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BY RESS and EMAIL

April 2, 2015
File No.: 270052.00020/17631

File: EB-2014-0116

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

Dear Ms. Walli:

**Re: File Number EB-2014-0116, Toronto Hydro-Electric System Limited
Application for 2015 Distribution Rate**

In accordance with Procedural Order No. 9, please find enclosed the reply of Rogers Communications Partnership; Cogeco Cable Inc. on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc.; Allstream Inc.; and TELUS Communications Company and its affiliates (the “Carriers”) in respect of the notice of motion filed March 5, 2014 by the Carriers.

Yours truly,

A handwritten signature in blue ink that reads "Leslie Milton".

Leslie J. Milton

cc: Applicant and Intervenors (by email)

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, in particular section 78 of that Act;

AND IN THE MATTER OF an Application by Toronto Hydro-System Electric Limited for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of May 1, 2015.

**REPLY SUBMISSION (CARRIERS' MOTION)
(April 2, 2015)**

1. This reply is submitted by Rogers Communications Partnership; Cogeco Cable Inc. on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc.; Allstream Inc.; and, TELUS Communications Company and its affiliates (collectively, the "Carriers") in response to the submissions received from Board Staff, Toronto Hydro-Electric System Limited ("THESL") and the School Energy Coalition ("SEC") in respect of the Motion filed by the Carriers on March 5, 2015 (the "Motion").
2. In the Motion, the Carriers have requested the Board to strike THESL's request for an increase in its wireline pole attachment rate on the grounds that the Board does not have jurisdiction to set this rate pursuant to an application brought under section 78 of the *Ontario Energy Board Act, 1998* (the "Act") or, in the alternative, to revise the schedule established by the Board for the hearing of this issue. The comments of OEB Staff, THESL and SEC on each of these requests are addressed below.

Jurisdiction of the Board to Set the Wireline Pole Attachment Rate in this Proceeding

3. As set out in the Motion, subsection 78(3) of the Act grants to the Board authority "to make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed".
4. Neither Board Staff nor THESL make any reference in their submissions to the wording of subsection 78(3). For its part, SEC maintains that the Board itself can "prescribe" other activities which are covered by this provision. Even if this were correct – which the Carriers deny – the Board has not identified the wireline pole attachment rate as a "prescribed" rate pursuant to subsection 78(3) of the Act.

5. Board Staff notes that the RP-2003-0234 and EB-2011-0120 proceedings were brought pursuant to section 74. The Carriers agree that these decisions were made under section 74 of the Act. This is consistent with the Carriers' position that the pole attachment rate should be addressed pursuant to that provision.
6. Board Staff and THESL advert to the fact that revenues from the third party wireline pole attachment rate are an offset to the revenue requirement for electricity distribution rates. The Carriers do not dispute this, but it does not alter the plain wording of subsection 78(3). While the Board may consider other revenues for purposes of setting electricity rates pursuant to section 78, it does not follow that the Board has authority under this provision to actually set the rates for any services (or goods) sold by THESL that might generate these other revenues.
7. THESL also relies on the fact that its condition of licence relating to pole access by Canadian carriers and cable companies makes reference to its tariff and, as a result, no licence amendment is necessary to affect a change in the pole attachment rate. According to THESL, its pole attachment rate was included in its tariff as a result of RP-2003-0249. In fact, RP-2003-0249 amended the licence conditions of the electricity distributors to provide that Canadian carriers and cable companies "shall have access to the power poles of the electricity distributors at the rate of \$22.35 per pole." This licence condition made no reference to a tariff. Nor did EB-2011-120 alter the wording of the condition of licence established by RP-2003-0249. It is the Carriers' understanding that THESL's licence condition was only amended as a result of the settlement reached regarding its application for forbearance for wireless communications attachments. The Carriers are not aware of any discussion or assessment during that forbearance proceeding that might permit THESL to seek a rate increase by way of a section 78 application.
8. In any event, the Board's jurisdiction established by statute cannot be expanded simply by cross-referencing a condition of licence to a tariff that happens to include electricity rates approved by the Board. Similarly, the inclusion of the wireline pole attachment rate in THESL's tariff for regulated electricity services cannot alter the jurisdiction of the Board established by statute.
9. Accordingly, the Carriers submit that the responding submissions fail to address the jurisdictional issue. Simply stated, the Board does not have jurisdiction to address THESL's pole attachment rate under section 78 of the Act.
10. The Carriers do not believe it would be appropriate for the Board to remediate THESL's failure to properly file and serve its request by converting it to a section 74 application on the Board's own motion, simply because the Carriers - through their own digging - obtained notice of THESL's request before the conclusion of this proceeding. As discussed below, THESL has not identified any prejudice to it as a result of a requirement

to re-file the application or to participate in the broader forthcoming process on pole attachment rates identified by the Board in its Wireless Attachment Consultation. The Carriers' evidence is also that THESL's rate should decrease, not increase, and the change in the rate should be substantially less than what THESL has proposed.

Revised Schedule

11. Should the Board decline to dismiss THESL's request for an increase in its wireline pole attachment rate in this proceeding, the Carriers have requested that the schedule for consideration of the wireline pole attachment rate be extended as follows so as to provide the Carriers, THESL, the Board and Board Staff with time to address and narrow the evidentiary issues associated with the wireline pole attachment rate:
 - to extend the date for responding to the interrogatories due April 2 in respect of information that is relevant to the hearing;
 - to establish a deficiency process in respect of these interrogatory responses;
 - to permit the filing of additional intervenor evidence following the receipt of initial and any deficiency responses to the April 2 interrogatories prior to the date of the oral hearing; and,
 - to establish a new hearing date.
12. In accordance with the Board's direction, the Carriers have worked diligently to meet the current schedule for this proceeding, based on the available evidence and resources, all within an extremely restricted time period. In so doing, the Carriers have identified numerous gaps and inconsistencies in the evidence filed by THESL. The Carriers identified these issues by letter dated March 26, 2015 filed in respect of this Motion and are filing on April 2, 2015 interrogatories seeking information to address these gaps and inconsistencies, in accordance with the existing schedule.
13. The responding submissions to the Motion make no attempt to consider the detailed materials filed by the Carriers and the gaps and limitations that exist within the current record they have identified. Instead, THESL pretends not to understand the relevance of these materials to the Motion and complains that the Carriers failed to separately ask THESL to clarify its evidence. THESL also has the audacity to assert in its submission that the amount of THESL's proposed pole rate increase represents a subsidy from distribution ratepayers to telecommunications companies. Plainly, THESL has not read the Carriers' evidence. Not only does the current approved rate greatly exceed any incremental costs incurred by THESL to provide this service, but it provides a huge contribution to pole costs that THESL incurs in any event. THESL seeks a massive subsidy from telecommunications companies, not the reverse, and it has tried and continues to try to achieve this by shielding its request from scrutiny.

14. We note that THESL has not even attempted to argue that it will be prejudiced by a delay in considering this matter. Further, while the Board Staff identified principles to be considered in assessing the Carriers' request for alternative relief, they did not take a position on this issue. Finally, the SEC takes no position on the potential prejudice to the Carriers and does not identify any prejudice to THESL. Rather, it appears to be concerned that the increased revenues THESL seeks from wireline pole attachments are material and, as a matter of principle, all such material impacts should be addressed in a single proceeding. The Carriers' evidence is that the current record does not support a rate increase and, even if it does (which is denied), any impact on electricity rates can be addressed by making the current rate interim.
15. The gaps and inconsistencies in THESL's evidence filed to date are material. Moreover, determination of the pole attachment rate is a not simple formulaic matter requiring only cursory analysis. The rate is based on a number of costing inputs, which themselves are based on a wealth of raw data, assumptions on how this data should be incorporated in the rate and economic principles of allocation. All of these factors should be scrutinized.
16. The Board has previously determined that access to poles for the provision of wireline communications services is an essential service. It is in the public interest to ensure that the rates set for such access are just and reasonable, based on a robust and properly tested methodology and cost inputs. The Carriers submit that the modest revisions to the schedule they have requested are necessary to achieve this and will enhance (not prejudice) the efficacy and efficiency of the Board's process and ultimately the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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