

*Review of Process Leading to  
Draft Report of the Board:  
Framework for Determining Wireline  
Pole Attachment Charges  
EB-2015-0304*

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*Prepared for  
Rogers Communications Canada Inc.  
February 9, 2018*

**BDR**

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### **APPENDIX 1 – CURRICULUM VITAE OF PAULA ZARNETT**

## 1 INTRODUCTION AND SCOPE

BDR NorthAmerica Inc. (“BDR”) has been retained by Rogers Communications Canada Inc. (“Rogers”) to provide comments in response to a letter dated December 18, 2017 (the “Letter”), inviting comments on a Draft Report of that date (the “Draft Report”) setting out a policy for the wireline pole attachment rates charged by local distribution companies (“LDCs” or “distributors”) for attachments of telecommunication and cable companies (“carriers”) to distribution poles.

BDR is a Toronto-based consultancy providing advisory and analytical services to clients who are participants or stakeholders in the Canadian energy sector. This report was prepared entirely by Paula Zarnett, Vice President of BDR, a consultant with more than 30 years of experience in the regulated energy sector. In that capacity, she has participated on behalf of clients in OEB stakeholder consultations in the areas of cost allocation and rate design and also provided expert written and oral testimony before the Board in a variety of proceedings.

Rogers asked BDR to review, based on publicly available information, the consultation process that preceded issuance of the Draft Report, and comment from experience as to whether that process conforms to the Board’s previously stated policies and usual practice for setting rates.

For clarity, BDR was not asked to comment on the data used or the quality of the allocation approach on which the proposed new pole attachment rate is based. Other experts have addressed these issues on behalf of Rogers.

## 2 PRE-DEFINED SCOPE AND MANDATE OF THIS PROCESS

At the outset, the process parameters were defined as “a) review of wireline pole attachments and the **methodology** used for determining charges, including the appropriate treatment of any revenues that carriers may receive

from third parties”<sup>1</sup>. [Emphasis added] No intention was stated that the process would result in setting a rate.

Based on expressions of interest, the Board (or Board Staff) selected representatives to form a pole attachment working group (“PAWG”). It is a matter of record that Rogers expressed such interest, and was selected to participate in the PAWG. The mandate of the PAWG was defined as “to provide advice on the technical aspects and related details to be addressed in respect of pole attachments”<sup>2</sup>. In contrast to the typical rate setting process, in which the roles of parties are as applicants or intervenors, the PAWG participants were neither applicants nor intervenors.

In describing the role of the Staff’s consultant to this process, the Letter states:

“NGL Nordicity Group (Nordicity) was retained to facilitate the PAWG meetings and to provide expert input and analysis of the key issues identified by the PAWG. In addition, Nordicity was tasked with producing an expert report that would summarize the current pole attachment landscape within the province of Ontario by analyzing relevant regulatory decisions, pole attachment data, and findings from working group meetings. The report was to recommend an appropriate **framework methodology** for setting wireline pole attachment charges.”[Emphasis added]

As such, Rogers expected that the outcome of their work would be a “methodology” or a “framework methodology”, which, if approved by the Board, would be the basis on which an LDC could apply for revisions to its pole attachment rate.

Bringing a methodology issue or a process to develop guidelines to a stakeholder group has been an approach taken by the Board frequently since electricity transmission and distribution came under its regulation. An example is the extended process that developed guidelines and a working

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<sup>1</sup> <https://www.oeb.ca/industry/policy-initiatives-and-consultations/review-miscellaneous-rates-and-charges>

<sup>2</sup> [https://www.oeb.ca/oeb/Documents/EB-2015-0304/Brdltr\\_Misc\\_Rates\\_Charges\\_Review\\_20151105.pdf](https://www.oeb.ca/oeb/Documents/EB-2015-0304/Brdltr_Misc_Rates_Charges_Review_20151105.pdf)

model for customer class cost allocation by distribution utilities,<sup>3</sup> in which Rogers participated as a stakeholder. In that process, working group members had the opportunity to comment extensively on documents that went forward as Staff Reports to the Board. The Board then made a decision based on those reports.

Review of the Draft Minutes of the final PAWG meeting which took place on January 31, 2017 clearly shows that at that time:

- Participants expected the next step to be a “staff report” rather than a Report of the Board;
- Options were open, and a hearing on the issues remained a possibility;
- The scope of the expected staff report was not known;
- The understanding of participants, including Board Staff, was that the process was a “consultation, not a hearing”;
- Parties were anticipating a further process of input which would be before the Board, along with a staff report;
- Considerable disagreement continued to exist as to both methodologies and data; and
- If a new methodology was adopted, the appropriate process for implementation into the rates of LDCs remained an issue.

The following excerpt from those minutes supports the preceding conclusions as to the understanding of participants:

“Mr. Lesychyn: Let’s move on to where do we go from here and how to move this forward.

Ms. Milton: What will the staff report do?

Mr. Lesychyn: It will provide some recommendations.

Ms. Helt: It will be presented to the OEB and all the options are open, they may decide a hearing is necessary. It just depends. Nordicity’s draft report will be sent out for comments so if there are things in terms of process then we would want to hear from you.

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<sup>3</sup> EB-2005-0317

Mr. Piaskoski: Would we be able to provide written comments as part of the process before the report. All the assumptions and all the methodologies that have gone into these calculations have not been agreed upon and tested. Or maybe the OEB and Nordicity think you already have enough information to make decision.

Mr. Rubenstein: I think there's a lot of complexity and disagreement. Is it that the staff report will be a proposed approach? Or will it be a summary of what was heard? Will it present a recommendation on the way forward? These are very different options.

Mr. Lesychyn: I think it could be either Mark, I would need some further direction from Lynne.

Ms. Helt: I agree Mark, that there is a lot of disagreement and that would have to be noted in the report. It may still make a recommendation but it will present the different views of the parties. Nordicity's findings will be part of that.

Mr. Harper: So does Nordicity believe that it needs more input? It depends on how the process works and where people feel is the most appropriate point to provide feedback.

Mr. Piaskoski: Personally, I would say that we would like to provide written submissions to assist Nordicity in writing their reports.

Ms. Helt: Okay, and those submissions based on the presentation today. That's up to Nordicity to decide.

Mr. Rubenstein: I'm uncomfortable with that. Is the point that each side is making an argument to Nordicity? There's an inequality of arms issue. My client has less resources than Rogers to bring these issues back up with the OEB.

Mr. Lesychyn: The answer here is that Nordicity, myself and Nancy need to sit down and figure out what the process is given the budget and timelines. The process could go on forever with rebuttals.

Ms. Helt: In terms of timing and budget, not to disagree with you but this has been a long process and we want to get it right. I agree that you and Nancy and Lynne should discuss process going forward. The Carriers want the chance to write submissions before Nordicity writes its final report.

Mr. Piaskoski: We also have questions about the data that John provided. We're almost getting into a proceeding with interrogatories here.

Mr. Lesychyn: And that's what I'm afraid of.

Mr. Rubenstein: Based on past experience, I think Nordicity will come up with a general framework, staff will make some adjustments and there will be a draft report with the chance for feedback. But the first case that these findings are applied to we will be back here fighting over these same issues. This is a consultation right? Not a hearing. We need to figure out data, methodology.

Mr. Harper: The Nordicity report needs to acknowledge where the consensus exists. We have to confirm that there has actually been on consensus and on which points.

The last thing you want is saying there was consensus and receiving submissions to the contrary.

Ms. Milton: I think you can say consensus if everyone agreed. I don't think that applies in many cases. If there wasn't consensus you have to list who held which position. I don't think majority is useful in this case because it's arbitrary who is in this room. That's not a flaw in this process but that's just the way it is.

Mr. Rubenstein: Well there are three groups here and each one wants something different. I'm not sure that each issue lends itself to a single sentence summary. If the end result is a utility specific rate, then proxies will not be sufficient.

Mr. Lesychyn: I think that would be a two phase process. You need the best of both worlds.

Mr. Ahmed: As you said the issues are attachers for example. The data we have is the best we can get. The only thing to decide is whether to use the actual or the presumptive.

Mr. Lesychyn: Looking to past OEB decisions, they favour actual.

Ms. Milton: But they refused to listen to our arguments on that.

Mr. Rubenstein: I understand that in front of a panel the OEB doesn't want to get into every decimal, that's why we are here to some degree. But there are other issues that will be important going forward that we have not discussed.

