



BY EMAIL and RESS

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2300 Yonge Street
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November 1, 2017
Our File: EB20160085

Attn: Kirsten Walli, Board Secretary

Re: EB-2016-0085 – InnPower 2017 – SEC Comments re: Pole Attachment Rate

Dear Ms. Walli:

We are counsel to the School Energy Coalition (“SEC”). Pursuant to Procedural Order No. 6, these are SEC’s submissions on the following question: “[s]hould the OEB consider a change to InnPower’s pole attachment and microFIT charges in this proceeding?” As discussed further below, SEC submits the answer is ‘yes’.

The Board Should Consider Pole Attachment Rate Change

On May 11th 2017, InnPower Corporation (“InnPower”) filed an amended application with the Board for distribution rates effective July 1st 2017. Within the application’s pre-filed evidence, InnPower sought approval to increase the charges to both, microFIT and pole attachment customers. In Procedural Order No. 2, the Board made provisions for providing request notice on these affected customer segments. After interrogatories on these two specific issues had been filed, InnPower filed a letter with the Board withdrawing its request to increase these two charges. In Procedural Order No. 3, the Board once again ordered InnPower to provide notice to affected microFIT and pole attachment customers.

The evidence on the record demonstrates InnPower does not itself believe the current pole attachment rate is just and reasonable. It proposed to increase the rate from to \$22.35 to \$47.48¹ to reflect the change in costs from that set over a decade ago in the CCTA proceeding.² By filing evidence seeking an increase, InnPower has demonstrated that the existing rate is neither just nor reasonable and thus contrary to section 78 of the *Ontario Energy Board Act* (“*OEB Act*”). This is not a situation where there is no evidence that the current rate is not appropriate. InnPower’s original evidence or its comments in its August 28th letter demonstrate that the current rate does not reflect the actual costs to serve pole attachment customers.

Proper cost allocation between distribution and pole attachment ratepayers is important in determining just and reasonable rates. With InnPower seeking approval of a 31.5% rate increase³, it

¹ Ex.8, p.15

² *Decision and Order* (RP-2003-0249 - CCTA), March 7 2015 [See Appendix A]

³ See SEC Final Argument, p.3, Table 2

is entirely unfair for them to argue that those costs should not be fairly allocated between distribution and pole attachment customers.

SEC notes that this differs from the microFIT charge, where the withdrawal of the requested rate change is on the basis that the additional costs that it originally sought to allocate to microFIT customers were not properly part of the ongoing cost and thus should not make up part of the charge.

Reply To InnPower

In its August 28th letter to the Board responding to SEC's August 24th letter, InnPower made essentially three arguments on why the Board should allow it to withdraw its request and maintain the current pole attachment rate.. As detailed below, each should be rejected.

First, InnPower argues that only it has standing to request a change in the pole attachment rate since it is a condition of its license under section 74 of the *OEB Act*. The Board has rejected the argument that the pole attachment rate can only be changed by way of license amendment on three separate occasions. In each of the Toronto Hydro⁴, Motion to Review the Hydro One Decision⁵, and Hydro Ottawa⁶ proceedings, the Board ruled that it does have authority under section 78 of the *OEB Act* to see the pole attachment charge as they are incidental to the distribution of electricity.

Regardless, ratepayers have the same legal right to request a change in the pole attachment rate as an LDC under either section 78 or 74 of the *OEB Act*. Nothing in section 78 says only a LDC can request a change. Section 74 is even clearer. It provides that “[t]he Board may, on the application of any person, amend a license if it considers the amendment to be... [emphasis added].”⁷

While the CCTA decision does mention specifically that an LDC may come before the Board to change the pole attachment rate, it does not mean that it has the sole discretion to do so. It is simply an artifact of both, the audience of the main decision (LDCs who were having their licenses amended) and practicalities. The LDCs are the ones who, for practical reasons, bring applications for rate increases before the Board, not ratepayers. Further, due to the requirement to provide notice, the issue cannot arise organically within a rate hearing as other rate issues arise, since the Board requires notice to be provided specifically to pole attachment customers. This will usually only occur when an LDC seeks to change the rate in its application. In this proceeding, the pole attachment customers have now been given notice.

Second, InnPower has argued that it would be premature to set the pole attachment rate without the benefit of the outcome of the Pole Attachment Working Group. The Board rejected this same argument in the Hydro Ottawa proceeding.⁸ The outcome and timing of the entire consultation process, of which the working group is just one part, is unknown, and will not itself lead to a change in the pole attachment rates. Any outcome of the consultation process will only lead to a policy which will still require implementation in individual rate cases. This is a process that may take years.

⁴ *Decision and Procedural Order No. 10* (Toronto Hydro-Electric System Ltd - EB-2014-0115), April 29 2015, p.4 [See Appendix B]

⁵ *Decision and Order* (Rogers et al. - EB-2015-0141) June 30 2015, p.4 [See Appendix E]

⁶ *Decision and Rate Order on Pole Attachment Charge* (Hydro Ottawa Ltd. - EB-2015-0004), February 25 2016, p.4-5 [See Appendix D]

⁷ *Ontario Energy Board Act, 1998*, Section 74

⁸ *Decision and Rate Order on Pole Attachment Charge* (Hydro Ottawa Ltd. - EB-2015-0004), February 25 2016, p.4-5 [See Appendix D]:

The OEB rejects that argument that it cannot set just and reasonable rates when there is an ongoing Policy Review of the methodology for determining pole attachment rate charge.

Distribution ratepayers should not have to continue to subsidize pole attachment customers until the consultation is complete. With new pole attachment rates approved in the last two years for Hydro One, Toronto Hydro, and Hydro Ottawa, a majority of poles and pole attachers in the province are covered by a rate other than what was set in the CCTA proceeding.

Lastly, InnPower has taken the position that its own pre-filed evidence is wrong, and a new “rough, back of the envelope calculation” shows a much lower than originally requested new rate, and one whose impact would be below its materiality threshold. SEC notes that the use of the materiality threshold is for determining the scope of reviewing certain costs. The actual underlying costs are not at issue in the context of setting the pole attachment.⁹ Here, InnPower will recover the full costs from ratepayers. The issue is the proper allocation of these costs as between distribution and pole attachment customers.

More importantly, SEC has no way to test the veracity of these comments without interrogatories. In fact, a simple review of the pre-filed evidence revealed that InnPower had incorrectly applied the CCTA decision in a way that resulted in a lower rate than the approved methodology would suggest.¹⁰ As just one example, InnPower has used a capital carrying cost of 3% when the evidence shows that its actual cost (its weighted average cost of capital) in 2017 is 5.58%.¹¹ This amount would also need to be grossed for taxes as required by the CCTA decision.¹² SEC’s interrogatories on the issue were attempting to ensure the correct inputs to the approved CCTA methodology.¹³

Summary

The evidence is clear that the current pole attachment rate is unjust and unreasonable contrary to section 78 of the *Ontario Energy Board Act*. SEC submits the Board should consider adjusting the pole attachment rate to ensure that distribution ratepayers and pole attachment ratepayers are each paying their fair share. While the magnitude of the cross-subsidy is not clear at this point, requiring InnPower to respond to interrogatories that have already been posed by parties will allow the Board to set the appropriate rate.

Shepherd Rubenstein P.C.

Original signed by

Mark Rubenstein

cc: Jay Shepherd, SR (by email)
Wayne McNally, SEC (by email)
Interested parties (by email)

⁹ The Board has confirmed that under the CCTA decision, the Board is to use historical not test year costs to set the pole attachment rate. See *Decision and Order* (EB-2015-0141 - Rogers et al), August 4 2016, p.14 [See Appendix E]

¹⁰ *Decision and Order* (CCTA - RP-2003-0249), March 7, 2005 [See Appendix A]

¹¹ See Appendix 2-AO

¹² *Decision and Order* (CCTA - RP-2003-0249), March 7, 2005, Appendix 2 [See Appendix A]

¹³ SEC Interrogatories on Specific Service Charges, June 13 2017

A



RP-2003-0249

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

AND IN THE MATTER OF an Application pursuant to section 74 of the *Ontario Energy Board Act, 1998* by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors

BEFORE: Gordon E. Kaiser
Vice Chair and Presiding Member

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION AND ORDER

The Applicant, Canadian Cable Television Association ("CCTA") seeks access to the power poles of the regulated electricity distribution utilities in Ontario for the purpose of supporting cable television transmission lines. Specifically, the CCTA is seeking an Order under section 74(1) of the *Ontario Energy Board Act* which would amend the licences of these utilities in a fashion that would specify the uniform terms of access including a province-wide uniform rate or pole charge for such access.

In the past, the CCTA members have rented space on the utilities' poles under private contract. That contract came to an end in 1996. Since then, the parties have been unable to reach further agreement with respect to rates.

Background

In early 1997, the CCTA applied to the Canadian Radio and Telecommunications Commission ("CRTC") to set a charge for access by cable companies to the poles of the Ontario electricity distributors. After a lengthy proceeding, the CRTC set an annual pole charge of \$15.89.¹

The Ontario Municipal Electric Association ("MEA") appealed that decision to the Federal Court of Appeal which held that the CRTC did not have statutory authority under the Telecommunications Act to regulate access by cable operators and telecommunication carriers to power poles.²

On further appeal by the CCTA the Supreme Court of Canada upheld the Federal Court of Appeal decision.³ Given the Court's decision that the CRTC lacked jurisdiction, the CCTA filed an application with this Board on December 16, 2003 on behalf of the twenty-three cable companies that operate in Ontario. None of the parties questioned the jurisdiction of this Board.

The issues before this Board in this proceeding are as follows :

1. Is it necessary that this Board set access charges?
2. Which parties should have access?
3. What is the appropriate methodology?
4. How many attachers should be assumed in calculating the rate?
5. Should there be a province-wide rate?
6. What costs should be used in calculating the rate?
7. Should new licence conditions impact existing contracts?

The Need to Regulate Access Charges

¹ *Part VII Application - Access to supporting structures of municipal power utilities - CCTA v. MEA et al - Final Decision*, Telecom Decision CRTC 99-13, 28 September 1999. [hereinafter "Telecom Decision CRTC 99-13"]

² *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2001] 4 F.C. 237.

³ *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28.

The CCTA Application is opposed by the Electricity Distribution Association (“EDA”) and the Canadian Electricity Association (“CEA”). The EDA represents virtually all licensed electricity distributors in this province (sometimes referred to as LDCs) while the CEA is a national association representing electricity distributors, generators and transmitters. The position of these two parties is supported by Hydro One Networks Inc., Hydro One Brampton Networks Inc., and Hydro One Remote Communities Inc.

The position of the EDA *et al* is that regulatory intervention by this Board is not necessary. The argument largely is that the Applicant has not demonstrated that there has been a systematic abuse of monopoly power and absent that showing, the Board should allow the parties to continue to negotiate.

There has been some evidence on both sides with respect to abuse. In the end the CCTA says that the electricity distributors do have monopoly power and the fact that the parties have been unable to come to an agreement for over a decade demonstrates the exercise of that monopoly power whether this results in abuse or not.

The Board agrees. A showing of abuse is not necessary to justify the intervention of this Board in this matter. The fact is the parties have been unable to reach an agreement in over a decade. This degree of uncertainty is not in the public interest.

The Board agrees that power poles are essential facilities. It is a well established principle of regulatory law that where a party controls essential facilities, it is important that non-discriminatory access be granted to other parties. Not only must rates be just and reasonable, there must be no preference in favour of the holder of the essential facilities. Duplication of poles is neither viable nor in the public interest.

The Board concludes that it should set access charges.

The EDA *et al* further submits that if the Board is going to set rates it should set a range of rates based on its proposed methodology as opposed to a specific rate. The CCTA opposes this. The CCTA argument is that a range of rates would simply lead to continued delay, that monopoly power would continue to be exerted and in fact, the upper range would become the rate. In another words, the bargaining power of the cable companies would be as deficient with a range of rates as it is at present. The Board accepts this view. There is no rationale for a range of rates in the current circumstances.

Who should have access?

On this issue, the parties are in agreement. In the Settlement Agreement of October 19, 2004, all parties agreed that if the Board does set access conditions, these conditions should apply to access to the communications space on the LDC poles by all Canadian Carriers as defined in the Telecommunications Act and cable companies. The only exception is that these conditions would not apply to the current joint use agreements between telephone companies and electricity companies that grant reciprocal access to each others poles.

This Board has accepted the settlement agreement in this regard. In addition, the Board has heard submissions to the effect that the LDCs agree that their own telecommunication affiliates would access poles on the same conditions as other users of the communications space. The LDCs also confirmed that all users of the communications space should pay the same charge.⁵

This is an important clarification. This market is changing rapidly and industries are converging. Cable companies are now providing the telecommunication services just as the electricity distributors enter this industry. The fact that the two groups that have been warring over the past decade are fast becoming competitors is an additional reason for the Board to intervene and establish clear guidelines. From this Board's perspective, it is equally important that costs be properly allocated and that the electricity distributor (and ultimately, the electricity ratepayer) receives its fair share of revenue.

What is the appropriate methodology?

There are two elements to the proposed rate. The first is the incremental or direct costs incurred by electricity distributors that results directly from the presence of the cable equipment. Second, there are common or indirect costs which are caused by both parties. The parties agree that the direct or incremental costs should be borne by the cable companies.

