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Vice President – Regulatory

By Email (BoardSec@ontarioenergyboard.ca) and Courier

February 12, 2015

Ontario Energy Board
2300 Yonge Street, 27th 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”)

This letter is submitted by Rogers Communications Partnership (“**Rogers**”) on its own behalf, as well as on behalf of Allstream Inc. and Cogeco Cable Inc.¹ (the “**other carriers**”), in response to the letter of February 10, 2015 submitted by counsel to Toronto Hydro-Electric System Limited (“**THESL**”) in the above-referenced matter. In its letter, THESL objects to the relief requested by Rogers and the other carriers in their February 9, 2015 letter to the Board, namely, that in order to rectify the breach of procedural fairness resulting from THESL’s failure to provide notice of its request for an increase in the pole attachment rate in the Application, the Board decline to hear this aspect of the Application or, in the alternative, deny THESL’s request in the Application for an increase in its pole attachment rate.

THESL’s arguments are spurious and intentionally misleading. First, as THESL is well aware and as Rogers and the other carriers noted in their initial request, the Notice published by THESL in respect of the Application referred solely to “electricity distribution rates”. It made no reference to pole attachment rates. Nor did it make any reference to “Specific Service Charges” or “other revenues” for that matter; rate categories that may have included pole attachment rates.² Significantly, THESL also

1 On behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc.

2 The Notice states as follows:

provided the Notice to all intervenors in its previous cost of service and IRM proceedings but made no attempt to notify any of its pole attachment customers, participants or observers in previous pole attachment proceedings before the Board. It is also telling that not a single third party pole attachment customer, including Rogers and the other carriers, as well as Bell Canada and Telus Communications, appears to have been aware of the Application. In this regard, it is worth noting that, according to THESL's letter dated February 10, 2015, as recently as 2013 there were only eight companies leasing pole access at the regulated rate. Providing notice to this small and readily ascertainable group of customers that their rates were the subject of an application would not have been onerous, in addition to being required for procedural fairness.

Second, a casual reference in a meeting between the CEOs of Rogers and THESL of THESL's intention to seek an increase in its pole attachment rate is not notice that a rate increase has been sought. Furthermore, the fact that this issue was discussed between CEOs underscores that THESL was well aware of the importance of this issue to Rogers and of Rogers' interest in responding to any formal request for a rate increase.

Third, THESL's bold assertion that the suggestion that its request for an unprecedented pole rate increase is "buried" in the Application is "manifestly incorrect" is belied by its own argument. As THESL is well aware, there is no reference to an increase in its pole attachment rate in the *Executive Summary* to the Application. Nor is there any reference to an increase in its pole attachment rate in the associated *Specific Relief Requested*³. Rather, these documents refer obliquely to changes in "Specific Service Charges" and, as THESL recognizes in its letter, the pole rate discussion is indeed buried in the Application at "Exhibit 8A, Tab 2, Schedule 1, pages 5-6" and later at Exhibit 8A, Tab 2, Schedule 1, Appendix B, pages 1-9.

Fourth, Rogers and the other carriers do not dispute - and in fact, expressly recognized - that the Board's memo of December 11, 2014 relates to a consultation regarding wireless attachments. This does not detract from the fact that, in the memo, the Board clearly states its understanding that, as of the date of the memo, no distributor had filed evidence in support of a change in its wireline attachment rate. If the Board itself was unaware of THESL's request for an increase in the pole attachment rate for the wireline

[THESL] has applied to the Ontario Energy Board with a plan to set electricity distribution rates for the period beginning May 1, 2015 and ending December 31, 2019. If approved, the plan would result in increase to the amount [THESL] charges each month for the typical residential customer using 800 kWh per month.

*[THESL] is proposing that there be a full review of its costs as the basis for setting electricity distribution rates in 2015. For each of 2016, 2017, 2018 and 2019 the rates would be set using a formula based on inflation, factors to promote efficiency and funds to recover [THESL's] additional capital needs. *[emphasis added]**

3 Exhibit 1B, Tab1, Schedule 1, Article V - Specific Relief Requested, pp 3-5.

attachment, it is difficult to conceive of how Rogers and the other carriers could have been aware of this request based on the Notice.

Finally, THESL's proposed remedy - that Rogers and the other carriers be permitted to engage in cross-examination in next week's oral hearing and then file written argument - would severely prejudice Rogers and the other carriers and does not satisfy the requirements of procedural fairness. Consistent with the standard process before the Board and the requirements of natural justice and procedural fairness, Rogers and the other carriers require the ability to participate in a proceeding regarding pole attachment rates from its earliest stages. This includes the ability to:

- 1) ask detailed interrogatories pertaining to THESL's evidence (which comprises a mere eight pages of unsubstantiated numbers and cost factors used in determining the pole attachment rate);
- 2) review the responses to the interrogatories in detail and, if required, pose follow-up interrogatories and seek undertakings on any deficiencies in the responses;
- 3) file their own evidence relating to costing methodologies and other aspects of the pole attachment rate analysis, including oral evidence;
- 4) cross-examine THESL's witnesses on their evidence; and
- 5) submit final arguments to the Panel.

The above steps would most likely require the retention of legal counsel and economic experts to assist in the proceeding, including to review and prepare evidence, make legal argument and participate in the oral hearing. Naturally, the coordination and implementation of these steps takes considerable time, which is exactly why the first stages of this proceeding were scheduled over a period of at least six months. It would be unrealistic, unfair and prejudicial to expect Rogers and the other carriers to "catch up" to the current proceeding, or even to a proceeding that was deferred for only a couple of months.

Had THESL provided proper notice of the Application, it is clear that the above process would have ensued. Moreover, as Rogers and the other carriers previously stated, the relief requested does not prejudice in any way THESL's ability to request by separate application, properly served on interested parties, an increase in its wireline pole attachment rate.

Contrary to THESL's assertion, it is not "simply seeking to adjust" its pole attachment rate; it is trying to obtain a four-fold increase in the rate with full knowledge that the customers of this service are not aware of the request and are not participating in the process. While the increased revenues attributable to the rate increase may not be material to THESL, the increase in operating costs from the rate increase would be material to Rogers and the other carriers.

In the *2003 Pole Rate Proceeding*, the Board ruled that “[i]t is a well established principle of regulatory law that where a party controls essential facilities, it is important that non-discriminatory access be granted to other parties. Not only must rates be just and reasonable, there must be no preference in favour of the holder of the essential facilities. Duplication of poles is neither viable nor in the public interest”. An application to raise the rate for this essential service therefore engages the public interest and raises very real questions of whether that new rate is just and reasonable, and whether the rate grants a preference to THESL. It would be unjust to Rogers and the other carriers, as well as inconsistent with the *2003 Pole Rate Decision* and the broader public interest for THESL’s proposal to be considered in the absence of full participation from the parties most impacted by the increase.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Dinsmore".

Pamela Dinsmore
Vice President, Regulatory

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