Mr. Harper: An issue the OEB needs to struggle with is, if you establish a methodology, only 1/5 of the utilities are coming in every year. What do you do with the other 4/5? Do they stick with the existing rate? A default rate?

Ms. Helt: The idea of doing a standard rate vs. another rate just becomes a bit more complicated.”<sup>4</sup>

However, following the final PAWG session, the Draft Report was developed, apparently without further input from the PAWG members. If any further expert analysis or opinion was solicited, it is not clear from the Draft Report. When the Draft Report issued, it was the first public notice to PAWG participants and other stakeholders of a proposal to increase the pole attachment charge applicable for all LDCs without an individually determined charge, by 233%, effective on approval in the early part of this year.

### 3 RATE SETTING PROCESSES

In contrast to the policy consultation framework adopted in this docket, the OEB, which is a leader in regulatory process in Canada, has identified and consistently used a different process for setting rates—a process of application and public hearings, which is the process generally used by North American regulators for setting rates.

The OEB has described its mandate and process for setting rates as follows:

‘One of the OEB’s principal functions is to set “just and reasonable rates” that utilities may collect from ratepayers for utility services. The Board sets rates using a quasi-judicial process that **requires utilities to present evidence** to justify any proposed rate increases **through an open and transparent public hearing.**’<sup>5</sup> [Emphasis added].

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<sup>4</sup> Draft Minutes of Meeting Prepared by NGL Nordicity Group Limited (“Nordicity”) Issue date February 15, 2017

<sup>5</sup> Energy Sector Regulation – A Brief Overview, page2

[https://www.oeb.ca/oeb/Documents/Documents/Energy\\_Sector\\_Regulation-Overview.pdf](https://www.oeb.ca/oeb/Documents/Documents/Energy_Sector_Regulation-Overview.pdf)

In rate applications, affected parties, who may be consumers, consumer interest groups or public interest groups, may intervene, subject to the Board's approval in order to avoid inappropriate or duplicative interventions. Although many utility rate applications are largely or entirely resolved through a settlement process, the evidence filing is public, and both Board Staff and intervenors have the opportunity to challenge the relevance, accuracy, and completeness of the evidence, and the appropriateness of the proposals, through interrogatories prior to any settlement meetings. The settlement agreement is subject to approval by the Board, and if any issue is not settled, it comes to the Board to hear and decide.<sup>6</sup> Intervenors will then have an opportunity to cross-examine the applicant's witnesses in the public hearing, and to present their own evidence, which may be the report of an objective expert. The Board then decides based on its policy and the evidence on the record.

The OEB itself describes this process and its commitment to an open, transparent but rigorous process as follows:

“A rate application must demonstrate on its face that it is of sufficient quality to support the OEB's rigorous review process. An application that does not meet this standard will not be processed; it will be returned for further work. This is one of the ways the OEB will ensure that utilities take full ownership of all aspects of the information and proposals included in their applications.

“The OEB uses an open and transparent adjudicative process to review rate applications. The adjudicative process can involve a number of steps, depending on the type of application, to ensure that a utility's proposals are adequately examined and “tested” during the review. (Potential tools include interrogatories, technical and settlement conferences, and an oral hearing)...

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<sup>6</sup> Neither the Board itself nor Board Staff are parties to settlement agreements.

“The OEB uses the adjudicative process to ensure its review results in just and reasonable rates for customers.”<sup>7</sup>

If this Report is approved and implemented, the OEB will have set a rate without any party to “take ownership” of evidence, and without an open and transparent public hearing which allows intervenors, especially including the customers who will pay the rate, the opportunity to publicly test an applicant’s evidence with relevant questions, present their own evidence and be tested, and to be heard directly by a panel of the Board. Furthermore, while intervenor status in a rate hearing is always subject to approval by the Board, in this case participants were selected. Any other party who may have wished to participate has to date only had the option of comments after issuance of the Draft Report.

#### **4 PRECEDENTS FOR PROCESSES SETTING RATES FOR POLE USE IN ONTARIO**

In previous cases, the Board has established charges for joint use of poles through a process that involved an application, the filing of evidence, and a Decision by a panel of the Board.

As noted in the Draft Report, the current province-wide pole attachment rate was set in 2005, following an application by the CCTA and a public hearing before a 3-member panel of the Board<sup>8</sup>. The applicant and intervenors presented evidence to the Board, on the basis of which a Decision was rendered.