The dispute relates to what share of the common cost each parties should pay. The cable companies say the portion of the fixed or common cost they should bear should be based on the cable companies "proportionate use" of the usable space on the pole. Electricity distributors claim that the portion of the common cost each of the parties bear should be equal. In other words, the common cost should be divided equally among attachers on a "per capita" basis.

⁵ Tr. Vol. 2 at paras. 800 and 804.

Both parties called experts. The cable companies called Donald A. Ford while the electricity distributors called Dr. Bridger Mitchell. Reply evidence for the CCTA was presented by Patricia Kravtin and Paul Glist. All witnesses were qualified as experts.

The CCTA Application seeks a pole attachment rate of \$15.65, a similar amount to that decided by the CRTC. The rates proposed by the EDA are substantially higher.

The principal argument advanced by the cable companies is that proportionate use is the methodology adopted by the CRTC and it has also been followed elsewhere in Canada and the United States. They point out that there have been numerous reviews of this rate methodology and the methodology has never been set aside.⁶

The response of the electricity distributors is that these rates are unduly low and are driven by considerations of telecommunication policy. In particular, they were designed to foster competition in that sector. The witnesses, however, were unable to point to any particular articulation of that policy goal as the justification for the rate levels at least in the Canadian context.

In Canada, the two decisions that follow the CRTC decision have in fact been divided on this issue. The Alberta Energy Utility Board (“AEUB”) established a pole attachment rate of \$18.34 in 2000 using the per capita approach.⁷ The Nova Scotia Utility and Review Board (“NSURB”) set a rate of \$14.15 in 2002 following the CRTC approach.⁸ The Nova Scotia Board did point out however, they had not conducted any cost allocation studies on their own.

An additional argument to support the lower rate advanced by the cable companies is that they are only tenants while the electricity distributors own the poles. They argue that pole ownership confers a benefit.

⁶ *FCC v Florida Power Corp.* 480 US 245, (1987); *In the Matter of Alabama Cable Telecom Association v Alabama Power Corp.*; 16 FCC 12, 12, 209 (2001)

⁷ *TransAlta Utilities Corporation*, Decision 2000-86 (Alberta Energy and Utilities Board), December 27, 2000 online: <<http://www.eub.gov.ab.ca/bbs/documents/decisions/2000/2000-86.pdf>>.

⁸ *In the Matter of the Public Utilities Act and In the Matter of an Application by Nova Scotia Power Incorporated for Approval of an Increase in its Pole Attachment Charge*, Decision 2002 (Nova Scotia Utility and Review Board) NSUARB-1, January 24, 2004.

The electricity distributors deny this, claiming that ownership has costs; they have to install poles whether they have an attacher or not and may face stranded assets. In the end, the Board is not persuaded that the ownership of the poles should effect the level of rates. The Board agrees with the electricity distributors that the impact of ownership is neutral.

The CEA argues that electricity distributors should be allowed to raise the rates charged to the cable companies because cable companies are now generating “massive new sources of revenue” from the use of electricity distribution plant. In particular, they point out that revenues from high speed internet service have increased from \$0 in 1995 to over \$900 million annually by 2003. The CEA requested that the Board infer that a large portion of these revenues are from Ontario cable operations. The Board notes that there is very little evidence on this issue. Moreover, the Board believes that the methodology used to determine rates should be based on cost recovery, not some form of revenue sharing.

Another rationale advanced by the cable companies is that it makes no sense to have different methodologies for setting rates on power poles compared to telephone poles. The argument is that since the CRTC methodology is used to price access to telephone poles, the same methodology should be followed in pricing access to power poles. The Board is not convinced. This Board may have a different policy rationale than the CRTC particularly in terms of the electricity ratepayer and the serving utility. In any event, it is worth noting that the rental charge paid by the cable companies for access to telephone poles is \$9.60 per pole. This is certainly not the rate being advanced by the cable companies in this proceeding.

The most persuasive argument for equal sharing of the common cost is the practice that appears to take place when parties are in position of equal bargaining power. The LDCs point to the reciprocal agreements between the telephone companies and the power companies that have existed for a number of years. Under those agreements, each of the regulated utilities has access to the other's poles. They essentially split the common cost equally.

The cable companies question this proposition. They argue that these are regulated entities that have a bias to invest more than optional amounts of capital based on the Averch Johnson principle.⁹ The Board notes however, that both sides face the same incentive in terms of investing capital in rate base assets. It can reasonably be assumed that the telephone companies and the power companies are in an equal bargaining position and the resulting solution is a meaningful guideline.

⁹ Harvey Averch and Leland L. Johnson, “Behaviour of the Firm under Regulatory Constraint,” *Amer. Econ. Rev.* (December 1962) LII: 1052-1069.

The CCTA responds that its members are not in an equal bargaining position. In the Board's view, that is not relevant. The free and open negotiation between the telephone and power companies is offered as a proxy for a competitive market solution. No party holds an advantage over the other or is in a position to exercise monopoly power.

For many years, electricity and telephone companies in at least four provinces have openly negotiated reciprocal access agreements to telephone and power poles. In all cases, these agreements appear to reflect equal allocation of common costs. This suggests that the per capita or equal sharing methodology is the appropriate one. Moreover, as more and more parties attach to these poles, the notion that there is a discrete portion of space to be allocated to each becomes more problematic.

The Board recognizes that a case can be made for both the proportionate use and the equal sharing methodology. On balance, however, the Board prefers the equal sharing theory for the reasons stated.

How many attachers should be assumed?

When the CCTA filed its Application, it assumed two attachers. This position was amended in Final Argument when 2.5 attachers was proposed. The Reply Argument of the CCTA appears to revert back to two attachers with reference to the CRTC rate of \$15.65.

Two attachers were assumed in the CRTC decision. The industry however, has changed dramatically over the last five years. There is evidence that in one municipality there are as many as seven different parties seeking attachment. There is also evidence that poles are used by municipalities for the purpose of street lighting and traffic lights.

In addition, an increasing number of telecommunication providers are entering the market to compete with incumbent telephone company providing voice and data services. A number intervened in this proceeding and by virtue of the settlement agreement will have access to the poles in question. Finally, in a number of major markets the Ontario electricity distributors have established their own affiliates to offer telecommunication services. The LDCs have agreed that these affiliates should pay the same rates as the other parties attaching to the power poles. There is also evidence that Hydro One which accounts for a third of the poles in the province has more than two attachers.

The Board considers 2.5 attachers to be reasonable. Things have changed since the days of the CRTC decision. If anything, there will be more than 2.5 attachers in the future.

Should there be a province-wide rate?

The cable companies argued for a standard province-wide rate. There is precedent for this in terms of the CRTC decision as well as the Nova Scotia and Manitoba decisions. A province-wide rate has the advantage that it is simple to administer. This is certainly one of the goals the Board hopes to achieve in this decision. Moreover, the cost data at the individual LDC level is incomplete. Calculating these costs for ninety different utilities will be a challenge for all concerned.

This is not to say there should not be relief available for electricity distributors who feel the province-wide rate is not appropriate to their circumstances. Any LDC that believes that the province-wide rate is not appropriate can bring an application to have the rates modified based on its own costing. Absent any application, the province-wide rate will apply as a condition of licence, as of the date of the Order.

What costs should be used to calculate the rate?

The annual pole rental charge of \$15.65 proposed by the CCTA is a function of both the direct and the indirect cost as set out in Appendix 1. The direct costs consist of the administration cost and the loss of productivity. The total direct cost estimate of \$2.61 is based on the CRTC decision.

The EDA claims that there is no reason why the Board should use a \$1.92 estimate of loss of productivity as advanced by the CCTA. The EDA points to different data from five different LDCs which range from \$0.67 per pole in the case of Hydro One Networks to \$5 per pole in the case of Guelph Hydro. References are also made to the evidence of Manitoba Hydro filed by the CEA which calculated a loss of productivity of \$6.39 per joint use pole.

There is no question that there is a wide variation in these costs and estimates. The EDA recommends that if this Board determines that it should use the CCTA model to arrive at a uniform annual pole charge, the Board should use the highest Ontario data available to set that uniform rate. That rate would be \$32.81 using the Toronto Hydro data and the productivity loss estimate for Guelph Hydro. The Board disagrees and concludes that province-wide representative cost data are more meaningful in the circumstances. For the purposes of calculating the rate in this proceeding, the Board has adopted the direct costs set out in the CCTA application and reproduced in Appendix 1.

Next there are the indirect costs which consist of the net embedded cost per pole plus depreciation, maintenance expense and carrying costs. Again a wide range of costs were proposed by the EDA depending on the particular utility chosen. The Board has concluded that the depreciation, maintenance and carrying costs proposed by the CCTA are representative as set out in Appendix 1.

The CCTA's proposed rate is based on an average net embedded pole cost of \$478. This embedded cost is derived from material filed by Milton Hydro in the proceeding leading to the Telecom Decision of the CRTC 99-13 and is supported by the evidence of Hamilton Hydro in this proceeding that the embedded pole cost is \$477.47.

EDA argues that local costs vary significantly and if the Board considers it appropriate to set a uniform rate, the rate should reflect the cost of the utilities having the highest embedded pole cost. The EDA then submits that the parties should be free to apply to the Board for a lower rate where they can demonstrate lower costs.

While the Board recognizes local costs vary, there are advantages to having a province-wide rate. That rate should to a maximum extent possible, be based upon representative cost. The Board accepts the CCTA's estimated average net embedded pole cost of \$478.

The rate proposed by the CCTA assumed a pre-tax weighted average cost of capital of 9.5%. In response to an undertaking, the CCTA provided a revised weighted average cost of capital based upon a debt equity ratio of 50/50, an interest rate of 7.25% and a return on equity of 9.88% as provided for in the Board's current Rate Handbook. This cost of capital applies to distributors with a rate base of less than \$100 million. Given that a large majority of distributors in the province have less than this amount, the Board believes that this new weighted average of capital is an appropriate one to use in calculating a province-wide rate.

Calculation of the rate

To calculate the rate, it is necessary to define the number of attachers as well as the embedded pole costs discussed above. It is also important to define the spacing on a typical pole.

The CCTA proposal assumes a typical pole height of 40 feet with two feet of communications space, 3.25 feet of separation space and 11.50 feet of power space. Mr. Wiebe, on behalf of CEA proposed slightly different space allocations. The CCTA argues that the space allocations adopted by Mr. Ford are virtually identical to those put forward by the Municipal Electric Association in the CRTC proceeding. In addition, the EDA put forward a model agreement developed co-

operatively by a number of LDCs (the Mearie Group) where the assumptions regarding space allocation for a typical 40 foot pole were identical to those used by Mr. Ford. The Board finds that the CCTA estimates are acceptable.

As stated, the Board believes that a single province-wide rate is in the public interest. As indicated, the Board believes its more realistic to use 2.5 as the number of attachers. The Board agrees with the EDA and CEA that the common costs should be shared equally among all attachers. On these principles and the cost data described above, the annual pole charge is \$22.35 per attacher as set out in Appendix 2.

Should there be a standard form of agreement?

Under the Settlement Agreement, the parties agree to negotiate the terms and conditions once the Board has made its determination as to the rate. The parties agree to report back to the Board in four months as to the progress of these negotiations. The Board accepts this approach.

Impact on existing contracts

In the Settlement Agreement all parties with one exception, agreed that any new rate set by the Board should not apply to existing contracts. The rate would only apply when the current term of existing contracts expired. Where no contract exists, the licence conditions would apply immediately.

The acceptance of this position appears to be driven by the fact that most existing contracts provide for retroactive rate adjustment in the event this Board determines a rate.

The CCTA states that it would not object to a Board ruling that existing contracts without a retroactivity clause are immediately subject to the Board's decision regarding new licence conditions. They claim however, that few contracts do not have retroactivity provisions.

MTS objects to the Settlement Agreement and submits that any pole access rates set by the Board should be applied to all existing contracts not just those with retroactivity clauses. The Board will provide that the new rates and conditions resulting from this decision will apply immediately to those agreements without a retroactivity clause. Those are apparently few in number. This should provide immediate relief to those who are unable to benefit from a retroactivity provision.

THE BOARD ORDERS THAT:

The licence conditions of the electricity distributors licenced by this Board shall as of the date of this Order be amended to provide that all Canadian carriers as defined by the Telecommunications Act and all cable companies that operate in the Province of Ontario shall have access to the power poles of the electricity distributors at the rate of \$22.35 per pole per year.

Dated at Toronto, March 7, 2005.

Gordon E. Kaiser
Vice Chair and Presiding Member

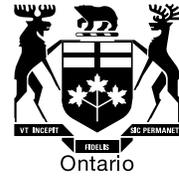
Appendix 1: CCTA Recommended Charge (2 Attachers)

	<i>Price Component - Per Pole</i>	<i>\$</i>	<i>Explanation</i>
	DIRECT COST		
A	Administration Costs	\$0.69	CRTC estimate 1999 \$0.62, plus inflation
B	Loss in Productivity	\$1.92	MEA estimate 1991 = \$3.08, plus inflation, and divided between two pole attachers
C	Total Direct Costs	\$2.61	A + B
	INDIRECT COSTS		
D	Net Embedded Cost per pole	\$478.00	Milton Hydro 1995 = \$478
E	Depreciation Expense	\$31.11	Milton Hydro 1995 = \$31.11
F	Pole Maintenance Expense	\$7.61	Milton Hydro 1995 = \$6.47, plus inflation
G	Capital Carrying Cost	\$45.41	Pre-tax weighted average cost of capital 9.5% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	\$84.13	E+F+G
I	Allocation Factor	15.5%	CRTC allocation
J	Indirect Costs Allocated	\$13.04	H x I
K	Annual Pole Rental Charge	\$15.65	C + J

Appendix 2: 2.5 Attachers - Shared Costs Evenly Spread Amongst All Users

	<i>Price Component - Per Pole</i>	<i>\$</i>	<i>Explanation</i>
	DIRECT COST		
A	Administration Costs	\$0.69	CRTC estimate 1999 \$0.62, plus inflation
B	Loss in Productivity	\$1.23	MEA estimate 1991 = \$3.08, plus inflation, and divided between 2.5 pole attachers
C	Total Direct Costs	\$1.92	A + B
	INDIRECT COST		
D	Net Embedded Cost per pole	\$478.00	Milton Hydro 1995 = \$478
E	Depreciation Expense	\$31.11	Milton Hydro 1995 = \$31.11
F	Pole Maintenance Expense	\$7.61	Milton Hydro 1995 = \$6.47, plus inflation
G	Capital Carrying Cost	\$54.59	Pre-tax weighted average cost of capital 11.42% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	\$93.31	E+F+G
I	Allocation Factor	21.9%	Allocation based on 2.5 attachers
J	Indirect Costs Allocated	\$20.43	H x I
K	Annual Pole Rental Charge	\$22.35	C + J

B



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. 10

April 29, 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 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.

Notice of Motion

On March 5, 2015, a Notice of Motion (the motion) was filed with the OEB by 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. and TELUS Communications Company and its affiliates (collectively the Carriers).

The motion requests 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 ask 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 claim that the schedule is highly prejudicial to them.

Decision on the Motion

This Decision addresses the following issues raised in the motion:

1. Jurisdiction of the Board to Set the Wireline Pole Attachment Rate in this Proceeding
 - a. Does the OEB have jurisdiction under section 78 of the Act to determine wireline pole attachment rates?
 - b. If the OEB does not have jurisdiction under section 78, does the OEB have to issue new notice if it proceeds under section 74 of the Act

2. Revised Schedule

Should the OEB revise the current schedule for this proceeding?

1. **Jurisdiction of the Board to Set the Wireline Pole Attachment Rate in this Proceeding**
 - a. ***Does the OEB have jurisdiction under section 78 of the Act to determine wireline pole attachment rates?***

Subsection 78(3) of the Act grants the OEB the 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".

The Carriers allege that the OEB does not have jurisdiction, pursuant to its rate-setting authority to set wireline attachment rates. Their view is that while 78(3) refers to setting just and reasonable rates for transmission and distribution of electricity, and “such other activity as may be prescribed”, pole attachments are not a prescribed activity.

The Carriers submit that the OEB’s jurisdiction to regulate wireline pole attachment rates is provided by section 74 of the Act, which gives the OEB a broad power to amend licences in the public interest. OEB staff submits that section 74 of the Act deals with licence amendments:

Amendment of licence

74. (1) The OEB may, on the application of any person, amend a licence if it considers the amendment to be,

- (a) necessary to implement a directive issued under this Act; or
- (b) in the public interest, having regard to the objectives of the OEB and the purposes of the *Electricity Act*, 1998.

The Carriers argue that a new application is required if the rate is to be changed by way of a license amendment. Toronto Hydro, SEC and OEB staff disagree and submit that the Board, in this same proceeding, on the same evidence, can adjust Toronto Hydro’s rates pursuant to section 74(1)(b).

Toronto Hydro submits that a pole attachment rate is an offset to Toronto Hydro’s revenue requirement and has a direct impact on the distribution rates being established under section 78 in this proceeding. The amount of the proposed increase represents the amount by which distribution ratepayers would, in the absence of the proposed increase, effectively be subsidizing the telecommunications companies which have wireline attachments on Toronto Hydro’s poles.

Toronto Hydro, SEC and OEB staff submit that the OEB has explicitly prescribed the activity of setting wireline attachment rates in Toronto Hydro’s license:

22.1 The Licensee shall provide access to its distribution poles to all Canadian carriers, as defined by the Telecommunications Act, and to all cable companies that operate in the Province of Ontario. For each attachment, with the exception of wireless attachments, the Licensee shall charge the rate approved by the Board and included in the Licensee’s tariff.

The OEB has explicitly prescribed the activity of setting wireline attachment rates in Toronto Hydro's license. The OEB agrees with OEB staff that pole attachment rates are incidental to the distribution of electricity as the poles are an essential facility properly considered in under section 78 of the Act. The scope of the OEB's jurisdiction is always subject to its own assessment in light of specific challenges. The OEB finds that the setting of wireline of pole attachment rates clearly falls under section 78 of the Act.

b. If the OEB does not have jurisdiction under section 78, does the OEB have to issue new notice if it proceeds under section 74 of the Act

The Carriers argue that a new application is required if the rate is to be changed by way of a license amendment. Toronto Hydro, SEC and OEB staff disagree and submit that the Board, in this same proceeding, on the same evidence, can adjust Toronto Hydro's rates pursuant to section 74(1)(b).

The OEB finds that while the legal tests are different under sections 74 and 78, namely "just and reasonable" versus "in the public interest", when regard is given to the objectives of the OEB and the purposes of the *Electricity Act, 1998*, for the purpose of ratesetting they are essentially equivalent. It would not be in the public's interest to set a rate that is not just and reasonable, so any differences are a matter of form rather than substance. In the alternative, if the wireline attachment rate properly falls under section 74 of the Act, the OEB finds that no new notice would need to be issued. All of the parties wishing to participate in the proceeding have been notified in the current proceeding and as such the requirements of procedural fairness have been met.

2. Revised Schedule

a. Should the OEB revise the current schedule for this proceeding?

The Carriers argue that they will suffer prejudice by the schedule established by the OEB in Procedural Order No. 7 as it does not provide them with sufficient time to gather the evidence necessary to properly test Toronto Hydro's request for an increase in the wireline pole attachment rate.

The OEB notes that since the time that the motion was filed the OEB has issued Procedural Order No. 9 which adjourned the previously set date for the oral hearing. The OEB therefore finds that the request for a revised schedule is now moot.

The OEB notes that there is one additional matter to consider and that is the request made by Toronto Hydro that the current wireline pole attachment rate be declared interim with Toronto Hydro being permitted to recover from the attachers the difference, if any, between the current rate and the approved rate for the duration of the interim period.

On April 28, 2015, the OEB declared Toronto Hydro's rates interim as of May 1, 2015 including the charge for wireline pole attachments. Toronto Hydro is directed to track the incremental revenue it would have received through the proposed increase to the wireline pole attachment rate, in order to allow the OEB to make a determination on the treatment of any incremental revenue that may exist following the OEB's determination on the appropriate level of the charge.

The OEB ORDERS THAT:

1. A transcribed technical conference will be held on May 6 and 7, 2015 at the OEB offices at 2300 Yonge Street, Toronto, 25th floor at 9:30 am.
2. Responses to undertakings given at the Technical Conference shall be filed with the OEB and delivered to all parties on or before May 18, 2015.
3. An Oral Hearing on this matter will be held on June 9 and June 11, 2015 in the OEB'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 <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

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, April 29, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

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Ontario Energy Board
Commission de l'énergie de l'Ontario

DECISION AND ORDER

EB-2015-0141

ROGERS COMMUNICATIONS PARTNERSHIP ET AL.

**Motion for Leave to Bring a Motion to Review and Vary
Decision EB-2013-0416/EB-2014-0247**

BEFORE : **Ken Quesnelle**

Presiding Member

Emad Elsayed

Member

June 30, 2015

1 INTRODUCTION AND SUMMARY

This is a motion by several cable and telecommunications companies (the Carriers) under Rule 40.02 of the OEB's Rules of Practice and Procedure for leave to bring a motion to review and vary the OEB's March 12, 2015 decision approving distribution rates and charges for Hydro One Networks Inc. (Hydro One) for 2015 through 2017. The Carriers say they did not have adequate notice that Hydro One proposed to increase the charge they are required to pay for using Hydro One's power poles (the Pole Access Charge).¹

For the reasons that follow, the OEB grants the Carriers leave to bring a motion to review the decision. As requested, the Carriers will have 20 days from the date of this decision to file a Notice of Motion. The rate order issued following the EB-2013-0416/EB-2013-0247 stated that the Pole Access Charge would remain as an interim rather than a final charge. The OEB will fix the final charge through the hearing of this motion.

¹ The Carriers are:

- Rogers Communications Partnership
- Allstream Inc.
- Shaw Communications Inc. (on behalf of itself and Shaw Cablesystems Limited)
- Cogeco Cable Inc. (on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc.)
- Quebecor Media, on behalf of Videotron G.P.
- Bragg Communications Inc. operating as Eastlink
- Packet-tel Corp. operating as Packetworks
- Niagara Regional Broadband Network
- Tbaytel
- Independent Telecommunications Providers Association
- Canadian Cable Systems Alliance Inc.

2 BACKGROUND

On March 12, 2015, the OEB issued Decision EB-2013-0416/EB-2014-0247 in which it approved distribution rates and charges for Hydro One for 2015 through 2017 (not through 2019 as Hydro One had requested). Included in Hydro One's application was an increase in the Pole Access Charge from its current level of \$22.35 per pole per year, where it has been since 2005, to \$37.05 in 2015, \$37.42 in 2016, \$37.80 in 2017, \$38.18 in 2018, and \$38.56 in 2019.

Following the release of the decision, but before the OEB issued a final rate order, several of the Carriers wrote to the OEB seeking leave under Rule 40.02 to bring a motion under Rule 40.01 to review and vary the decision. The other Carriers joined the motion following the issuance of Procedural Order No. 1.

Leave is required under Rule 40.02 because the Carriers were not parties to the hearing on the Hydro One rate application. The Carriers say they did not participate in the hearing because they were not given adequate notice that Hydro One had applied to increase the Pole Access Charge.

On April 17, 2015, the OEB issued a decision in respect of Hydro One's draft rate order, in which the OEB determined that the Pole Access Charge will remain as an interim rather than a final charge until the Carriers' challenge to the March 12, 2015 decision is resolved. The OEB reiterated this in its final rate order decision on April 23, 2015. As a result, despite the March 12, 2015 decision, the Pole Access Charge remains at \$22.35 on an interim basis.

OEB staff filed a submission in support of the Carriers' motion for leave. Canadian Manufacturers & Exporters also expressed their support. The Power Workers' Union opposed the motion.

3 ANALYSIS

3.1 The adequacy of notice

The OEB accepts the Carriers' arguments that they did not participate in this proceeding because they did not realize that the application included a significant increase in the Pole Access Charge. The Notice of Hearing and Application, which was issued by Hydro One in accordance with the OEB's directions, did not refer to the Pole Access Charge and there is no evidence that Hydro One provided any specific information related to the Pole Access Charge directly to the Carriers. The OEB has no reason to question the validity of the Carriers' claim that they were simply not aware of the potential impact on them of an element of Hydro One's application.

In a similar case, the OEB determined that there was insufficient notice of a proposal by Toronto Hydro-Electric System Limited (Toronto Hydro) to increase the Pole Access Charge.² Hydro One argued that the case is distinguishable because its proposed increase is modest in comparison to the increase sought by Toronto Hydro. Hydro One also submitted that consideration must be given to the fact that the Pole Access Charge has not been adjusted for approximately 10 years.

The OEB agrees with the Carriers that neither the amount of the increase nor the length of time the present charge has been in force is determinative of the question of whether adequate notice was provided. While the proposed increase in this case is less than the increase proposed in the Toronto Hydro case, such an increase should have been brought to the attention of the affected customers. The quantum of the Pole Access Charge increase may or may not be appropriate but that question can only be answered with the affected parties present.

² Decision and Procedural Order No. 7, February 23, 2015 (EB-2014-0116).

3.2 The Carriers' jurisdiction argument

The Carriers argued that the OEB has no jurisdiction to approve an increase to the Pole Access Charge in Hydro One's rate application, which was made under section 78 of the *Ontario Energy Board Act, 1998*. According to the Carriers, the Pole Access Charge can only be increased through a section 74 application to amend a licence. The OEB notes the commonalities between the Pole Access Charge issues in this case and in the recent Toronto Hydro rate application.³ As explained in that case, pole attachment rates are incidental to the distribution of electricity, as the poles are an essential facility properly considered under section 78 of the Act. The OEB finds that it can set the Pole Access Charge under the jurisdiction granted by that section.

3.3 The Carriers' request for a stay

The OEB declared Hydro One's current Pole Access Charge interim as per the effective date of Hydro One's approved 2015 rate order in recognition of this matter having surfaced prior to rates being declared final. Therefore, the requested stay of the March 12, 2015 decision is not necessary.

3.4 Next steps

The OEB commends the Carriers for co-ordinating their submissions in this motion for leave and encourages them to do the same in the motion on the merits.

The OEB requires that the Carriers indicate in their Notice of Motion whether they intend to file any evidence, and whether they need further information from Hydro One in order to prepare that evidence.

³ Decision and Procedural Order No. 10, April 29, 2015 (EB-2014-0116).

4 ORDER

THE BOARD ORDERS THAT:

The Carriers' motion for leave is granted. The Carriers must file a Notice of Motion to review and vary within 20 days of this order.

