



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.

PROCEDURAL ORDER NO. 9

March 11, 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. 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.

Rogers and the other carriers argued that Toronto Hydro had failed to provide adequate notice of this increase to its wireline attachment customers and requested relief as outlined in their letters.

On February 23, 2015, the OEB issued Decision and Procedural Order No. 7, which determined that the Notice of the Application which was provided was not adequate but that the relief requested by Rogers and the other carriers would not be granted. The OEB further determined that it would establish additional procedural steps in the Application to allow for the concerns of Rogers and the other carriers to be heard.

The OEB accordingly granted late intervenor status to Rogers and stated that any other party wishing to make a late intervention request, specifically related to the wireline attachment rate could do so by February 26, 2015. A condition of late intervenor status being granted was that parties so approved adhere to the schedule outlined in Decision and Procedural Order No. 7. Specifically at page 3 the OEB stated that:

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.

On March 5, 2015, the OEB issued Procedural Order No. 8 in which it accepted late intervention requests from Cogeco Cable Inc. on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc. (Cogeco) and TELUS Communications Company and its affiliates (TELUS) as well as Allstream Inc. (Allstream).

On March 5, 2015, a Notice of Motion (the motion) was filed with the OEB by Rogers, Cogeco, Allstream, and TELUS (collectively the Carriers).

The motion requested that the OEB issue an order striking out the request by Toronto Hydro in the Application for an increase in its annual wireline pole attachment rate, on the basis that the OEB lacks jurisdiction under section 78 of the *Ontario Energy Board Act, 1998* to hear Toronto Hydro's request.

In the alternative, the Carriers asked that a procedural order establishing a revised schedule for the hearing of Toronto Hydro's requested wireline pole attachment rate

increase be established to replace the one set out in Decision and Procedural Order No. 7. The Carriers took the position that the highly compressed nature of the aforementioned schedule is highly prejudicial to them. Further the Carriers noted in the affidavits filed with the motion that they are not available for an oral hearing of the motion any time before March 23rd. The OEB is not available for hearing an oral motion during the week of March 23rd, 2015. As such, the OEB has determined that it will establish a written process to consider the motion. The Carriers shall file any additional motion materials by March 25, 2015. Any party that wishes to respond shall do so by March 30, 2015. The Carriers may serve and file a reply by April 6, 2015.

The OEB confirms that all dates set out in Procedural Order No. 8 remain in effect

The OEB considers it necessary to make provision at this time for the following procedural steps.

The OEB ORDERS THAT:

1. The Carriers shall file any additional motion materials by **March 25, 2015**.
2. Any party that wishes to respond shall do so by **March 30, 2015**.
3. The Carriers may serve and file a reply by **April 6, 2015**.

All filings to the OEB must quote the file number, EB-2014-0116, and be made electronically through the OEB's web portal at <https://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 <http://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

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DATED at Toronto, March 11, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary