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**Pam Dinsmore**

Vice President – Regulatory

**By Email (BoardSec@ontarioenergyboard.ca) and Courier**

February 9, 2015

Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4  
**Attn:** Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: EB-2014-0116, Toronto Hydro-Electric System Limited Application for 2015  
Distribution Rates (the “Application”)**

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This letter is submitted by Rogers Communications Partnership on its own behalf as well as on behalf of Allstream Inc. and Cogeco Cable Inc. on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc. (collectively, the “**other carriers**”). Rogers and the other carriers have wireline communications attachments on poles of Toronto Hydro-Electric System Limited (“**THESL**”). The annual rate for these attachments is currently \$22.35 per pole, as established by the Board in the *2003 Pole Rate Proceeding*<sup>1</sup>.

Last week, after reviewing the submission of the School Energy Coalition in the Board’s *Wireless Attachment Consultation*<sup>2</sup>, Rogers and the other carriers became aware that buried within the above-referenced Application was a request by THESL for a 314% increase in its annual pole attachment rate to \$92.53 per pole.

THESL’s ability to include this request in the Application appears to be an unintended consequence of the resolution of THESL’s EB-2013-0234 application, seeking forbearance from application of the pole attachment rate to wireless communications attachments (“**THESL Wireless Forbearance Proceeding**”). This proceeding did not seek and was not expected to affect the regulatory regime applicable to wireline

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<sup>1</sup> RP-2003-0249.

<sup>2</sup> EB-2014-0365.

attachments. Even more significantly, THESL provided no notice to Rogers and the other carriers or, to their knowledge, to any other communications attachers on its poles, of its request for a pole attachment rate increase in the Application. Further, the Notice of Application published by THESL referred solely to increases in “electricity distribution rates”.

It is also unclear that the Board is aware of this aspect of the Application. In this regard, the memo issued by the Board on December 11, 2014 regarding its *Wireless Attachment Consultation* (which was directed to all intervenors in the *THESL Wireless Attachment Proceeding*<sup>3</sup> and in the *CANDAS Proceeding*<sup>4</sup>) states:

### **Pole Attachments and Future Review**

Section 2.11.7 of the Filing Requirements for Electricity Distribution Rate Applications - Chapter 2, provides direction on the evidence that must be filed in support of a change to a Specific Service Charge. As yet, no distributor has filed evidence in support of a change to the pole attachment rate.

The option remains open to distributors filing a Cost of Service or Custom IR application to file evidence in support of a change to the \$22.35 charge. The Board does recognize that this charge was based on costs that are now more than 10 years old. However, distributors may wish to take into consideration that the Board plans to undertake a review of all Specific Service Charges next fiscal year, including pole attachments. (emphasis added)

To the knowledge of Rogers and the other carriers, THESL has taken no steps to correct the Board’s understanding referenced in the memo quoted above that no distributor had filed, as of December, 2014, evidence in support of change in its pole attachment rate.

Furthermore, the absence of a requirement in the Board’s letter of direction in respect of the Application to notify pole attachment customers stands in marked contrast to its approach in other proceedings dealing with pole attachment rates, such as the *THESL Wireless Forbearance Proceeding*, in which it directed THESL to serve a copy of its application on all parties who participated in the *CANDAS Proceeding* and the *2003 Pole Rate Proceeding*.

THESL’s failure to provide any notice of this aspect of its Application to its pole attachment customers is a blatant breach of the rules of procedural fairness. Through its Application, THESL has effectively asked the Board to approve an increase to its pole attachment rate that exceeds all normal expectations and is unprecedented in the utility pole industry. More importantly, THESL expects the Board to approve its rate increase without notifying those parties who are directly affected by the increase (*i.e.*,

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<sup>3</sup> EB-2013-0234.

<sup>4</sup> EB-2011-0120.

the communications attachers) and without providing them with an opportunity to review and contest THESL's evidence and supporting materials, nor to submit their own evidence and arguments before the Board. This "process" flies in the face of procedural fairness and natural justice.

In the circumstances, and given that most of the evidentiary steps in respect of the Application are now complete with only the oral phase of the hearing remaining and scheduled for February 17, 2015 (if settlement is not reached), Rogers and the other carriers request the Board to strike out THESL's request in the Application for an increase in its pole attachment rate, as well as all of its supporting evidence, and refuse to hear this matter in the course of the proceeding or, in the alternative, to deny THESL's request in the Application for an increase in its pole attachment rate. This determination would not prejudice THESL's ability to request by separate application, properly served on interested parties, an increase in its pole attachment rate, or to seek an increase in this rate in the context of the Board's review of Specific Service Charges during the 2015/2016 fiscal year, as indicated in its memo regarding the *Wireless Attachment Consultation*.

Sincerely,



Pamela Dinsmore  
Vice President, Regulatory

cc Parties to the EB-2014-0116 proceeding  
David Peaker, MTS Allstream  
Nathalie Dorval, Cogeco Canada Inc.  
Michael Piaskoski, Rogers  
Leslie Milton, Faskens