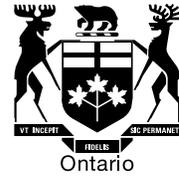
DATED at Toronto, June 30, 2015

ONTARIO ENERGY BOARD

Original Signed by

Kirsten Walli
Board Secretary

D



EB-2015-0004

Hydro Ottawa Limited

**Application for electricity distribution rates for the
period from January 1, 2016 to December 31, 2020**

DECISION AND RATE ORDER ON POLE ATTACHMENT CHARGE

February 25, 2016

INTRODUCTION AND SUMMARY

This is a Decision and Rate Order of the Ontario Energy Board (OEB) approving a pole attachment charge for Hydro Ottawa Limited (Hydro Ottawa). The OEB issued an earlier Decision and Rate Order for Hydro Ottawa on December 22, 2015 approving final rates and charges, excluding the pole attachment charge.

Hydro Ottawa filed a custom incentive rate (Custom IR) application with the OEB seeking approval for changes to the rates that Hydro Ottawa charges for electricity distribution, to be effective January 1, 2016 and for each following year through to December 31, 2020. The application included a proposal to change the pole attachment charge from \$22.35 to \$57.00 per pole per year in 2016 with annual increases of 2.1% in 2017 to 2020.

The OEB has considered the evidence on this matter and the submissions of the parties and approves a pole attachment charge of \$53.00 per pole per year effective January 1, 2016. This charge will be fixed, with no annual inflation adjustments, pending the outcome of the OEB's generic policy review of electricity distributors' miscellaneous rates and charges, as described later in this Decision. The components of the pole attachment charge and associated findings are discussed below.

BACKGROUND

Since 2005, Ontario electricity distributors have charged a common pole attachment charge of \$22.35 to cable television transmission carriers as approved by the OEB. The \$22.35 is an annual charge for each attacher on a pole. The \$22.35 was established when the Canadian Cable Television Association (CCTA) applied to the OEB to enable pole access for cable television transmission lines by amending electricity distributor licences. The CCTA proposed a standard pole attachment agreement and standard pole rental charge throughout Ontario. The OEB issued its decision in the RP-2003-0249 proceeding on March 7, 2005 (the 2005 Decision), approving the \$22.35 charge. The 2005 Decision indicated that any distributor, who did not consider the province-wide charge appropriate for its circumstances, could apply to the OEB for a different charge based on its own costs.

The OEB approved ten intervenors in the Custom IR proceeding, and the following eight intervenors participated in the pole attachment charge issue:

- Allstream Inc. (Allstream)
- Consumers Council of Canada (CCC)¹
- Energy Probe Research Foundation (Energy Probe)
- Quebecor Media Inc. (Quebecor)
- Rogers Communications Partnership (Rogers)
- School Energy Coalition (SEC)
- TELUS Communications Company (TELUS)
- Vulnerable Energy Consumers Coalition (VECC)

All issues related to the Custom IR application were examined through written questions and answers and orally in a technical conference. Parties were able to settle on all issues related to the Custom IR application, except the pole attachment charge. The OEB decided to proceed with an oral hearing regarding the pole attachment charge, wherein the application and the evidence of Quebecor, Rogers and TELUS (the Carriers) and Allstream were examined. The Carriers and Allstream expert witnesses were cross examined at the oral hearing.

During the oral hearing phase, the OEB informed parties that it plans to undertake a generic policy review of electricity distributors' miscellaneous rates and charges (the Policy Review).² The Policy Review would include the pole attachment charge

¹ The submission of CCC was largely supportive of the VECC submission

² Decision on Motion and Procedural Order No. 9, October 14, 2015

methodology and treatment of third-party revenues.³ The OEB decided it would hear evidence and submissions on costs incurred by Hydro Ottawa specific to serving pole attachments, however, the OEB would not hear further evidence or submissions related to methodology or cost recovery from third parties by the Carriers (i.e., overlashers).

PROCEDURAL ISSUE

Following the oral hearing, the OEB made provision for submissions by Hydro Ottawa and the parties on the pole attachment charge, including whether the charge should be interim or final. Reply argument was filed by Hydro Ottawa on November 19, 2015.

While the OEB only made provision for reply argument by Hydro Ottawa, the Carriers in their submission requested the right of reply to any new arguments submitted by the intervenors. The Carriers filed a reply submission on November 18, 2015, citing that the intervenor submissions raised new arguments or issues that were not previously raised.

Both Hydro Ottawa and VECC requested that the Carriers' reply be struck from the record. VECC noted that the Carriers' reply argument was filed without leave of the OEB and that accepting the reply argument would give implicit right of reply to all respondents.

Finding

The OEB agrees that the schedule outlined did not allow for reply submissions from the parties other than Hydro Ottawa. As an issue of procedural fairness, the OEB would have allowed reply submissions by the other parties if it was considered necessary to address new arguments or issues raised by the parties.

The Carriers in their reply set out four areas which they argued were new and therefore necessitated the need for reply:

- the use of forecast costs to establish a pole attachment charge for future years⁴
- the inclusion of a portion of pole removal crew costs as loss in productivity costs⁵
- the inclusion of costs that are related to power-specific assets on the grounds that there "is insufficient information to determine the basis for a specific exclusion"⁶

³ The Review of Miscellaneous Rates and Charges (EB-2015-0304) was announced on November 5, 2015

⁴ Carriers Submission (November 12, 2015), page 5

⁵ Carriers Submission (November 12, 2015), pages 13-15

⁶ Hydro Ottawa Final Argument, page 11

- the ability of Hydro Ottawa at some point in the future, to seek revision of a final pole attachment charge.

The OEB finds that the first three areas had been raised earlier in the proceeding (as indicated by the footnotes to the previous bullet points), such that the Carriers would have been aware of the issues and could have addressed the issues in their original submission. Therefore the Carriers would not be prejudiced by not having a further opportunity to make submissions. The OEB does not find that new arguments or issues were raised such that the need for reply became necessary.

The Carriers raise a fourth point, the ability of Hydro Ottawa at some point in the future, to seek revision of a final pole attachment charge. OEB staff proposed that the OEB could permit Hydro Ottawa the option to include in its mid-term review an opportunity to update its rates on the basis of the outcomes of the OEB's Policy Review.

The OEB will not, as part of this Decision, comment on any direction which might flow from the Policy Review related to pole attachment charges. As a result, the OEB will not consider any submissions on this point in coming to its Decision.

Because the OEB will not consider the Carriers' reply in coming to its Decision, the OEB is ordering the Carriers' November 18, 2015 reply submission be struck from the record.

JURISDICTIONAL MATTERS

There were two submissions with respect to the jurisdiction of the OEB to approve a revised pole attachment charge:

- (A) The Carriers submitted that the OEB cannot amend Hydro Ottawa's pole rate condition of licence and approve a revised pole attachment charge under section 78 of the *Ontario Energy Board Act, 1998* (the Act).
- (B) Allstream submitted that it is not possible for the OEB to approve a rate that is just and reasonable if there are doubts as to the adequacy of the methodology employed.

Each of these is addressed below.

(A) Jurisdiction under section 78 of the Act

The Carriers submit that the OEB cannot amend Hydro Ottawa's pole rate condition of licence and approve a revised pole attachment rate pursuant to an application under

section 78 of the Act. The treatment of revenues from activities such as pole access as a revenue offset does not, in the Carriers' submission, confer on the OEB jurisdiction to regulate these activities under section 78 of the Act.⁷

In reply, Hydro Ottawa submits that the Carriers' arguments regarding the constraints of the OEB's jurisdiction are without merit and should accordingly be rejected.⁸

Finding

Similar arguments were put forward by the carriers (as defined in each of these proceedings) in motions filed with the OEB in EB-2014-0116, and EB-2015-0141. In both of these proceedings, the carriers alleged that the OEB has no jurisdiction to approve an increase to the pole attachment charge under section 78 of the Act. According to the carriers, the pole attachment charge can only be increased through a section 74 application to amend a licence. In both cases the OEB determined that pole attachments are incidental to the distribution of electricity as the poles are an essential facility properly considered under section 78 of the Act.⁹ The OEB therefore finds, in this Decision as well, that it does have authority under section 78 of the Act to set the pole attachment charge under the jurisdiction granted by section 78.

(B) Can the OEB approve just and reasonable rates if the methodology for the pole attachment rate is under review?

Allstream submits that it would be inappropriate for the OEB to approve a new rate for Hydro Ottawa that is "just and reasonable" if there are doubts as to the adequacy of the methodology employed in calculating that rate. Allstream notes that the OEB has announced the initiation of a review of the methodology used to establish pole attachment rates.¹⁰ Until the OEB establishes a new methodology or determines that the existing methodology continues to be appropriate, Allstream submits that the OEB is unable to approve or fix a just and reasonable pole attachment rate and that the current province-wide rate should continue to apply to Hydro Ottawa.

⁷ Carriers Submission, page 22

⁸ Hydro Ottawa Reply Argument, page 18

⁹ Toronto Hydro-Electric System Limited EB-2014-0116 Decision and Procedural Order No. 10, page 4

¹⁰ Review of Miscellaneous Rate and Charges, EB-2015-0304, Board Letter dated November 5, 2015, page 2. "The subsequent review of pole attachments will consider the methodology used for determining charges, including the appropriate treatment of any revenues that carriers may receive from third parties."

Finding

The OEB rejects the argument that it cannot set just and reasonable rates when there is an ongoing Policy Review of the methodology for determining the pole attachment charge. The current methodology for determining pole attachment charges has been in place since 2005 and the OEB is guided by this methodology until such time that any new methodology is determined through the generic and comprehensive policy review of miscellaneous rates and charges.

As part of the Policy Review the OEB has established a Pole Attachments Working Group (PAWG) to provide advice on the technical aspects and related details to be addressed in respect of pole attachments. The selection of PAWG was based on the nominee's technical expertise in pole attachments, experience with OEB proceedings related to pole attachments and expertise in cost allocation methodologies used for determining service charges. Included in the PAWG are representatives from small and large electricity distributors and a balance between the wireline industry, and ratepayers groups.¹¹

The OEB finds that it does have jurisdiction to approve the pole attachment charge and will do so on a final basis as more fully explained on page 15 of this Decision.

POLE ATTACHMENT CHARGE – COMPONENTS AND FINAL CHARGE

The 2005 Decision established a province-wide pole attachment charge. The calculation of the charge, including the direct costs and indirect costs, is summarized in the appendices to the 2005 Decision. The OEB has followed the format of the 2005 Decision and appendices in this Decision.

Number of Attachers per Pole

The OEB decided at the oral hearing that the number of attachers per pole was within the scope of the proceeding.¹² Hydro Ottawa's application proposed 2.0 attachers per pole although the most recent data indicated that the average number of attachers in August 2015 was 1.71.¹³ When questioned about the number of attachers, the Hydro Ottawa witness stated that the utility was conservative in its proposal.¹⁴

¹¹ Review of Wireline Pole Attachment Charges (EB-2015-0304), Letter – February 9, 2016

¹² Oral Hearing Transcript Vol 2, page 17

¹³ Undertaking J2.3

¹⁴ Oral Hearing Transcript Vol 2, pages 101-102

The submissions by the intervenors proposed a range from 1.71 (SEC) to 2.5 (the Carriers and OEB staff). Except for the Carriers and OEB staff, the intervenors submitted that a value less than 2.0 would be appropriate based on the current number of attachers per pole (1.74 at the end of 2013 and 1.71 at the end of August 2015). Energy Probe submitted that the lower number was appropriate due to the anticipated mergers and acquisitions of telecommunications providers in Hydro Ottawa's service area, as well as the lack of evidence in this proceeding of a significant new source of attachers in the Hydro Ottawa distribution system.¹⁵

The Carriers submitted that the number of attachers is a non-cost input and changing that number is inconsistent with the 2005 Decision consideration of distributor applications for pole attachment charge based on their own costs. The Carriers submitted that it is grossly unfair to vary the 2005 methodology by proposing a different number of attachers, but not permit the Carriers to challenge other aspects of methodology such as equal sharing.

The Carriers' evidence was that 2.5 non-power attachers is a more appropriate value to use than 2.0 or less. The 2.5 attachers is more appropriate given this was the value used in the 2005 Decision, the current and future number of pole attachment customers in the area, the OEB's intention to commence a proceeding to consider the deregulation of rates charged to wireless attachments, and the fibre expansion plans of Bell Canada.¹⁶ OEB staff submitted that the 2.5 attachers per pole used in the 2005 Decision should be used until the completion of the Policy Review (or other OEB process).

Finding

The 2005 Decision established a province-wide pole attachment rate based on an average number of attachers of 2.5. The 2005 Decision also provided that individual utilities could bring an application to the OEB to vary the provincial pole attachment rate if they choose to do so and could support an alternative rate. Hydro Ottawa chose to file such an application with evidence to support its request that is specific to the utility.

The OEB, in considering this application, is of the view that information specific to the utility is the most useful and as a result will rely on the number of attachers per pole information filed by Hydro Ottawa that reflects its specific circumstances.

¹⁵ Energy Probe Submission, page 7

¹⁶ Carriers Evidence, August 21, 2015, page 22

Hydro Ottawa's application was based on 2.0 attachers per pole. However, Hydro Ottawa explained in its final argument that the average number of third party attachers on Hydro Ottawa's poles is less than two.

The OEB prefers to rely on actual information when available, rather than a projection. The OEB finds that the use of 1.74 attachers per pole is appropriate. This number is based on the number of attachers per pole specific to Hydro Ottawa at the end of 2013.¹⁷ Using 2013 actual information is consistent with the approach the OEB has taken in the remainder of this Decision.

Historical versus Forecast Costs

The 2005 Decision used historical costs to determine the pole attachment charge, such as the embedded cost of a pole and the associated depreciation. Hydro Ottawa proposed to use its 2013 historical costs to determine the pole attachment rate. OEB staff and the Carriers supported Hydro Ottawa's proposal.

SEC, VECC, and Energy Probe supported the use of forecast costs, not historical costs. These parties expressed concern that setting the pole attachment charge using historical costs while setting distribution rates using forecast costs would result in distribution ratepayers subsidizing pole attachers as Hydro Ottawa's costs rise over time.

In reply, Hydro Ottawa acknowledged that it would be preferable to use forecast costs and indicated that the issue of forecast versus historical costs could be considered in the OEB's Policy Review.¹⁸

Hydro Ottawa's 2016 proposed pole attachment charge was based on historical costs yet included an annual inflation adjustment of 2.1% in 2017 to 2020. The 2005 Decision did not incorporate an annual adjustment factor; the approved rate of \$22.35 did not change over time.

SEC, Energy Probe and VECC submitted that the approved 2016 rate should be increased annually by inflation as Hydro Ottawa's costs will increase over time. OEB staff submitted that there was no inflation adjustment approved in the 2005 Decision which could be considered part of the methodology. The Carriers submitted that the exclusion of an inflation adjustment was part of the methodology approved in the 2005 Decision.

¹⁷ Undertaking J2.1

¹⁸ Hydro Ottawa Reply Argument, page 9

Finding

The OEB finds that the use of historical costs with no annual inflation adjustment is consistent with the methodology in the 2005 Decision. Furthermore, it is contrary to OEB practice to use forecast or projected costs to determine specific service charges. The OEB approves the use of Hydro Ottawa's 2013 historical costs as the basis for determining the pole attachment charge for 2016 to 2020 with no inflation adjustment, subject to any change determined by the OEB subsequent to the Policy Review.

Direct Costs

Direct costs are incremental costs incurred by the distributor that result directly from the presence of the third-party equipment. The direct costs consist of (A) administration costs and (B) loss in productivity costs.

(A) Administration Costs

Hydro Ottawa proposed including ongoing operational costs associated with managing and administering third-party attachment permits and occupancy on its poles. Hydro Ottawa included three categories of activities: invoicing, updating its geographic information system and permit processing. The 2005 Decision included administration costs as direct costs. Parties did not take issue with the proposed inclusion of administration costs.

Finding

The OEB approves Hydro Ottawa's proposed administration costs of \$141,291.¹⁹

(B) Loss in Productivity Costs

Hydro Ottawa proposed including Loss in Productivity (LIP) costs associated with maintaining poles with third-party equipment. Hydro Ottawa included two types of LIP costs (field verification cost associated with wires down and tree on wires and pole replacement cost) for a total of \$310,419.²⁰ The pole replacement cost consists of two components (field verification cost of pole replacement and the cost of returning crew). The 2005 Decision included LIP costs as direct costs.

¹⁹ Interrogatory Response IR:H-7-1 (Carriers #12) page 4

²⁰ Interrogatory Response IR:H-7-1 (Carriers #13) page 5

Energy Probe submitted the proposed LIP costs were understated, but there was insufficient evidence to justify an increase. OEB staff submitted that the \$188,988 cost of returning crews associated with pole replacement should be excluded from the LIP calculation. OEB staff indicated that these costs are recovered through distribution rates and would result in double recovery if included as a direct cost in the pole attachment charge. VECC and Allstream took issue with the proposed LIP costs and recommended a reduction. The Carriers also proposed the elimination of returning crew costs as these were not part of the 2005 Decision methodology and should not be added.

Finding

The OEB approves LIP costs of \$121,431 for field verification. The OEB will not include the cost of returning crews for pole replacement (i.e. \$188,988) in the LIP calculation as these costs are currently recovered through distribution rates.

Recovery of Direct Costs

Hydro Ottawa divided its direct administration and LIP costs by the number of poles at year end 2013, i.e. 35,663,²¹ to determine the pole attachment charge. Hydro Ottawa submitted that it did not further divide its direct costs by the number of attachers per pole as the 2005 Decision did not specify that direct costs should be divided by the number of attachers per pole. However, Hydro Ottawa acknowledged in its final argument that there was merit in dividing the administration and LIP costs by the number of attachers even though this approach is not clear from the 2005 Decision.

SEC, VECC and Energy Probe agreed with Hydro Ottawa's determination of the administration cost and the division by 35,663 poles. However, they proposed that the 2013 administration cost be escalated to 2016, and then further escalated each year of the Custom IR term. They submitted the same treatment was appropriate for LIP costs, but that the LIP costs should be divided by the number of attachers per pole. The Carriers, Allstream and OEB staff also submitted that all direct costs should be divided by the number of poles and then by the number of attachers per pole to avoid having Hydro Ottawa over-collect its direct costs.

Finding

The OEB finds it inappropriate to include direct costs on a per pole basis, yet collect the pole attachment charge on a per attacher basis. For any pole with more than one

²¹ Interrogatory Response IR:H-7-1 (Carriers #1) page 5

attacher, Hydro Ottawa would over collect its direct costs associated with that pole. The OEB finds that Hydro Ottawa's direct administration and LIP costs should be determined on a per pole basis and then divided by the number of attachers per pole of 1.74.

The OEB approves the use 35,663 as the number of poles to use in the calculation of Hydro Ottawa's direct costs. As noted above, the OEB has determined that the appropriate number of attachers is 1.74.

Indirect Costs

Indirect costs or common costs are borne by the distributor and the third parties. The 2005 Decision concluded that depreciation, maintenance and carrying costs are representative indirect costs. The determination of the indirect costs starts with the establishment of an appropriate net embedded cost of a pole.

Net Embedded Cost

Hydro Ottawa proposed a net embedded cost of \$1,678 per pole in its original application.²² In response to interrogatories, Hydro Ottawa stated that the \$1,678 was based on average net book value based on 2013 financial records for external reporting purposes.²³ Reconciliation of the average cost with the net book value in fixed asset continuity schedules resulted in a net embedded cost of \$1,569 (based on 2013 year end net book value of \$75.3 million and 47,978 poles).²⁴

The Carriers submitted that the 2013 average year costs should be used (i.e \$71.5 million) as this was consistent with the filing requirements for cost of service applications. The Carriers also argued that the correct pole inventory is 48,352.²⁵ Further, as part of the Carriers' evidence, the Carriers' expert, Mr. McKeown, submitted that certain cost elements included in account 1830²⁶ are power specific assets used for supporting overhead distribution conductors and service wires, which are not needed for

²² Hydro Ottawa Application Exh H-7-1

²³ Interrogatory Response IR:H-7-1 (Carriers #7) page 2

²⁴ Oral Hearing Transcript Vol 2, page 77, "We, you know, had the most data in relation to 2013 in terms of the number of permits processed and the hours of GIS. So from a consistency point of view, we chose to stick with 2013 data in all respects. As a result, we did use the year-end values versus the average. If we were to use 2016-2020, we would obviously use the average values. But using average for 2013 didn't make a lot of sense because it is further away from the period that we are trying to set the rates for."

²⁵ Hydro Ottawa Application Exh B-1-2, page 93

²⁶ Account 1830 – Poles, Towers and Fixtures – includes the cost of installed poles, towers and appurtenant fixtures used for supporting overhead distribution conductors and service wires

telecommunications cable attachments. He proposed that 15% of account 1830 is a reasonable proxy for these power-specific assets.

Allstream submitted that Hydro Ottawa's net embedded cost was unreasonably high. Based on an analysis of electricity and telephone companies to whom Allstream pays pole attachment charges, Allstream determined that the average approved net embedded cost is less than \$225 per pole.²⁷ Allstream also submitted that the Hydro Ottawa net book value determination is based on a period of unusually high investment.²⁸ Like the Carriers, Allstream supported a 15% reduction in net embedded cost as a proxy for removing power-specific assets.

SEC, VECC and Energy Probe submitted that the net embedded cost should be set based on the average net book value noted in fixed asset continuity schedules for 2016-2020 underpinning the approved settlement proposal. The average 2016 net book value is \$92.8 million. Energy Probe submitted that forecast averages should be used, and that the use of 2013 year end book values would only be appropriate if the OEB were to set the pole attachment charge on a historical cost basis. The intervenors proposed that the number of poles for the determination of net embedded cost should be 48,449, the total number of in-service poles in August 2015.²⁹ The intervenors agreed with the Carriers, that an appropriate proxy for power specific fixtures was a reduction of 15%.

OEB staff submitted that there was insufficient evidence related to typical poles and costs related to power-specific assets in account 1830. OEB staff submitted that the net embedded cost per pole of \$1,569 was reasonable.

Hydro Ottawa noted OEB staff's support of the proposed \$1,569 net embedded cost in reply argument.³⁰ Hydro Ottawa disagreed with Mr. McKeown's reasoning and suggested that using a 5% account adjustment value would be more applicable to Hydro Ottawa's specific poles.³¹

Finding

The OEB finds that a net embedded cost based on 2013 year-end net book value is consistent with the findings in this Decision. The OEB notes that Energy Probe supports the use of year-end values when charges are based on historical costs. While Hydro Ottawa's net embedded cost of \$1,569 was based on 2013 year-end net book value,

²⁷ Allstream Submission, page 6

²⁸ Allstream Submission, page 9

²⁹ Undertaking J2.3

³⁰ Hydro Ottawa Reply Argument, page 14

³¹ Hydro Ottawa Reply Argument, page 15

the cost was based on 47,978 poles at year end 2013. Hydro Ottawa revised that number to 48,352 during the proceeding,³² which is consistent with the Carriers' submission. The OEB finds that an adjustment for the updated number of poles is required.³³

Further, the OEB finds that a 5% reduction in the net embedded cost per pole is reasonable to account for inclusion of power-specific assets. This results in a net embedded cost of \$1,479. The OEB finds that while the 15% proposed by Mr. McKeown may be appropriate in certain circumstances (e.g. use of crossarms and other non-pole related items), the OEB relies on the evidence provided by Hydro Ottawa as to the actual configuration of its assets (i.e. using brackets rather than crossarms in its distribution system construction). Given this evidence, which was canvassed at the technical conference, the OEB finds that the 5% adjustment is more appropriate.

Depreciation, Pole Maintenance and Capital carrying Costs

Hydro Ottawa proposed depreciation expense of \$43.29 per pole in the original application, but revised the expense to \$41.26 to reflect the fixed asset continuity schedule. A maintenance expense of \$12.61 per pole was proposed and carrying costs were determined based on a rate of 6.7%. OEB staff adopted these costs in its submission, but applied a pre-tax carrying cost of 8.04%, as this is consistent with the 2005 Decision methodology. At the oral hearing, Hydro Ottawa acknowledged that its application should have used 8.04%.³⁴

The Carriers submitted that depreciation and maintenance expense should be determined on a bare pole basis and in the absence of detailed information, proposed a 15% deduction and division of overall 2013 expense by 48,352 as the total number of poles. The Carriers' submission also referenced the 2013 pre-tax capital cost of 8.04%.

SEC, VECC and Energy Probe submitted that 2016-2020 amounts for depreciation and maintenance expense set out in the settlement³⁵ should be used. The intervenors proposed a 15% reduction for power specific fixtures and division by the 48,449 as the total number of poles. SEC and VECC submitted that the pre-tax carrying cost for the 2016-2020 period apply.³⁶ For 2016, the rate was determined to be 7.04%. Energy Probe submitted that the rate proposed by SEC and VECC does not include updates for

³² Undertaking J2.1

³³ $\$1,569 \times 47,978/48,352 = \$1,556.86$

³⁴ Oral Hearing Transcript Vol 2, page 102

³⁵ Settlement Proposal, filed September 18, 2015, amended December 7, 2015

³⁶ Undertaking J2.4

long term and short term debt. Energy Probe's analysis indicates that the 2016 rate should be 7.06%.

Finding

The OEB finds that the depreciation and pole maintenance expenses proposed by Hydro Ottawa are reasonable. Consistent with the OEB's findings on net embedded cost, it is reasonable to reduce the depreciation and pole maintenance expenses by 5% to account for the inclusion of power-specific assets, and to reflect the update in the number of poles at 2013 year end.

The OEB finds it appropriate to use the pre-tax carrying cost of capital, which is consistent with the methodology in the 2005 Decision. The OEB approves the 2013 pre-tax rate of 8.04%, consistent with the other cost inputs.

Allocation factor

Finding

As outlined earlier, the OEB finds that 1.74 attachers per pole is a reasonable number. Therefore, the corresponding allocation factor would be 28.8%.³⁷

Calculation of Pole Attachment Charge

A table summarizing the development of the charge approved in this Decision is attached at Schedule A.

Interim or Final Order

Hydro Ottawa and most intervenors submitted that the pole attachment charge approved in this Decision should be made final, effective January 1, 2016. Any changes arising from the Policy Review should be applied prospectively within Hydro Ottawa's Custom IR term of 2016-2020.