At page 3 of the Decision and Order in that proceeding the Board said:

“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

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<sup>7</sup> Ontario Energy Board, Handbook for Utility Rate Applications October 13, 2016, page 7.

<sup>8</sup> RP-2003-0249

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.” [Emphasis added.]

A more recent precedent which is related, although in this case the user of the joint asset is not a telecommunication attacher, is the application of Hydro One Networks for joint use charges related to generation projects.<sup>9</sup> The application was heard by a 2-member panel of the Board, and a Decision rendered on December 17, 2010, following a process that included a technical conference, pre-filed questions for the conference, and submissions, and reply argument. Seven parties participated as intervenors.

Following review of methodology proposals presented by the applicant, an intervenor and Board Staff, the Board adopted the methodology proposal of the applicant, saying at pages 6-7:

“The Board finds that it is appropriate to set the generator joint use charge at \$28.40 which is the current level of the charge for distribution joint use, updated to reflect current costs. **The Board finds that this approach achieves the best balance between the principles of cost based charges and non-discriminatory treatment amongst pole users.** The Board finds that this approach maintains a reasonable alignment amongst the methodologies underpinning the telecommunications and distribution joint use charges while reflecting current costs into the charges being set in this proceeding.” [Emphasis added.]

Three recent cases of individual distributor pole attachment rate approvals resulted from applications to the Board by utilities, and were dealt with through the Board’s normal process which applies to the setting of rates. These cases are referenced in the Draft Report.

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<sup>9</sup> EB-2010-0228

## 5 USES OF POLICY CONSULTATION APPROACHES BY THE BOARD

As mentioned, the Board frequently uses a process of stakeholder consultation, leading to a Staff or Board Report, to deal with methodology and policy issues. However, of the examples listed at the OEB website, while some of these processes had implications for the rates or affected the manner in which rates would be set, none of these processes were for **setting** of rates.

The following table summarizes the subjects and scopes of Reports of the Board and Staff Reports over the last several years, as listed at the OEB website<sup>10</sup>. Reports of third party advisors are not included.

Title, Date and Docket Number	Description of Scope from OEB or Staff Report
Regulatory Treatment of Pension and Other Post-employment Benefits (OPEBs) Costs September 14, 2017 EB-2015-0040	From page 2: “In summary, this Report establishes the use of the accrual accounting method as the default method on which to set rates for pension and OPEB amounts in cost-based applications. A panel of the OEB can use another method if accrual accounting does not result in just and reasonable rates. This Report also provides for the establishment of a variance account to track the difference between the forecasted accrual amount in rates and actual cash payment(s) made, with an asymmetric carrying charge in favour of ratepayers applied to the differential. The variance account will be effective January 1st, 2018, unless otherwise ordered by the OEB.”
Proposed Cyber Security Framework and Supporting Tools for the Electricity and Natural Gas Distributors EB-2016-0032 June 1, 2017	Page i: “In the absence of a recognised sector specific standard or framework, the OEB has undertaken this initiative to facilitate The development of the framework so that the sector entities are able to address cyber security risks based on a consistent approach and criteria in order to meet their obligations.

<sup>10</sup> <https://www.oeb.ca/industry/policy-initiatives-and-consultations/reports-board>

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
Report to the Minister Options for an Appropriate Rate Assistance Program for On -Reserve First Nations Electricity Consumers December 29, 2016 (no docket)	Page 3: In order to advise on options for a First Nations Rate, the Minister asked the OEB to: <ul style="list-style-type: none"> <li>•Identify eligible on-reserve First Nations consumers, including those who may live on reserves not connected to the IESO grid and those served by power systems not regulated by the OEB;</li> <li>•Consider impacts on existing electricity consumers, as well as distribution and transmission utilities and other stakeholders;</li> <li>•Consider program funding and administration;</li> <li>•Consider interactions with existing programs such as the Ontario Electricity Support Program (OESP); and</li> <li>•Report back to the Minister by January 1, 2017.</li> </ul>
Regulatory Framework for the Assessment of Costs of Natural Gas Utilities' Cap and Trade Activities EB-2015-0363 September 26, 2016	Page 7: The Regulatory Framework describes how the OEB intends to assess the Utilities' Compliance Plans for cost-effectiveness and reasonableness and describes the information to be included in a Plan to assist the OEB in assessing and monitoring the Plans for prudence and protecting the interests of customers.
Distributor Gas Supply Planning EB-2015-0238 August 12, 2016	Page 1: The Staff Report is the main output of this consultation and serves as the foundation platform from which the OEB should consider further policy work related to the overall planning and review /approval processes. The side-by-side comparison document (Appendix A) is a reference document, developed with the stakeholders and the two major distributors. Recommendations are contained below, to further expand the understanding of the gas supply planning and processes.
Defining Ontario's Typical Electricity Customer EB-2016-0153 April 14, 2016	Page 1: A recent review indicates that average residential consumption has declined significantly since the standard was last established. As a result, the OEB has determined that the standard used for illustrative purposes should now be 750 kWh per month.

