I'm sorry.

2 MR. PEAKER: AllStream would like to make some
3 submissions on this point as well, if now is the
4 appropriate time. I know it was opened up for some
5 questions from the other carriers, so if anyone has them,
6 now perhaps would be the time.

7 Otherwise, we will continue with our submissions.

8 DR. ELSAYED: Okay, please go ahead now.

9 **SUBMISSIONS BY MR. PEAKER:**

10 MR. PEAKER: Thank you very much. I just wanted to
11 speak briefly on this motion.

12 I want to state at the outset, and repeat something we
13 made in our written comments on this, Hydro Ottawa has not
14 actually sought this information from AllStream; its motion
15 is directed at the Carriers, which it defines to be Rogers,
16 Telus and Quebecor. So we continue to operate under the
17 assumption that this motion, this request for information
18 is not levelled against AllStream.

19 However, having said that, we would still like to make
20 a few comments on the merits of the request, because this
21 information really is entirely irrelevant to the proceeding
22 and, indeed, there is almost a notice issue associated with
23 this request at this state of time.

24 Hydro Ottawa proposed a new pole attachment rate
25 within its general rate application. It filed evidence as
26 to its costs, and applied them against the formula
27 established by the Board in 2005.

28 Parties, including AllStream, have questioned and will

1 continue to question that evidence and the way in which the
2 methodology was applied.

3 But simply put, any revenues earned by carriers for
4 third party overloading to carry a strand just does not
5 factor into that analysis. It is not part of that test, or
6 any other test that we're aware of.

7 I note that in its oral submission today, Hydro Ottawa
8 noted that it is entitled to seek a rate based on its own
9 costing, and underlined the word "costing". We don't
10 contend it should be any other way. The rate should be set
11 on its own costs.

12 But the information related to third party overlash
13 revenues are not Hydro Ottawa costs, and are therefore not
14 relevant to the exercise that we are engaged in.

15 As a side note, Mr. Cass made some submissions on the
16 relevance of some evidence that AllStream submitted last
17 month. I will say that we clearly disagree with his views
18 on relevance.

19 I think he has made a great many of assumptions about
20 how we intend to use that information. AllStream has not
21 had an opportunity in the order of this proceeding to make
22 arguments, but only to file evidence. And so I think we
23 will make our arguments at the argument stage and we will
24 speak to relevance at that point.

25 But back to the issue of the relevance of third party
26 overlash revenues. There just isn't any information on the
27 record, or that has been provided by Hydro Ottawa as to how
28 this information is relevant or will be used.

1 Hydro Ottawa has noted that it believes that evidence
2 of third party fees would be a measure of whether Hydro
3 Ottawa's costs are appropriate. But with respect, this
4 simply does not make any sense.

5 Carriers who lease access to poles owned by third
6 parties do not have the same costs as the pole owner; this
7 is the point of a regulated rate.

8 So, for example, part of the regulated rate is based
9 on embedded costs of the regulated entity's poles. Those
10 poles are owned by the regulated entity, and not by a third
11 party attacher such as AllStream.

12 So comparing any rate that might be paid by a third
13 party for overlashing to Allstream's strand would have no
14 bearing in assessing the net embedded cost of the
15 underlying pole owned by Hydro Ottawa.

16 So it would seem, then, that this evidence is being
17 sought to be provided on the record of this proceeding as
18 part of some new method of setting pole access rates, one
19 that is entirely outside of the existing rate or the
20 methodology that's been set by the Board, and we simply
21 have not been provided any evidence as to how it would be
22 imposed. Is there a new formula? We just don't know. And
23 so we would argue that there is no point in tendering this
24 evidence at this point.

25 As noted by the other Carriers in their submissions,
26 there are a number of other factors related to third-party
27 costs that would have to be assessed, including carriers'
28 costs of installing strand, administrating costs of working

1 with third parties, efficiencies to Hydro Ottawa, support
2 structure usage, and additional revenues to Hydro Ottawa
3 from overlashing.

4 There's been no evidence submitted on any of this, and
5 of course there would have to be if rates were to be set
6 based on some third-party overlashing rate.

7 So in our view, at this point in the proceeding it is
8 a rather radical new methodology that hasn't even been
9 fleshed out and really should not be accepted by the Board,
10 and so in AllStream's respectful submission we would ask
11 that you not order the disclosure of this information from
12 any party, including AllStream. Thank you.