The Carriers submitted that the OEB should approve an interim pole attachment charge, until the final charge is determined subsequent to the Policy Review. Allstream was less concerned with interim or final, but submitted that any charge established by this proceeding should be subject to change should a new methodology be approved in the Policy Review.

³⁷ Formula - Interrogatory Response IR:H-7-1 (Carriers #4) page 2

OEB staff preferred the OEB establish a final charge pending the outcome of the Policy Review, but suggested two other options in which an interim charge could be established pending the outcome of the Policy Review.

Finding

The OEB finds that new policies should be applied on a prospective basis. This finding is consistent with prior OEB decisions involving new policies such as the working capital policy approved in 2015.³⁸ In this application, the OEB finds it appropriate to establish the pole attachment charge on a final basis effective January 1, 2016 to provide rate certainty to the third-party wireline attachers and revenue certainty to Hydro Ottawa.

As indicated in the Historical versus Forecast Costs section of this Decision, the OEB does not approve an annual inflation factor applied to either Hydro Ottawa's costs or the final approved charge. The calculation of the approved pole attachment charge of \$53.00 is provided in Schedule A and will remain in effect, subject to any direction from the OEB regarding the implementation of any changes resulting from the Policy Review.

December 22, 2015 Decision and Rate Order

In the Decision and Rate Order issued on December 22, 2015, the OEB approved final distribution rates for Hydro Ottawa effective January 1, 2016, except for the current pole attachment charge of \$22.35 which was maintained on an interim basis, pending this Decision. The new charge of \$53.00 per pole per year will replace the interim rate on a final basis.

The amended settlement proposal, approved by the OEB on December 22, 2015 included Hydro Ottawa's distribution rates based on the proposed \$57.00 pole attachment charge. The OEB approved a Pole Attachment Charge Variance Account (Variance Account) to record the revenue requirement difference between the final pole attachment charge and the proposed \$57.00. The balance in the Variance Account would be reviewed and disposed as part of Hydro Ottawa's next Custom IR rate adjustment in 2017.

Hydro Ottawa requested direction from the OEB regarding the collection of any foregone revenues arising from an interim pole attachment charge. The OEB finds that the approved pole attachment charge of \$53.00 is an annual rate and should be

³⁸ Allowance for Working Capital for Electricity Distribution Rate Applications (June 3, 2015), North Bay Hydro Decision and Order EB-2014-0099 (November 12, 2015), Horizon Corporation Decision on Motion EB-2014-0002 (October 29, 2014)

charged for 2016 services. If Hydro Ottawa has already issued invoices for 2016 based on the interim rate of \$22.35, Hydro Ottawa should issue subsequent invoices for the difference based on the OEB approved final rate.

THE OEB ORDERS THAT:

1. Effective January 1, 2016, Hydro Ottawa Limited shall charge \$53.00 for the “Specific Charge for Access to the Power Poles – per pole per year”, on a final basis, as set out in the Tariff of Rates and Charges (Schedule B of this Order). Hydro Ottawa shall notify its customers of the rate change immediately.
2. The Carriers’ November 18, 2015 reply submission be struck from the record of this proceeding.

DATED at Toronto, **February 25, 2016**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

**Schedule A – Decision on Pole Attachment Charge
Hydro Ottawa Limited (EB-2015-0004)
February 25, 2016**

		RP-2003-0249 - CCTA (2005 Decision)	Hydro Ottawa Limited Application*	EB-2015-0004 Decision	Notes
	Number of Attachers	2.5	2.0	1.74	Year end 2013
	DIRECT COST				
A	Administration	\$0.69	\$3.96	\$2.28	2013 cost per pole adjusted per attacher
B	Loss in Productivity	\$1.23	\$8.70	\$1.96	2013 cost less cost of returning crew, per pole adjusted per attacher
C	TOTAL DIRECT COST (B+C)	\$1.92	\$12.66	\$4.23	
	INDIRECT COST				
D	Net Embedded Cost per pole	\$478.00	\$1,678.00	\$1,479.02	\$1,569 year-end 2013 net book value adjusted by total number of poles, 5% reduction for power-specific assets.
E	Depreciation Expense	\$31.11	\$43.29	\$38.89	\$41.26 adjusted by year-end 2013 total number of poles, 5% reduction for power-specific assets
F	Pole Maintenance Expense	\$7.61	\$12.61	\$11.89	\$12.61 adjusted by year-end 2013 total number of poles, 5% reduction for power-specific assets
G	Capital Carrying Cost	\$54.59	\$112.42	\$118.91	8.04% pre-tax carrying cost (2013)
H	TOTAL INDIRECT COST (E+F+G)	\$93.31	\$168.32	\$169.69	
I	Allocation Factor	21.9%	25.9%	28.8%	
J	Indirect Costs Allocated (HxI)	\$20.43	\$43.60	\$48.80	
K	ANNUAL POLE ATTACHMENT CHARGE (C+J)	\$22.35	\$56.26	\$53.03	

* Hydro Ottawa applied for a 2016 pole attachment charge of \$57.00. In response to Carriers IR #18, Hydro Ottawa stated that the 2013 rate of \$56.26 was escalated at 2.1% to \$57.46. This amount was rounded down to \$57.00 for 2016.

E



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND RATE ORDER

EB-2015-0141

ROGERS COMMUNICATIONS PARTNERSHIP *ET AL.*

Motion to Review and Vary Decision EB-2013-01416/EB-2014-0247
Approving Distribution Rates and Charges for Hydro One
Networks Inc. for 2015-2017

BEFORE: Ken Quesnelle
Vice Chair and Presiding Member

Emad Elsayed
Member

August 4, 2016

TABLE OF CONTENTS

1	INTRODUCTION AND SUMMARY.....	1
1.1	OVERVIEW.....	1
1.2	BACKGROUND.....	2
1.3	THE PARTIES' POSITIONS ON THE APPROPRIATE POLE ATTACHMENT CHARGE.....	3
2	THE PROCESS.....	4
3	SETTING A JUST AND REASONABLE POLE ATTACHMENT CHARGE	6
3.1	SCOPE OF THE PROCEEDING.....	6
3.2	VEGETATION MANAGEMENT COSTS.....	7
3.3	HYDRO ONE'S RECIPROCAL AGREEMENT WITH BELL.....	9
3.4	REDUCTION FOR POWER-SPECIFIC ASSETS.....	11
3.5	AVERAGE NUMBER OF ATTACHERS PER POLE.....	12
3.6	ALLOCATION FACTOR FOR INDIRECT COSTS.....	13
3.7	USE OF ACTUAL VS. FORECAST COSTS.....	14
3.8	INTERIM VS. FINAL RATE.....	14
4	CONCLUSION.....	16
5	COST AWARDS.....	17
6	ORDER.....	18
	SCHEDULE A.....	20

1 INTRODUCTION AND SUMMARY

1.1 Overview

Rogers Communications Partnership (Rogers) and several other cable and telecommunications providers and associations (collectively, the “Carriers”)¹ brought this motion to review and vary the March 12, 2015 decision of the Ontario Energy Board (OEB) approving distribution rates for Hydro One Networks Inc. (Hydro One) for 2015 to 2017.²

The Carriers only take issue with the decision in so far as it relates to Hydro One’s proposed increase to the charge it collects from cable and telecommunications companies for connecting their overhead wires to its power poles, from \$22.35 per pole to \$37.05 in 2015, \$37.42 in 2016 and \$37.80 in 2017.³

They argue that the proposed pole attachment charge is too high, mainly because it includes Hydro One’s costs for vegetation management. At the Carriers’ request, this motion provided an opportunity for a new hearing on the matter, with the objective being to establish a just and reasonable pole attachment charge.

For the reasons that follow, the OEB has concluded that a just and reasonable pole attachment charge is \$41.28 per pole, per year.

Although the OEB agrees with the Carriers that vegetation management costs should be excluded from the calculation of the charge, any resulting reduction is offset by countervailing factors that were not fully explored in the initial rates hearing. In particular, when the charge is calculated using the actual number of attachers per Hydro One pole, which the evidence shows, is 1.3, instead of using the 2.5 attachers per pole presumed by Hydro One in its initial rate application, the rate goes up. Fewer attachers to contribute to the costs of the pole means each attacher is responsible for a greater share of the costs. The net result is a small increase to the charge initially proposed by Hydro One.

¹ The Carriers comprise: Rogers, Allstream Inc., Shaw Communications Canada Inc., Cogeco Cable Inc., on behalf of itself and its affiliate, Cogeco Cable Canada LP, Quebecor Media, Bragg Communications, Packet-tel Corp., Niagara Regional Broadband Network, Tbaytel, Independent Telecommunications Providers Association, and Canadian Cable Systems Alliance Inc.

² Decision re Hydro One Distribution Rates, March 12, 2015 (EB-2013-0416/EB-2014-0247).

³ EB-2013-0416/Exhibit G2/Tab 5/Schedule 1/p. 31. This charge was described in Hydro One’s application as the “Specific Charge for Cable and Telecom Companies Access to the Power Poles”, and has often been referred to in this proceeding as the Pole Access Charge. In this Decision and Order, it is referred to as the “pole attachment charge”.

1.2 Background

This is the third pole attachment case to come before the OEB in the last year. Prior to these cases, all licensed distributors charged the same amount: \$22.35 per pole, per year. That rate was established by the OEB in 2005, in a proceeding brought by the Canadian Cable Television Association (CCTA).⁴ The OEB's decision in the CCTA case gave distributors the option of applying for a variance from the province-wide charge if their circumstances warranted it: "Any LDC that believes that the province-wide rate is not appropriate can bring an application to have the rates modified based on its own costing."⁵ But it was not until the three recent cases that any distributor actually applied for a variance.

In Toronto Hydro's most recent custom incentive rate application, it reached a settlement with the intervenors to increase its pole attachment charge from \$22.35 to \$42.00, which was approved by the OEB.⁶ In Hydro Ottawa's most recent custom incentive rate application, it sought to raise the pole attachment charge to \$57.00 in 2016, with annual increases of 2.1% for the rest of the rate period. The OEB approved \$53.00, with no annual inflation adjustments.⁷ That decision has been appealed to the Divisional Court.⁸

In its December 19, 2013 application for 2015 to 2019 rates, Hydro One asked to increase its pole attachment charge to \$37.05 in 2015, \$37.42 in 2016, \$37.80 in 2017, \$38.18 in 2018, and \$38.56 in 2019. None of the Carriers participated in the OEB hearing on Hydro One's rate application, and the pole attachment charge was not a contested issue. In its March 12, 2015 decision, the OEB approved Hydro One's rates for only three years (2015 to 2017) rather than the five years Hydro One had applied for. The decision did not refer expressly to the pole attachment charge at all.

Following the March 12, 2015 decision, but before the OEB issued a final rate order, Rogers and several other Carriers wrote to the OEB to request leave to bring a motion to review and vary the decision, but only in so far as it relates to the pole attachment charge. They were later joined by the other Carriers. The Carriers said they did not

⁴ Decision and Order, March 7, 2005 (RP-2003-0249).

⁵ *Ibid.*, p. 8.

⁶ Decision on Settlement Proposal, July 23, 2015 (EB-2014-0116); Settlement Proposal filed June 11, 2015 (EB-2014-0116).

⁷ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004).

⁸ The appellants include three of the Carriers in this proceeding: Rogers, Quebecor Media Inc. and Allstream Inc.

participate in the hearing because they had not been given adequate notice that Hydro One proposed to increase the pole attachment charge.

On April 17, 2015, the OEB issued a decision on Hydro One's draft rate order, in which the OEB determined that the pole attachment charge would remain at \$22.35 on an interim basis until the Carriers' challenge to the March 12, 2015 decision was resolved.⁹ The OEB reiterated this in its final rate order issued on April 23, 2015.¹⁰

On June 30, 2015, the OEB granted leave to the Carriers to bring this motion to review and vary.

1.3 The Parties' Positions on the Appropriate Pole Attachment Charge

Hydro One, in its argument in chief in this proceeding, proposed that the pole attachment charge be set at \$70.04, nearly twice the level that it had proposed in its initial rate application. The \$70.04 was based on the inclusion of vegetation management costs, the use of 1.3 attachers per pole, and 2014 actual cost information. Some intervenors suggested a slightly higher rate. The School Energy Coalition and Canadian Manufacturers & Exporters used the same cost inputs and number of attachers as Hydro One but calculated the "allocation factor" (discussed below) a little differently, resulting in a pole attachment charge of \$72.16. The Vulnerable Energy Consumers Coalition came up with \$71.95, using the same number of attachers as Hydro One but a different allocation factor and a minor reduction to administration costs.

The Carriers proposed \$28.51. Their calculation excluded vegetation management costs and relied on 2012 data. The Carriers also assumed 2.5 attachers per pole.

OEB staff suggested \$41.56. OEB staff's calculation was the same as Hydro One's, except vegetation management costs were excluded.

⁹ Decision on Draft Rate Order, April 17, 2015 (EB-2013-0416), p. 3.

¹⁰ Rate Order, April 23, 2015 (EB-2013-0416), p. 2.