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
2015 Natural Gas Market Review EB-2015-0237 April 6, 2016	Page 1: Information and insight gained through this consultation will assist the OEB to identify the potential need for modifications to the OEB’s regulatory framework/policies; and to review utility applications that affect the rates and quality of service to customers.
New Policy Options for the Funding of Capital Investments: Supplemental Report EB-2014-0219 January 22, 2016	Page 3: In this Supplemental Report the OEB has determined that: <ul style="list-style-type: none"> <li>•No changes will be made to the manner in which the OEB applies the half-year rule in a test year and its persistence over the incentive rate-setting (IR) term.</li> <li>•The materiality threshold formula will be modified as follows: <ul style="list-style-type: none"> <li>o A multi-year formula</li> <li>o An annualized growth factor</li> <li>o A dead band of 10% (down from the previous 20%)</li> <li>o Use of the stretch factor assigned to the middle cohort (currently 0.3%) for every distributor for the determination of the materiality threshold, irrespective of the actual stretch factor at any one point in time.</li> </ul> </li> </ul>
Review of the Cost of Capital for Ontario’s Regulated Utilities EB-2009-0084 January 14, 2016	Page 1: Based on the results of this review, OEB staff has concluded that the methodology adopted in late 2009 has worked as intended. Movement in the parameters have followed macroeconomic trends and activity, and have not resulted in excessive or anomalous volatility. While there is more volatility observed in the financial performance of utilities, these are largely due to other reasons.
Electricity Distribution System Reliability: Major Events, Reporting on Major Events and Customer Specific Measures EB-2015-0182 December 7, 2015	Page 2: <p>The first initiative will be to develop a definition of a “Major Event” that will be used to normalize reliability data that is reported to the OEB.</p> <p>The second initiative will be to develop criteria and new reporting requirements that will be used to evaluate a distributor’s response to a Major Event.</p> <p>The third initiative will be to establish an approach to implementing “customer specific” system reliability measures.</p>

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
Regulated Price Plan EB-2014-0319 November 16, 2015	Given the supply situation described above, now is the time to take a comprehensive approach to the redesign of RPP, which takes into consideration the longer-term needs of the system as reflected in the LTEP.
Electricity Distribution System Reliability Measures and Expectations EB-2014-0189 August 25, 2015	Page 1: This Report sets out the direction that is being taken by the Ontario Energy Board (OEB) to establish an expected level of electricity reliability performance by distributors.
Giving a Voice to Ontarians on Energy East Report to the Minister (no docket) August 13, 2015	Page 4: The Ontario Minister of Energy asked the OEB to undertake this consultation to help inform the government's position when it appears before the National Energy Board hearing on Energy East.
Consumers Come First: A Report of the Ontario Energy Board on the Effectiveness of Part II of the Energy Consumer Protection Act, 2010 EB-2014-0158 May 28, 2015	Page 2: The OEB is recommending 14 new measures to further enhance consumer protection. Recommendations include measures to curb inappropriate behaviour at the door and to provide consumers with the information that they need to make informed decisions about retail energy contracts. The recommended measures are listed here and described in more detail later in this report.
Board Policy A New Distribution Rate Design for Residential Electricity Customers	This policy is focused on just one aspect of electricity charges: distribution rates. Distribution rates are designed to recover the costs for the poles, wires, meters, transformer stations, trucks and computer systems that bring electricity from the high voltage transmission system to the individual homes and businesses of Ontario. These charges represent about 20% to 25% of a