13 MS. LONG: Mr. Peaker, I didn't quite understand your
14 point when you said this is almost an issue of notice. Can
15 you elaborate on what you meant by that?

16 MR. PEAKER: Yes, certainly. When I say "notice",
17 what I was getting to there was, if the rate was to be
18 based on a new methodology, one different from the pre-
19 existing methodology established by the Board in 2005, we
20 should have had notice that that issue was going to be
21 before the Board, preferably at the state that the
22 application was brought. So in other words, we could
23 tender evidence on whether a new methodology was
24 appropriate or not.

25 Instead, I think this information was sought at the
26 third technical conference held in this proceeding about a
27 month ago, maybe just a little over a month. So really in
28 the final stages of the proceeding and long after evidence

1 was submitted.

2 So that's really what I was getting at with notice.
3 We just hadn't -- we didn't know at the outset that this
4 methodology was going to be in dispute, and so we proceeded
5 as if it wasn't. I don't know if that helps.

6 MS. LONG: No, it does. I was just wondering. And I
7 guess, just to be even more precise, when you say "this
8 methodology", as I understand it, the question of the word
9 "methodology" is something that we are going to discuss on
10 another day. So while that was known to the Carriers,
11 because I believe the Carriers' own evidence asks the Board
12 to consider some new aspects of the methodology, you mean
13 with respect to this aspect of, I guess, if we can call it
14 revenue-sharing or that type of proposal as you see it?

15 MR. PEAKER: I think that's right. And, you know, I
16 would hasten to add that of course we're participating
17 independently of the Carriers, and I don't think that
18 AllStream has suggested any changes to the overall
19 methodology.

20 But frankly, in our view of the evidence submitted by
21 any other party, no party is suggesting any radical
22 departure from the pre-existing methodology.

23 I mean, you can consider issues such as whether equal
24 or proportional sharing is an appropriate factor to apply
25 or not, matters such as that. To me they don't go to the
26 underlying methodology of setting rates, and as you say,
27 maybe it is more a question of distinguishing between a
28 methodology, largely put, or a fundamental methodology as

1 between a cost base or a revenue-minus type of approach,
2 so...

3 MS. LONG: Thank you.

4 [Board Panel confers]

5 DR. ELSAYED: The Panel would like to take a five-
6 minute break just to address one small question. Mr. Cass,
7 do you have anything to say before we break?

8 MR. CASS: Well, I did have just a couple of points in
9 reply, but I'm not sure whether you were thinking that you
10 would break before that?

11 DR. ELSAYED: We will take the five-minute break and
12 then we will address your questions.

13 --- Recess taken at 2:37 p.m.

14 --- On resuming at 2:47 p.m.

15 DR. ELSAYED: Okay. We will go to Mr. Cass now.

16 **REPLY SUBMISSIONS BY MR. CASS:**

17 MR. CASS: Thank you, Mr. Chair, I think I said two
18 areas; I actually will have three very quick areas in
19 reply.

20 First, my submission is that the Carriers want it both
21 ways in a number of aspects of their argument.

22 It was suggested by AllStream in their argument that
23 providing the information that Hydro Ottawa has requested
24 has something to do with opening up a new methodology.

25 That is not what Hydro Ottawa has ever said. Hydro
26 Ottawa is simply saying it's irrelevant to the Board's
27 consideration of whether the proposed charges are
28 appropriate.

1 In fact, as Ms. Long pointed out, it is the Carriers
2 themselves, through Mr. McKeown's evidence, who have sought
3 to open up the methodology, just one example of where the
4 Carriers want it both ways.

5 They argue that providing this information would open
6 up methodology, and yet that is what Mr. McKeown does in
7 his evidence and it is not what Hydro Ottawa intends.

8 Another example is on what they call third party
9 costs. I made a note as AllStream's representative was
10 speaking, and he specifically said that the information
11 sought by Hydro Ottawa is not relevant because it is about
12 third party costs, not Hydro Ottawa costs.

13 Well, I showed the Board the appendix from AllStream's
14 own evidence. That is about third party costs, not Hydro
15 Ottawa costs. They want it both ways. When an argument
16 works for them for one purpose, they make the argument, but
17 they contradict it themselves in their own positions.