2 THE PROCESS

Because none of the Carriers participated as parties in the hearing on Hydro One's rate application, leave to bring this motion to review and vary was required under Rule 40.02 of the OEB's *Rules of Practice and Procedure*. The OEB granted leave on June 30, 2015, holding that the reason the Carriers had not participated in the hearing was that they had not been given adequate notice that Hydro One's application included a significant increase to the pole attachment charge.¹¹ The OEB explained that it would fix the final pole attachment charge through the hearing of the Carriers' motion to review and vary.

On July 20, 2015, the Carriers jointly filed a notice of motion to review and vary the March 12, 2015 decision. The Carriers asked that the OEB's approval of the increase to the pole attachment charge be set aside (even though, as noted earlier, the proposed increase was not reflected in the final distribution rate order, and therefore the increase was never actually "approved"), and that "a hearing *de novo*" be held on the charge.

In Procedural Order No. 3, issued July 29, 2015, the OEB reiterated what it said in its decision granting leave to bring the motion: "the purpose of this motion to review and vary will be to fix the final Pole Access Charge, which until the disposition of the motion will remain at the interim level of \$22.35 per pole per year. That is, the motion will be a hearing on Hydro One's proposed increase to the Pole Access Charge." In the same Procedural Order, the OEB granted party status, for the purpose of the motion to review and vary, to everyone who had been a party in the Hydro One rate application, as well as to the Carriers.

In the event, the following intervenors participated actively and made submissions in this proceeding: the Power Workers' Union, the School Energy Coalition, Canadian Manufacturers & Exporters, the Vulnerable Energy Consumers Coalition, and the Sustainable Infrastructure Alliance of Ontario. Hydro One and OEB staff were also active participants. To their credit, the various Carriers worked together and made joint submissions.

In Procedural Order No. 4, issued October 26, 2015, the OEB explained that its "review of the Pole Access Charge in this proceeding will be within the context of the current approved OEB methodology as described in Decision and Order RP-2003-0249, issued March 7, 2005." The OEB added that "the OEB plans to undertake a policy review of

¹¹ Decision and Order, June 30, 2015 (EB-2015-0141).

miscellaneous rates and charges commencing this year which will include a review of pole attachment rate methodology.” This was the same approach the OEB took in the Hydro Ottawa case.

Both Hydro One and the Carriers filed evidence in this proceeding and responded to interrogatories. A technical conference was held on January 12, 2016. Immediately after the technical conference ended, there was a settlement conference, but the parties were unable to reach a settlement.

The Carriers brought a procedural motion on March 8, 2016 requesting: (a) that the motion to review and vary be heard orally, rather than in writing as required by Procedural Order No. 7; (b) an order that Hydro One produce any pole attachment agreements with Bell Canada (Bell); and (c) an order allowing for further interrogatories to Hydro One by the Carriers. The OEB granted the request for further interrogatories but denied the request for the Bell agreements. It deferred its decision on the request for an oral hearing until the completion of the next round of interrogatories.¹²

The Carriers brought another procedural motion on April 22, 2016 seeking an order requiring Hydro One to provide supplementary responses to the second round of interrogatories. In Decision and Procedural Order No. 9, issued May 4, 2016, the OEB said it would hear the procedural motion orally on May 19, 2016, and ordered Hydro One to have a witness or panel of witnesses on standby that day who would be prepared to provide supplementary responses should the OEB determine they were necessary. At the oral hearing, Hydro One agreed to provide clarification on the issues raised by the Carriers, which it did by way of affirmed oral testimony by John Boldt, Hydro One’s manager of program integration.

At the conclusion of Mr. Boldt’s testimony, the OEB established a schedule for written submissions. In addition to Hydro One and the Carriers, the OEB received submissions from the five intervenors mentioned above, as well as OEB staff. The OEB also received letters of comment from 12 individuals, all of whom opposed Hydro One’s proposed increase to the pole attachment charge.

¹² Decision and Procedural Order No. 8, March 31, 2016 (EB-2015-0141).

3 SETTING A JUST AND REASONABLE POLE ATTACHMENT CHARGE

3.1 Scope of the Proceeding

Before addressing the substantive issues at the core of this motion to review and vary, the OEB wishes to address certain concerns about procedural fairness raised by the Carriers.

In their submission dated June 10, 2016, the Carriers argue that the only relevant issue in this proceeding is whether the pole attachment charge should include vegetation management costs. They say that vegetation management was “the singular basis” for their motion, and that it is unfair for Hydro One and the intervenors to raise other issues, namely, whether the pole attachment charge should be calculated on the basis of 2014 or 2015 costs instead of (the lower) 2012 costs that were used in Hydro One’s initial rate application, and whether the charge should be calculated using 1.3 attachers per pole instead of the 2.5 that was used in the initial rate application. By the same token, they say it is unfair for Hydro One to ask, in its argument in chief, to increase the pole attachment charge even higher than the \$37.05 initially sought for 2015.

Findings

As the OEB has emphasized repeatedly throughout this proceeding, the purpose of the proceeding is to establish a final pole attachment charge that is just and reasonable, within the context of the approved methodology. It is not only about vegetation management.

Indeed, as noted in Chapter 2, the Carriers’ July 20, 2015 notice of motion asked the OEB to hold a hearing *de novo* on the pole attachment charge. The notice of motion did not refer to vegetation management – it was not until four months later that the vegetation management issue first came up, when the Carriers filed evidence provided by Michael Piaskoski of Rogers. Rather, the main thrust of the Carriers’ notice of motion was that a do-over of the pole attachment charge aspect of Hydro One’s rate application was required because the Carriers did not have an opportunity to participate:

The request for the increase in the Pole Attachment Rate proceeded completely unopposed and unchecked as a consequence of the failure to provide any kind of notice. The public interest requires

that a full hearing *de novo* be given in these circumstances to allow a considered decision be made with respect to the increase sought on a proper record.¹³

The Carriers got their wish for a new hearing on the pole attachment charge when the OEB granted leave to bring this motion. The OEB agreed with the Carriers that the appropriate approach would be, in essence, to restart the hearing on the single issue of the pole attachment charge, this time with the Carriers as participants.

For the same reasons, the OEB cannot accept the Carriers' argument that this proceeding offended the principle of *res judicata* (i.e., the principle that a matter that has already been decided should not be relitigated), or that allowing Hydro One and the intervenors to "revisit the Pole Access Charge afresh" amounted to an abuse of process.¹⁴ This was a whole new hearing on the charge. Just because the Carriers initiated the proceeding does not mean they alone can determine its scope. It would have defeated the purpose of setting a just and reasonable rate to exclude any evidence and arguments that Hydro One or the intervenors had not presented the first time around, when the pole attachment charge was not even a contested issue.

The OEB also wishes to respond to the Carriers' argument that the OEB improperly fettered its discretion by directing the parties to take note of its decision in the Hydro Ottawa case. What the OEB said in Procedural Order No. 7 was, "Parties making submissions in this case should take note of the findings of the OEB in the Decision and Rate Order on Pole Attachment Charge in the Hydro Ottawa Limited proceeding EB-2015-0004, issued February 25, 2016. While not bound by that decision, the OEB will have regard to those findings in making its decision in this case." It is common practice for adjudicative tribunals to look at other similar cases for guidance. The OEB's express statement that the Hydro Ottawa decision is not binding refutes the Carriers' argument that there was a fettering of discretion.

3.2 Vegetation Management Costs

Hydro One, supported by several intervenors, submits that the pole attachment charge should include its vegetation management costs.

¹³ Carrier notice of motion, July 20, 2015, para. 26.

¹⁴ Carrier submission, June 10, 2016, pp. 12-16.

The Carriers argue that those costs should be excluded, to be consistent with the OEB's approved methodology. OEB staff agrees that the approved methodology does not take into account vegetation management costs.

Hydro One acknowledges that the OEB's 2005 decision, which established the methodology, did not explicitly include vegetation management costs. Nevertheless, Hydro One points out that following that decision, it entered into pole attachment agreements with various Carriers, which specified that vegetation management costs were factored into the \$22.35 pole attachment charge. It asks the OEB to respect those contracts. It also raises practical concerns about how it could recover its vegetation management costs from the Carriers if those costs were not included in the pole attachment charge, including its historical costs going back to January 1, 2015, the beginning of the rate period at issue.

Findings

The OEB finds that vegetation management costs were not included in the OEB-approved methodology, and should therefore not be included in the calculation of Hydro One's pole attachment charge.

As OEB staff has noted, although the OEB's 2005 CCTA decision did not refer expressly to vegetation management costs, it can be inferred that vegetation management costs were excluded. One of the inputs used to calculate the \$22.35 pole attachment charge was a pole maintenance cost of \$7.61 per year. That \$7.61 was plucked from an earlier decision of the Canadian Radio-television and Telecommunications Commission (CRTC), in which the CRTC ordered certain Ontario distributors to provide access to their poles to CCTA members at an annual rate of \$15.89 per pole. (The CRTC was later found by the Supreme Court of Canada to have lacked jurisdiction to regulate access to power poles, which is why the OEB was called upon to resolve the dispute between the CCTA and the distributors.¹⁵) The CRTC used a pole maintenance cost of \$6.47, and the OEB simply adjusted that for inflation up to \$7.61. The CRTC made it clear that the \$6.47 excluded vegetation management: "The Commission considers that maintenance costs should exclude tree trimming. Rather, the power utilities should be permitted to levy a separate charge on cable companies to reflect tree trimming activities."¹⁶ It follows from all this that the methodology approved

¹⁵ *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476.

¹⁶ Telecom Decision CRTC 99-13, September 28, 1999 (included in Appendix C to the Evidence of Michael Piaskoski, filed by the Carriers in this proceeding), para. 212.

by the OEB in the CCTA decision accounts for pole maintenance costs, but those pole maintenance costs do not include vegetation management.

The OEB agrees with OEB staff that whatever Hydro One's agreements with various Carriers may say about vegetation management is not relevant to the question of whether vegetation management costs are included in the OEB-approved methodology or not. For the reasons above, the OEB finds they are not included in the methodology. Whether, as a matter of policy, they should be included in the calculation of the charge is a question that will no doubt be raised in the OEB's policy review that is now underway. But that this not the question before us today.

Excluding vegetation management costs would be consistent with the OEB's decision in the Hydro Ottawa case. Hydro Ottawa did not include vegetation management costs in its proposed pole attachment charge, therefore this was not an issue in that proceeding.

3.3 Hydro One's Reciprocal Agreement with Bell

Hydro One has a contractual arrangement with Bell for reciprocal access to each other's poles. Through this arrangement, Bell can attach to Hydro One's poles at no cost, and vice versa.¹⁷

In Decision and Procedural Order No. 8, the OEB denied the Carriers' request for an order compelling Hydro One to produce the Bell agreement or agreements. Citing its procedural ruling in the Hydro Ottawa matter, the OEB found that the details of the agreement were not relevant to establishing a just and reasonable pole attachment charge. Nevertheless, the OEB instructed OEB staff to ask Hydro One, by way of interrogatory, whether any of the costs being claimed by Hydro One in this proceeding are being recovered through the reciprocal arrangements with Bell or other parties, and how the Bell attachments and any other attachments associated with reciprocal arrangements factor into the determination of the number of attachers per pole. Hydro One answered both questions on April 15, 2016. It explained that no costs being claimed in this proceeding are being recovered elsewhere, and that the numerator in its calculation of the number of attachers per pole includes Bell and other reciprocal

¹⁷ Motion Hearing Transcript, May 19, 2016, pp. 30 and 42.

arrangement attachments.¹⁸ Hydro One provided further explanation of its arrangement with Bell at the oral hearing of the Carriers' procedural motion on May 19, 2016.

In their written submission dated June 10, 2016, the Carriers assert that Bell contributes 40% of the cost of Hydro One's poles and, therefore, Hydro One should only use the remaining 60% of its costs as the basis for the pole attachment charge. The Carriers repeat the argument in their June 15, 2016 reply submission and their June 23, 2016 response to the Vulnerable Energy Consumers Coalition's submission.

In its reply argument, Hydro One claims that the reciprocal agreement it has with Bell is "completely irrelevant to the establishment of the pole attachment rate".¹⁹ It explains that, at any given time, approximately 60% of the Bell/Hydro One poles are owned by Hydro One and 40% are owned by Bell. It clarifies that there is no "joint use pool", as argued by the Carriers, and that Bell is in no way paying for 40% of Hydro One's pole costs. Hydro One adds that if it were to remove the Bell attachments from the calculation of the number of attachers per pole, the number of attachers would go down, which would result in a higher pole attachment charge.

Findings

The OEB finds that Hydro One's reciprocal arrangement with Bell has no impact on the pole attachment charge. Bell "pays" for its attachments to Hydro One's poles by allowing free access for Hydro One to Bell's poles. No money changes hands. Contrary to the Carriers' repeated statements, Bell does not pay for 40% of Hydro One's pole costs.

If money were changing hands and the pole attachment charge went up, Bell would presumably have to raise the (unregulated) rate it would collect from Hydro One. Assume a hypothetical scenario where there are 1,000 poles with Hydro One and Bell attachments, 600 owned by Hydro One and 400 owned by Bell. If Bell were paying the pole attachment charge of \$22.35 per pole, then Hydro One would be paying about \$33.53 for it to be a wash. If Hydro One's rate increased to, say, \$42.00, and were applied to Bell, then Bell would have to raise its rate for Hydro One to \$63.00 to stay even. This process would not affect the Carriers or any other attacher in any way.

¹⁸ Hydro One response to OEB Staff Interrogatory 2.1, filed April 15, 2016.