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
EB-2012-0410 April 2, 2015	<p>residential customer’s total electricity bill. The other parts of the electricity bill relate to charges for electricity generation, transmission and system operations.</p> <p>This policy does not affect those parts of the bill. Under the new policy, electricity distributors will structure residential rates so that all the costs for distribution service are collected through a fixed monthly charge.</p>
Staff Report to the Board on the 2014 Natural Gas Market Review EB-2014-0289 March 31, 2015	<p>This Report has been prepared by staff to summarize the information provided to the Board’s 2014 Natural Gas Market Review (“the Review”) consultation, identify the implications and key issues arising from this information, and make recommendations for the Board’s consideration in relation to further steps</p>
Report of the Board Rate-Making Associated with Distributor Consolidation EB-2014-0138 March 26, 2015	<p>Page 4: This Report sets out the OEB’s amendments to its rate-making policy for electricity distributors following a MAADs transaction. The OEB has identified two specific policy matters that it intends to address at this time:</p> <ul style="list-style-type: none"> <li>•The duration of the deferral period for rebasing following the closing of a MAADs transaction; and,</li> <li>•A mechanism for adjusting rates to reflect incremental capital investments during the deferred rebasing period.</li> </ul> <p>The amendments to the OEB’s policy in relation to each of these matters are discussed below.</p> <p>The OEB has also provided clarification regarding the incentive rate mechanism that will apply to a distributor during a rebasing deferral period.</p>
Report of the Board Developing an Ontario Electricity Support Program EB-2014-0227 December 22, 2014	<p>Page 2-3: The Board has developed a preferred option to recommend to the Minister. We recommend that the Ontario Electricity Support Program:</p> <ul style="list-style-type: none"> <li>•Use a targeted, sliding-scale fixed credit to deliver greater benefits to those in greater need, including First Nations and Métis customers, those using medical equipment at home and those with electric heat;</li> <li>•Be available to all eligible electricity customers of local</li> </ul>

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
	<p>distribution companies, unit sub-meter providers and retailers;</p> <ul style="list-style-type: none"> <li>•Identify eligible low-income customers using Statistics Canada’s low-Income Measure (LIM) and, for effectiveness, use LIM for all low-income energy assistance programs;</li> <li>•Use a centralized service for program in take, supplemented by social agency partners for customers requiring additional assistance; and</li> <li>•Recover program costs on a provincial basis from all ratepayers.</li> </ul>
<p>Report of the Board Demand Side Management Framework for Natural Gas Distributors (2015-2020) EB-2014-0134 December 22, 2014</p>	<p>Page 2: The March 2014 directive to the Board from the Minister of Energy (the “Conservation Directive”) requires the Board to develop a new DSM framework that meets specific government objectives. It includes policies on all key elements that will be funded through the distribution rates of the gas utilities, providing guidance to the gas utilities as they develop their 2015 to 2020 DSM plans.</p>
<p>EB-2014-0198 Draft Report of the Board: Electricity and Natural Gas Distributors’ Residential Customer Billing Practices and Performance September 18, 2014</p>	<p>Page 2: By undertaking this initiative, the Board expects to take advantage of the recent upgrades to the electricity system and investments in smart meters to provide additional benefits for customers. This will result in more accurate bills for customers and receipt of electricity usage information based on actual meter readings in a more timely and convenient manner. The Board will also review the availability of e-billing as an option for customers. This report provides information on the Board’s policy review of both electricity and natural gas distributors’ residential customer billing practices and performance.</p>
<p>EB-2014-0219 New Policy Options for the Funding of Capital Investments: The Advanced Capital Module September 18, 2014</p>	<p>Page 4: The purpose of this ACM Report is to articulate the Board policy on the ACM, and how the current policy regarding the Incremental Capital Module (“ICM”) mechanism is changing. The Board does not intend to proceed with the elimination of the effect of the half year rule on test year capital additions for the IRM years at this time. The Board will continue to review this matter and may proceed with a further consultation at some point in the future.</p>

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
Draft Report of the Board Rate Design for Electricity Distributors EB-2012-0410 March 31, 2014	Page 4: As discussed later in the Report, a variable charge based on kWh is not aligned with the cost drivers for distribution. The Board has considered the Navigant analysis (see Appendix A) showing a consumer trend of decreasing average use which is discussed later in the Report. This analysis in the context of the public policy objectives set out in the LTEP regarding conservation has lead the Board to conclude that it will proceed with revenue decoupling for the low volume customer classes.
Report of the Board Performance Measurement for Electricity Distributors: A Scorecard Approach EB-2010-0379 March 5, 2014	Page ii: This Report sets out the Board’s policies on the measures that will be used by the Board to assess a distributor’s effectiveness and improvement in achieving the four performance outcomes.
Report of the Board Review of the Board’s Cost Allocation Policy for Unmetered Loads EB-2012-0383 December 19, 2013	Page 5: This consultation was to clarify the terminology and methodology used to allocate costs for unmetered loads. It was also meant to assess the need for, and the nature of, any updates or refinements to specific elements of the Board’s cost allocation policy as it relates to unmetered loads.
Report of the Board Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario’s Electricity Distributors EB-2010-0379 Issued on November	Page 2: This Report provides the Board’s final determination on its policies and approaches to the distributor rate adjustment parameters and the benchmarking of electricity distributor total cost performance for the period 2014 to 2018.

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
21 , 2013 and as corrected on December 4, 2013	
Report of the Board Supplemental Report on Smart Grid EB-2011-0004 February 11, 2013	Page 1 and 2: The Board has concluded that the objectives in the Minister’s Directive are aligned with the objectives of the renewed regulatory framework. The renewed regulatory framework set out by the Board in the RRFE Report is a comprehensive performance-based approach to regulation. It is designed to encourage cost -effective planning and operation of the electricity distribution network so that it is efficient, reliable and sustainable, and provides value for customers. Therefore, the Board will fulfill the Minister’s Directive by providing guidance on smart grid investments as part of implementing the performance-based framework set out in the RRFE Report
Report of the Board Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach October 18, 2012	Page 1 and 2: The Board’s renewed regulatory framework for electricity is designed to support the cost-effective planning and operation of the electricity distribution network –a network that is efficient, reliable, sustainable, and provides value for customers. Through taking a longer term view, the new framework will provide an appropriate alignment between a sustainable, financially viable electricity sector and the expectations of customers for reliable service at a reasonable price. The performance-based approach described in this Report is an important step in the continued evolution of electricity regulation in Ontario.
Report of the Board on the Cost of Capital for Ontario’s Regulated Utilities EB-2009-0084 December 11, 2009	Page 5: This report sets out the Board’s updated approach to cost of capital and the methods that the Board will use to annually update the cost of capital parameters for all rate-regulated utilities. Specifically, this report refines the Board’s policies regarding the cost of capital in the following five ways: (i) resetting and refining the return on equity (“ROE”) formula; (ii) refining long-term debt guidelines and the approach to determining the deemed long-term debt rate; (iii) refining the approach to determining the deemed short-term debt rate; and (iv) setting out an annual review process to be used by the Board in conjunction with each application of the methodology to ensure that the results meet the

<b>Title, Date and Docket Number</b>	<b>Description of Scope from OEB or Staff Report</b>
	Fair Return Standard (“FRS”); and (v) developing a framework within which to conduct a periodic review of the Board’s cost of capital policies.
Report of the Board Low-Income Energy Assistance Program EB-2008-0150 March 10, 2009	Page 3: This Report sets out the Board’s policies for implementation of a “Low-Income Energy Assistance Program”, or “LEAP”. LEAP has three components: (1) temporary financial assistance for low-income energy consumers in need; (2) the benefit of access to more flexible customer service rules on matters such as bill payment and disconnection notice periods; and (3) targeted conservation and demand management programs. With respect to the financial assistance component, LEAP builds on the “Winter Warmth” programs in which a number of distributors already successfully participate.

**6 ISSUES OF THE RATE AND IMPLEMENTATION THAT ARE NOT CONSISTENT WITH USUAL BOARD PRACTICE**

The increase of 233% which is proposed in the Draft Report is not consistent with the Board’s usual policy of mitigation of “rate shock” to users, even where other considerations would suggest the appropriateness of a significant increase. For example, in a report dated April 2, 2015, the Board said:

“The OEB understands that bill increases are never welcome. We work to ensure that customers understand the reasons for the increases. It is important that changes are made gradually to mitigate the impact of the increase and to give customers the opportunity to adapt. For this reason, we will implement the new rate design over four years.”<sup>11</sup>

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<sup>11</sup> EB-2012-0410 Board Policy A New Distribution Rate Design for Residential Electricity Customers April 2, 2015, page 13.