18 So that is my first point.

19 My second point is on the Board decision. You were
20 taken to page 6 by counsel for the Carriers. In the first
21 full paragraph on page 6, there are a couple of statements
22 there about the issue of the methodology.

23 First, the Board noted there was very little evidence
24 in that case. Well, that's exactly the concern in this
25 case. We've tried to ask questions and we've been refused
26 the answers. So if there is very little evidence, it is
27 because the Carriers have refused to answer the questions.

28 Secondly, the Board said here that the Board believes

1 that the methodology used to determine rates should be
2 based on cost recovery, not some form of revenue sharing.

3 Hydro Ottawa is not arguing for revenue sharing.
4 Hydro Ottawa is simply saying that if the Board is going to
5 consider whether the proposed rates are appropriate, this
6 is relevant information.

7 And also on the Board's decision, if I could take the
8 Board back to page 4 for another part of the decision that
9 the Board ought to take into account, it's the last
10 sentence above the question, "What is the appropriate
11 methodology?"

12 In my submission, this is a key consideration for the
13 Board. That last sentence says:

14 "From this Board's perspective, it is equally
15 important," and I emphasize that: equally
16 important, "that costs be properly allocated and
17 that the electricity distributor (and ultimately
18 the electricity ratepayer) receives its fair
19 share of revenue."

20 So the costs and receiving a fair share of revenue are
21 equally important, according to this decision. That is my
22 second area.

23 Then my third area is this in reply. I quite frankly
24 conceded in my argument in-chief that the Board can take a
25 very, very narrow view of the issue in this case, and
26 consider that it has nothing to do with anything other than
27 a specific look at Hydro Ottawa's costs.

28 And my submission will be, if the Board takes that

1 view, much of what the Carriers are saying in their
2 evidence and in this proceeding is irrelevant.

3 I caution the Board, though, as to what that means if
4 the Board were to take that narrow view. We've heard from
5 the Board decision in RP-2003-0249 that what this Board
6 previously decided is that these are essential facilities.
7 It is a well-established principle of regulatory law that
8 where a party controls essential facilities, it is
9 important that non-discriminatory access be granted to
10 other parties. Not only must rates be just and reasonable,
11 there must be no preference.

12 We've heard this morning that there are situations
13 where of the three locations on a Hydro Ottawa pole, one
14 carrier can control all three locations. That is what the
15 Board has decided is an essential facility.

16 In my submission, if the Board turns a blind eye to
17 what is happening with the Carriers when they allow
18 overlashing and charge other parties for access to these
19 poles, the Board is doing a half job of regulation of this
20 essential facility. It is ensuring that Hydro Ottawa
21 provide appropriate non-discriminatory access, but it has
22 no control at all as to what these Carriers are doing in
23 terms of them providing access where they control the
24 locations on the poles.

25 So in my submission, the Board can take that narrow,
26 cost-based view, but it is half a job of regulation. It is
27 turning a blind eye to what is happening with these
28 essential facilities when the Carriers control the

1 locations on the poles.

2 Those are my submissions in reply.

3 DR. ELSAYED: Thank you.

4 So I think we will now move to the last item, which is
5 the Hydro Ottawa - sorry, the reciprocal agreements that
6 Hydro Ottawa has with Bell and Hydro One.

7 And just to remind everybody, the Board did make a
8 decision that these agreements were not relevant to this
9 proceeding, but did ask one question of Hydro Ottawa, which
10 they did answer.

11 And the only question I would pose here is whether
12 anyone has any question about the response that we received
13 from Hydro Ottawa to that one question.

14 Okay. In that case, this completes our proceeding for
15 today. I would like to thank everybody for being here.
16 And just to reiterate what I said in my opening comments,
17 we going to continue this oral hearing on October 16th, and
18 the expectation is that we will have panels from both Hydro
19 Ottawa and the Carriers to address the general issue that
20 we are addressing, which is the pole attachment rate.

21 And that includes, of course, the expert evidence that
22 has been submitted by the Carriers; Mr. McKeown would be
23 part of that as well. So we do expect him to be here for
24 that hearing.

25 So any other questions before we adjourn? Okay.

26 Thanks very much. We are adjourned.

27 --- Whereupon the hearing adjourned at 2:55 p.m.

28