



EB-2014-0116

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015 and for each following year effective January 1 through to December 31, 2019.

DECISION and PROCEDURAL ORDER NO. 7
February 23, 2015

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a Custom Incentive Rate (“CIR”) application (the “Application”) with the Ontario Energy Board (the OEB) on July 31, 2014 under section 78 of the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2015 and each year until December 31, 2019. Commencing in 2016, rates will be effective January 1.

On February 9, 2015, the Rogers Communications Partnership (Rogers) 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) filed a letter with the OEB stating that Rogers and the other carriers have wireline communications attachments on poles of Toronto Hydro for which the annual rate for these attachments is currently \$22.35 per pole. Rogers stated that it and the other carriers had recently become aware that the Application contained a proposed increase in this rate to \$92.53 per pole.

Rogers and the other carriers argued that Toronto Hydro had failed to provide adequate notice of this increase to its wireline attachment customers. Rogers and the other carriers noted that most of the evidentiary steps in respect of the Application had been completed with only the oral hearing remaining and scheduled to begin February 17, 2015.

Rogers and the other carriers accordingly requested that the OEB strike out Toronto Hydro's request in the Application for an increase in its wireline 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, deny Toronto Hydro's request in the Application for an increase in its wireline attachment rate. Rogers and the other carriers argued that such a determination would not prejudice Toronto Hydro's ability to request by separate application an increase in the wireline attachment rate or to seek an increase in this rate in the context of the OEB's review of Specific Service Charges during the 2015/2016 fiscal year. On February 12, 2015, TELUS Communications Company (TELUS) filed a letter on behalf of itself and its affiliates supporting the position of Rogers and the other carriers.

On February 10, 2015, Toronto Hydro filed a letter with the OEB in response to the letter from Rogers and the other carriers which argued that there was no merit to any of the requests made by Rogers and the other carriers and that they should be denied by the OEB as adequate notice of the Application was provided to Rogers and the other carriers. However, Toronto Hydro stated that it did not oppose the participation of Rogers and the other carriers in the hearing of the Application for the purpose of testing Toronto Hydro's evidence through cross-examination or to file argument and would consent to late intervenor status being granted to Rogers and the other carriers.

On February 12, 2015, OEB staff filed a letter which took a similar position to that of Toronto Hydro arguing that adequate notice of the Application had been provided and supporting the granting of late intervenor status to Rogers and the other carriers.

On February 17, 2015, the Board heard submissions from Rogers, Toronto Hydro, SEC and BOMA.

Decision on Adequacy of Notice

The OEB has determined that the Notice of the Application which was provided was not adequate for the following reasons. The change in the wireline attachment represents a significant increase. The Notice of Application does not contain a reference to this rate increase. Toronto Hydro stated that Rogers was made aware that an increase would occur and cites a discussion between the CEOs of Rogers and Toronto Hydro as proof that notice was given. The panel does not accept that a conversation of this sort represents notice. Furthermore, no evidence in respect of the specifics of the conversation was filed. The Board also rejects Board staff's submission suggesting that notice to Rogers and the other carriers would have been onerous. The Board disagrees with this suggestion. The Board is not of the view that every element of a rate application must appear in the Notice of Application in order that proper notice be achieved. However, this case is distinguishable. The amount of increase is so significant to the customer that it should have been contained in the Notice of Application. At a minimum, Toronto Hydro should have advised its customers through the customer engagement process that it was proposing to make a significant change to its wireline attachment rate.

The OEB will not however grant the relief requested by Rogers and the other carriers but will establish additional procedural steps in the Application to allow for the concerns of Rogers and the other carriers to be heard. The OEB accepts the argument by Rogers that it will experience a significant impact as a result of the proposed increase in the wireline attachment rate by Toronto Hydro. However, the issue is a discrete one; the costs Toronto Hydro incurs to supply wireline attachments.

The panel does not accept that it will take Rogers and the other carriers months to prepare to participate in the proceeding. The issue of costs related to wireline attachments is not new. Therefore, should Rogers and the other carriers choose to ask interrogatories or file evidence, they should be able to do so within the time allotted in the schedule that has been established by the OEB.

The OEB will provide for certain steps which will include the filing of interrogatories on Toronto Hydro's evidence related to the wireline attachment rate, as well as allowing the late intervenors an opportunity to file evidence on this matter, if they wish to do so, and

interrogatories on any such evidence filed. A one-day oral hearing on this matter will be held on April 16, 2015.

The OEB accordingly grants late intervenor status to Rogers. Any other party wishing to make a late intervenor request, specifically related to the wireline attachment rate may do so by February 26, 2015, subject to the conditions outlined subsequently.

The OEB is of the view that the schedule outlined above will allow for meaningful participation by Rogers and the other carriers that may request late intervention status.

THESL's rate application is based on the fact that wireline attachment revenue, estimated to be \$6.7 million, will be a revenue offset and as such will impact the rates proposed in the application. Accordingly, the OEB will not delay its Decision on Toronto Hydro's rates nor will it parse out this issue and make it the subject of a separate proceeding. Therefore, the OEB requires, as a condition of granting late intervenor status to Rogers and the other carriers that they adhere to the schedule outlined in this Decision and Procedural Order. The OEB considers it necessary to make provision at this time for the following procedural steps.

The OEB ORDERS THAT:

1. Other carriers wishing to make requests for late intervenor status related to the wireline attachment rate must do so on or before **February 26, 2015**.
2. Intervenors and Board staff shall request any relevant information and documentation from Toronto Hydro that is in addition to the evidence already filed on the wireline attachment rate by written interrogatories filed with the Board and served on all parties on or before **March 5, 2015**.
3. Toronto Hydro shall file with the OEB complete written responses to all interrogatories and serve them on intervenors and OEB staff on or before **March 12, 2015**.
4. Intervenors that wish to file evidence shall do so, on or before **March 26, 2015**.

5. Parties and Board staff seeking information and material that is in addition to any evidence, and that is relevant to the hearing, shall request it by written interrogatories filed with the Board and delivered to all parties on or before **April 2, 2015**.
6. Responses by parties to interrogatories related to any intervenor evidence shall be filed with the Board and delivered to all parties on or before **April 13, 2015**.
7. An Oral Hearing on this matter will be held on **April 16, 2015** in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto.

All filings to the OEB must quote the file number, EB-2014-0116, and be made electronically through the OEB's web portal at www.pes.ontarioenergyboard.ca/eservice/, in searchable / unrestricted PDF format. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at Martin.Davies@ontarioenergyboard.ca and Board Counsel, Maureen Helt at Maureen.Helt@ontarioenergyboard.ca.

ADDRESS

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

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, February 23, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary