



**EB-2015-0141**

**Motion to review and vary Decision EB-2013-0416/EB-2014-0247 as it relates to the Specific Charge for Cable and Telecom Companies Access to the Power Poles charged by Hydro One Networks Inc.**

**DECISION AND PROCEDURAL ORDER NO. 9  
May 4, 2016**

This Decision and Procedural Order is in response to the Notice of Motion dated April 22, 2016 in which the Carriers<sup>1</sup> ask the Ontario Energy Board (OEB) to order Hydro One Networks Inc. (Hydro One) to provide supplementary responses to the Carriers' second set of interrogatories dated April 15, 2016. It will also address two procedural requests made by the Carriers in their letter to the OEB of April 19, 2016, namely that this entire proceeding be adjourned until the appeal of the OEB's February 25, 2016 decision on the Hydro Ottawa pole attachment charge (EB-2015-0004) is heard and decided by the Divisional Court, and that if the OEB does not adjourn it, then it be heard orally rather than in writing.

**The Carriers' Motion for an Order Requiring Hydro One to Provide Supplementary Responses to Interrogatories**

In their April 22, 2016 Notice of Motion, the Carriers point to a number of alleged deficiencies in the responses provided by Hydro One to the Carriers' second set of interrogatories. They say these deficiencies must be addressed in order for the OEB to have a sufficient evidentiary record for the setting of the Pole Access Charge at a level that is just and reasonable. They ask that the motion be heard orally.

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<sup>1</sup> The Carriers are the eleven cable and telecommunications companies and associations that initiated this motion to review and vary Hydro One's Pole Access Charge.

The OEB will hear the motion orally on May 19, 2016. The motion will proceed as follows. First, the OEB will hear arguments from all parties on whether Hydro One should provide supplementary responses to the Carriers' second set of interrogatories. Then, if the OEB determines that supplementary responses are required, Hydro One shall immediately provide those supplementary responses by way of affirmed oral testimony. Accordingly, Hydro One is directed to have a witness or panel of witnesses attend at the motion hearing who will be able to speak to the matters at issue in the Carriers' second set of interrogatories.

Having the Hydro One witnesses on standby will allow the evidentiary record to be closed on the day of the motion. To be clear, in directing Hydro One to be prepared to provide supplementary responses, the OEB in no way means to imply that any supplementary responses will actually be required: that is a question that the OEB will decide on the day of the motion after hearing from the parties.

### **The Carriers' Request for an Adjournment**

The Carriers say in their April 19, 2016 letter that this proceeding should be adjourned until the appeal of the OEB's decision on Hydro Ottawa's pole attachment charge is heard and decided by the Divisional Court.<sup>2</sup>

While recognizing that the determination of the Hydro One Pole Access Charge raises similar issues as in the Hydro Ottawa case, the OEB is not prepared to grant an adjournment.

It has not been the OEB's policy or practice to adjourn rate applications whenever there is an appeal pending of a related or otherwise relevant OEB decision. Utilities and ratepayers deserve finality on rates: the OEB has held that "The Board considers certainty of rates paid at the time of system use to be a very important attribute of a fair and reasonable ratemaking scheme."<sup>3</sup>

The Pole Access Charge has been frozen at the interim level of \$22.35 for more than a year already.<sup>4</sup> As Hydro One notes in its April 20, 2016 reply to the Carriers' letter, the OEB decision that the Carriers have challenged established rates for 2015 to 2017, and

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<sup>2</sup> The four appellants include three of the Carriers in this proceeding: Rogers Communications Partnership, Quebecor Media Inc. and Allstream Inc.

<sup>3</sup> Oral Decision on City of Hamilton Motion in the Hydro One distribution rates application, September 16, 2014 (included as Appendix 2 to the final rates Decision issued on March 12, 2015) (EB-2013-0416/EB-2014-0247); cited with approval in the October 29, 2014 decision on a procedural motion in the Horizon Utilities Corporation Custom Incentive Rate application (EB-2014-0002).

<sup>4</sup> Decision on Draft Rate Order, April 17, 2015 (EB-2013-0416); Rate Order, April 23, 2015 (EB-2013-0416).

we are now nearly half-way through that rate period. In the OEB's view, it would not be in the public interest to postpone the final determination of the charge any longer, especially considering that it is not known how long it will take for the Divisional Court to hear and decide the appeal, or whether there might be a further appeal of the Divisional Court's decision.

### **The Carriers' Request for an Oral Hearing on the Merits of the Proceeding**

In Procedural Order No. 7, the OEB ordered that the proceeding continue by way of a written hearing. On March 18, 2016, two business days before the deadline for Hydro One to file its written argument-in-chief, the Carriers filed a Notice of Motion in which they asked for various relief including that the proceeding be heard orally instead of in writing. The OEB deferred deciding that aspect of the motion until after the next round of interrogatories, directing the Carriers to make brief written submissions if it was still of the view that an oral hearing was warranted, and providing the other parties with an opportunity to respond.<sup>5</sup> The Carriers did so in their April 19, 2016 letter to the OEB. The Carriers argue that an oral hearing is required to enable Hydro One's evidence to be tested and for any deficiencies and inconsistencies to be explored.

Hydro One and OEB Staff responded by arguing that a written hearing is sufficient, as the OEB already has enough evidence to make a decision on the Pole Access Charge. No other party filed a response to the Carriers.

In light of the OEB's directions above concerning the hearing of the Carriers' motion for supplementary responses to interrogatories, the OEB is of the view that by the end of the day of the motion (irrespective of whether the motion is granted or not), the OEB will have all the evidence it needs to make a decision on the Pole Access Charge. The only thing left would be argument, which the OEB would prefer to receive in writing.

In summary, the Carriers have not satisfied the OEB that an oral hearing on the merits is warranted. Further directions on the filing of written submissions will be provided at or following the oral hearing of the Carriers' motion for supplementary responses to interrogatories.

### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. The Carriers' motion for an order requiring Hydro One to provide supplementary responses to interrogatories will be heard on May 19, 2016, starting at 9:30 am, in the OEB hearing rooms at 2300 Yonge Street, 25th floor, Toronto, Ontario.

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<sup>5</sup> Decision and Procedural Order No. 8.

2. Hydro One shall have a witness or witness panel attend at the motion who will be able to speak to the matters at issue in the Carriers' second set of interrogatories, should the OEB determine after hearing the arguments of the parties that supplementary responses are required.
3. The Carriers' request for an adjournment of the proceeding until the Divisional Court has heard and decided the appeal of the Hydro Ottawa case is denied.
4. The Carriers' request for an oral hearing on the merits of the proceeding is denied.

All filings to the OEB must quote the file number, EB-2015-0141, be made in searchable/ unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. 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 motion, parties must include the Case Manager, Harold Thiessen at [harold.thiessen@ontarioenergyboard.ca](mailto:harold.thiessen@ontarioenergyboard.ca) and OEB Counsel, Ian Richler at [ian.richler@ontarioenergyboard.ca](mailto:ian.richler@ontarioenergyboard.ca).

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**DATED** at Toronto, May 4, 2016

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary