

Ontario Energy Board
P.O. Box 2319
27th. Floor
2300 Yonge Street
Toronto ON M4P 1E4
Telephone: 416- 481-1967
Facsimile: 416- 440-7656
Toll free: 1-888-632-6273

Commission de l'Énergie de l'Ontario
C.P. 2319
27e étage
2300, rue Yonge
Toronto ON M4P 1E4
Téléphone; 416- 481-1967
Télécopieur: 416- 440-7656
Numéro sans frais: 1-888-632-6273



BY E-MAIL

February 12, 2015

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: Toronto Hydro-Electric System Limited
Application for Rates
Board File Number EB-2014-0116**

Board staff is writing this letter in response to the letters filed by Rogers Communications, filed on behalf of Allstream and Cogeco (collectively referred to as Rogers) and the response by Toronto Hydro-Electric System Limited (Toronto Hydro). The issue, in Board staff's view, is whether the notice of Toronto Hydro's rate application was sufficient. Rogers has indicated that it has only recently become aware of Toronto Hydro's request for a 314% increase in its pole attachment rate, included in Toronto Hydro's application. Rogers also notes that had it been given notice it would have participated in the proceeding. Rogers has asked that the OEB strike the part of Toronto Hydro's application that relates to the pole attachment rate. Toronto Hydro argues that public notice was adequate notice. With respect to the issue of the wireline rate, Toronto Hydro has clarified that it is, through this application, seeking to adjust the "regulated wireline attachment rate to provide cost recovery associated with wireline attachments, so that its ratepayers are not subsidizing the wireline attachment activity of telecommunications companies."

Toronto Hydro has also stated that it does not oppose Rogers participating in the Hearing for the purpose of testing Toronto Hydro's evidence through cross-examination or to file argument and supports late intervenor status being granted to Rogers, Allstream and Cogeco. Board staff supports this approach for the following reasons.

Section 6.1(1) of the *Statutory Powers Procedure Act* (SPPA) states that the parties to a proceeding shall be given reasonable notice of the hearing by a tribunal. Rule 21.02 of the Board's *Rules of Practice and Procedure* states that "The Board may direct a party to give

notice of a proceeding or hearing to any person or class of persons and that the Board may direct the method of providing the notice.” In this case the Board prescribed the form of notice and in compliance with the letter of direction, Toronto Hydro published the notice in newspapers with the largest circulation in Toronto (in English and in French) as well as providing the notice to all intervenors of record in its previous cost of service and IRM proceedings.

A determination as to what is appropriate in a specific instance requires balancing the interests of those who may be affected in some way by the application with the necessary administrative and regulatory efficiency of a public tribunal and the fact that it is not practical to give notice to every person who might possibly have an interest.

Section 24(1) of the SPPA states that:

Where a tribunal is of the opinion that because the parties to any proceeding before it are so numerous or for any other reason, it is impracticable,...to give notice of the hearing...to all or any of the parties individually, the tribunal may, instead of doing so, ***cause reasonable notice of the hearing...to be given to such parties by public advertisement or otherwise as the tribunal may direct.*** (Emphasis added)

It is also worth noting that section 125.1 of the OEB Act states that section 24(1)(a) of the SPPA applies, with necessary modifications, to all notices given by the Board whether or not a hearing is held.

Brown and Evans (Judicial Review of Administrative Action in Canada) say that when giving notice by public advertisement under section 24 of the SPPA, the tribunal must "select means that are appropriate to inform those who are entitled to be heard by choosing a newspaper that they are likely to read." McCaulay and Sprague add that "notices in the newspapers may be appropriate where the numbers of participants are uncertain or too large and unwieldy to make individual formal notice practical or possible."

Board staff acknowledges that a consultation letter issued by the Board on December 11, 2014 indicated that no evidence had been yet filed to change the pole attachment rate, despite the evidence included in THESL's application. However, in Board staff's view this is not relevant to the issue of adequate notice. The notice of Toronto Hydro's application was issued in August 2014 several months before the consultation letter was issued.

For the reasons set out above Board staff submits that appropriate notice was given. Board staff also supports allowing Rogers to participate in this proceeding by granting to Rogers late intervenor status.

Yours truly,

Maureen Helt
Senior Legal Counsel

cc: Parties to EB-2014-0116 proceeding