¹⁹ Hydro One reply, June 17, 2016, para. 32.

3.4 Reduction for Power-Specific Assets

One of the cost inputs in the OEB-approved methodology is the distributor's net embedded cost per pole. Hydro One proposed reducing its actual net embedded cost by 15% to account for the fact that some of its pole costs relate to "power-specific assets", which were described in the Hydro Ottawa decision as assets "used for supporting overhead distribution conductors and service wires, which are not needed for telecommunications cable attachments."²⁰ Every party that made a submission, including the Carriers, agreed that 15% was a reasonable reduction.

Findings

The OEB accepts 15% as a reasonable reduction to the net embedded cost per pole to account for the power-specific assets. The OEB notes that in the Hydro Ottawa case, Hydro Ottawa proposed – and the OEB accepted – a reduction of only 5% for the power-specific assets, based on the actual configuration of its poles. In the case at hand, however, there was no evidence justifying a departure from the 15% proposed by Hydro One and unchallenged by any party.

In the Hydro Ottawa case, the OEB determined that depreciation and pole maintenance expenses should also be reduced to account for power-specific assets, in the same way that the net embedded cost is reduced.²¹ In Hydro One's calculation of the pole attachment charge, it reduced the depreciation expenses by 15% but not the maintenance expenses. It argued in its reply that a 15% reduction to the maintenance expenses was not warranted because it had already deducted certain power-specific maintenance expenses from the total pole maintenance expenses it used in its calculation. The OEB finds that, to be consistent with the Hydro Ottawa decision, a 15% reduction for power-specific assets will be applied to Hydro One's pole maintenance expenses. Hydro One has not persuaded the OEB that its selective removal of certain power-specific costs adequately accounts for the power-specific assets.²²

²⁰ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), pp. 11-12.

²¹ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 14.

²² Hydro One's 2014 pole maintenance costs (without vegetation management costs) for 2014 were \$5.52 per pole. Multiplying that amount by the 34.3 allocation factor results in \$1.89. Reducing \$5.52 by 15% (\$4.69) and then applying the same allocation factor results in \$1.61. See Table 1 for the final calculation of the charge.

3.5 Average Number of Attachers per Pole

The number of attachers using a distributor's poles is an important factor in the calculation of the pole attachment charge. The more attachers there are to split the pole costs, the lower the rate.

In the OEB's 2005 decision in the CCTA case, the province-wide pole attachment charge of \$22.35 was calculated on the basis of an average of 2.5 attachers per pole. In the Hydro Ottawa case, the evidence was that Hydro Ottawa actually had on average fewer than 2.5 attachers on its poles. One of the issues in that case was whether Hydro Ottawa could use the actual number of attachers instead of 2.5. The OEB held that it could: the number of attachers is "an input to the methodology" rather than part of the methodology itself.²³ The OEB explained that it was "of the view that information specific to the utility is the most useful and as a result will rely on the number of attachers per pole information filed by Hydro Ottawa that reflects its specific circumstances."²⁴ Based on Hydro Ottawa's most recent year-end data, the OEB found there were 1.74 attachers per pole.

The same issue came up in this proceeding. Hydro One proposed using its actual number of attachers per pole, which it determined to be 1.3. All parties except the Carriers accepted that. The Carriers argue that the use of 2.5 attachers per pole is "an integral part" of the OEB-approved methodology, and that it would therefore be beyond the scope of the proceeding for the OEB to consider any number other than 2.5.²⁵ The Carriers also point out that in its initial rate application, Hydro One used 2.5, and suggest that it is unfair for it to resile from that in this proceeding.

Findings

As in the Hydro Ottawa decision, the OEB panel in this case also concludes that the number of attachers per pole is an input to the methodology rather than part of the methodology itself. The methodology that was approved in the 2005 CCTA decision does not require 2.5 attachers per pole to be used in all cases. As the OEB noted in the Hydro Ottawa decision, the CCTA decision "provided that individual utilities could bring an application to the OEB to vary the provincial pole attachment rate if they choose to

²³ Oral Hearing Transcript Vol. 2 (EB-2015-0004), p. 17; Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 6.

²⁴ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 7.

²⁵ Carrier submission, June 10, 2016, para. 13.

do so and could support an alternative rate.”²⁶ Hydro Ottawa chose to do so, with evidence that it actually had only 1.74 attachers per pole, and now Hydro One has done so too, with evidence that it has only 1.3 attachers per pole.

The OEB does not agree with the Carriers’ argument that Hydro One is bound by 2.5 because its initial calculation of the pole attachment charge, in its rate application, used that number. As explained earlier, this proceeding has been a hearing *de novo* on Hydro One’s pole attachment charge, with the objective of setting a just and reasonable rate within the context of the approved methodology. It was therefore open to Hydro One and the other parties to introduce new evidence and raise new issues. The OEB accepts Hydro One’s evidence that it has 1.3 attachers per pole. It is that actual number, rather than 2.5, which should be used in calculating the charge.

3.6 Allocation Factor for Indirect Costs

Under the approved methodology, the “indirect” costs associated with a pole, comprising depreciation, maintenance and capital carrying costs, are shared between the distributor and the third party attachers according to an “allocation factor”. The allocation factor is a function of the average number of attachers per pole. In the CCTA decision, the allocation factor was calculated to be 21.9%, based on 2.5 attachers per pole, which meant that each attacher was responsible for 21.9% of the indirect costs.

Based on 1.3 attachers per pole, Hydro One calculates the allocation factor as 34.3%. In their submissions, the School Energy Coalition, Canadian Manufacturers & Exporters and the Vulnerable Energy Consumers Coalition suggest that the allocation factor should be slightly higher (35.4%), and OEB staff invited Hydro One to clarify in its reply how it had arrived at 34.3%. Hydro One did explain how it derived the allocation factor in its reply, and confirmed that it should be 34.3%.

Findings

The OEB accepts Hydro One’s calculation of the 34.3% allocation factor, as explained in Hydro One’s reply.

²⁶ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 7.

3.7 Use of Actual vs. Forecast Costs

In the Hydro Ottawa decision, the OEB determined that the pole attachment charge should be calculated based on historical rather than forecast costs, as historical costs were used in the 2005 CCTA decision. The OEB added that “it is contrary to OEB practice to use forecast or projected costs to determine specific service charges.”²⁷

In this case, the parties seem to have agreed that historical costs should be used, but disagreed about which ones. Every party that made a submission, except the Carriers, urged the OEB to use 2014 costs, 2014 being the most recent year for which information is available prior to the rate period at issue. The Carriers argued that 2012 costs should be used, because Hydro One used 2012 costs in its initial rate application.

Findings

Hydro One’s pole attachment charge should reflect 2014 costs. Not only is 2014 the most recent year for which data is available prior to the rate period, but the 2014 data was tested through the interrogatory process and the technical conference. This being a hearing *de novo* on the pole attachment charge, Hydro One was not bound to use 2012 costs simply because those were the costs used in its initial rate application.

3.8 Interim vs. Final Rate

The Carriers argue that the OEB should wait until the Divisional Court has decided the appeal of the Hydro Ottawa decision and the OEB’s policy review has been completed before approving a final pole attachment charge for Hydro One.

Hydro One and OEB staff submit that the pole attachment charge should be made final as of January 1, 2015. OEB staff referred to the Hydro Ottawa case, where the OEB decided to make the pole attachment charge final even though the policy review had not yet begun. The OEB said in that decision that “new policies should be applied on a prospective basis”, consistent with prior decisions involving new policies.²⁸

Findings

The OEB clearly stated at the outset of this proceeding, when it granted leave to the Carriers to bring a motion to review and vary, that the OEB would “fix the final charge

²⁷ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 9.

²⁸ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 15.

through the hearing of this motion” (emphasis added).²⁹ Subsequent procedural orders have affirmed that the purpose of this proceeding is to fix the final charge at a level that is just and reasonable. Accordingly, the pole attachment charge of \$41.28 will be a final rate, effective January 1, 2015. That is the same day the other rates and charges approved in the OEB’s March 12, 2015 decision came into effect. It will remain at \$41.28, with no annual inflation adjustment, pending the outcome of the OEB’s policy review that is now underway. This approach is consistent with the OEB’s decision in the Hydro Ottawa matter.

In its reply, Hydro One agreed to establish two deferral accounts, for eventual disposition to Hydro One’s distribution customers. The first will record the revenue difference between the interim pole attachment charge (\$22.35) and the rate approved in this proceeding (\$41.28) over the term that interim rates were in place. The second will record the revenue difference between the pole attachment charge initially proposed in Hydro One’s rate application (\$37.05 for 2015) and the final approved rate (\$41.28) because, as noted by Hydro One in its reply, the impact of the initially proposed rate is what is reflected in Hydro One’s current distribution rates. The OEB finds that both deferral accounts are reasonable, and directs Hydro One to file a draft accounting order in respect of the accounts.

²⁹ Decision and Order, June 30, 2015 (EB-2015-0141), p. 1.

4 CONCLUSION

Based on all the components described in Chapter 3, the OEB has calculated the pole attachment charge for Hydro One to be \$41.28.

A table summarizing the OEB's calculation is attached as Schedule A. The only input that is different than Hydro One's calculation, in its argument in chief, is the pole maintenance expenses: vegetation management costs have been excluded, and a 15% reduction for power-specific assets has been applied.

This pole attachment charge is established on a final rather than interim basis, effective January 1, 2015, pending the outcome of the OEB's policy review. Consistent with the Hydro Ottawa decision, there will be no annual inflation adjustment.

5 COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. In Procedural Order No. 3, the OEB determined that any party that had been found to be eligible for costs in the initial Hydro One rate case (EB-2013-0416), including four of the five active intervenors in this motion to review and vary,³⁰ was also eligible for costs of the motion. Procedural Order No. 3 further established that these costs will be payable by Hydro One.

When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. Filings related to cost awards shall be made in accordance with the schedule set out in the Order section of this Decision and Rate Order.

³⁰ The Power Workers' Union did not request cost eligibility in EB-2013-0416.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Effective January 1, 2015, the “Specific Charge for Cable and Telecom Companies Access to the Power Poles” on Hydro One’s tariff of rates and charges shall be \$41.28 per pole, per year.
2. Hydro One shall establish two deferral accounts, as described in section 3.8 of this Decision and Rate Order.
3. Hydro One shall file a draft accounting order in respect of the deferral accounts with the OEB and deliver it to all other parties by August 11, 2016.
4. OEB staff and any other party may file written comments on Hydro One’s draft accounting order by August 18, 2016.
5. Hydro One may file any reply comments on the draft accounting order by August 25, 2016.
6. The School Energy Coalition, Canadian Manufacturers & Exporters, the Vulnerable Energy Consumers Coalition, and the Sustainable Infrastructure Alliance of Ontario shall file with the OEB, and deliver to Hydro One, their respective cost claims by August 25, 2016.
7. Hydro One shall file with the OEB, and deliver to the intervenors, any objections to the claimed costs by September 1, 2016.
8. Intervenors shall file with the OEB, and deliver to Hydro One, any responses to any objections to the claimed costs by September 8, 2016.
9. Hydro One shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

DATED at Toronto August 4, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
ROGERS COMMUNICATIONS PARTNERSHIP *ET AL.*
EB-2015-0141
AUGUST 4, 2016

HYDRO ONE POLE ATTACHMENT CHARGE (EB-2015-0141)							
		RP-2003-0249 (CCTA)		Hydro One Argument In Chief		EB-2015-0141 Decision	
	DIRECT COST						
A	Administration	\$0.69	CRTC estimate of 0.62 plus inflation	\$0.90	Escalated 3% per year from 2005.	\$0.90	Escalated 3% per year from 2005.
B	Loss in Productivity	\$1.23	Cost/attacher (2.5)	\$3.09	Escalated 3% per year from 2005, and adjusted for 1.3 attachers.	\$3.09	Escalated 3% per year from 2005, and adjusted for 1.3 attachers.
C	TOTAL DIRECT COST (B+C)	\$1.92		\$3.99		\$3.99	
	INDIRECT COST				2014 Actual Costs		2014 Actual Costs
D	Net Embedded Cost per pole	\$478.00		\$944.49	NBV of 1,575,195 poles in service; reduced by 15% for power-specific assets	\$944.49	NBV of 1,575,195 poles in service; reduced by 15% for power-specific assets
E	Depreciation Expense	\$31.11		\$23.83	Hydro One depreciation of 1.7%; reduced by 15% for power-specific assets.	\$23.83	Hydro One depreciation of 1.7%; reduced by 15% for power-specific assets.
F	Pole Maintenance Expense	\$7.61		\$88.56	Vegetation Management included	\$4.69	Vegetation Management excluded (result is \$5.52); reduced by 15% for power-specific assets
G	Capital Carrying Cost	\$54.59	11.42% cost of capital	\$80.19	Pre-Tax weighted cost of capital (8.49%)	\$80.19	Pre-Tax weighted cost of capital (8.49%)
H	TOTAL INDIRECT COST (E+F+G)	\$93.31		\$192.58		\$108.71	
I	Allocation Factor	21.9%	2.5 attachers per pole	34.3%	1.3 attachers per pole	34.3%	1.3 attachers per pole
J	Indirect Costs Allocated (H x I)	\$20.43		\$66.05		\$37.29	
K	ANNUAL POLE RENTAL CHARGE (C+J)	\$22.35		\$70.04		\$41.28	