Furthermore, the Board has specifically identified the levels at which rate increases at a point in time are unacceptable, and require mitigation. In its 2016 Handbook to Utility Rate Applications, the Board said:

“The OEB expects utilities to mitigate bill impacts through the pacing and prioritizing of investments and activities. For electricity distributors, the OEB has a policy requiring the filing of a mitigation plan when the total bill impact is **10% or more for any customer class**. The OEB expects all other utilities to propose mitigation plans, or explain why a plan is not required, when their proposals result in material impacts to customers.”<sup>12</sup> [Emphasis added.]

The Board has said that utility poles are “essential services” and that it is appropriate for users to pay a regulated charge that is just and reasonable. The Board has expressed a policy of avoiding rate shock for “any customer class”. An increase of 233%, without significant notice or mitigation is a departure from policy that applies to other users of a distributor’s services.

Furthermore, as mentioned in other reports to be submitted by Rogers, the terms proposed in the Draft Report are that any utility may apply for a higher pole attachment rate if it believes its costs will not be recovered at \$52.00. Utilities that believe (with or without analysis) that they would over-recover costs with a \$52.00 charge are permitted none-the-less to charge \$52.00 on an unsubstantiated basis. An amount of \$52.00 is therefore intended to be a “floor” rate, whether or not it reflects the cost structure of any particular utility. As a result, the average rate for pole attachments in Ontario may soon be well above \$52.00.

The Draft Report also addresses the issue of annual increases to the rate, excluding the “stretch factor” which is applied to other rates of distributors as an incentive for efficiency and cost control. If approved, this component of the Draft Report would result in a gradual move away from the allocation of costs that is being proposed over a period when a distributor is under

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<sup>12</sup> Handbook to Utility Rate Applications, October 13, 2016, page v.

price cap rate-setting. This does not appear consistent with the Board's previously expressed policy that rates for pole attachments should be cost based and non-discriminatory. (See EB-2010-0228 quoted above.)

Furthermore, there is no indication in the Draft Report as to whether, on implementation for a distributor under price cap regulation, an adjustment would be made to the rates of electricity consumers to compensate for additional revenue from pole attachment charges. If there is no adjustment, this will result in incremental revenue to the distributors, without providing any immediate benefit to electricity consumers.

## **7 CONCLUSION**

It has been established for many years that under current legislation, jurisdiction to set rates for wireline attachers to distribution poles rests with the electricity regulator. In setting such rates, the OEB has no responsibility to consider the goal of increasing broadband availability or the possible effects on the deployment of broadband service into small communities, which might be of concern to another regulator.

The OEB has, however, stated a policy of "just and reasonable" rates, which are cost-based and non-discriminatory. The OEB has established processes for the setting of rates that require supporting information to be tested in an open and transparent process.

BDR concludes that the process leading up to issuance of the Draft Report has not been consistent with the OEB's usual practice in rate setting. Furthermore, it has resulted in a rate increase that qualifies as rate shock by the standards set out previously by the Board for "any customer class", and an annual adjustment approach that will result in a gradual move away from the cost sharing proportions established by the methodology. Unless otherwise addressed, the implementation may result in revenue increases to distributors and a benefit to their shareholders, without a corresponding benefit to electricity consumers.

A process that would allow carriers and other customer groups to test the data provided by the distributors in a public process, and to offer expert evidence of their own to a panel of the Board for consideration, would reflect the OEB's expressed policies and be consistent with the high standard set by the OEB as a leader in regulation in Canada.

**PAULA ZARNETT**

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Paula Zarnett has more than 30 years broadly based experience specializing in regulatory compliance, regulated tariffs and pricing issues for electricity and gas utilities. She has been responsible for design and implementation of a wide variety of innovative rates including time of use, both for large industrial and for residential customers, curtailment incentives, and special rates for retention of water heating loads. She has performed cost allocation studies for utilities serving customers with electricity, natural gas and steam, including a one-year, cross-functional study for a major electric distribution utility.

Following a series of rate and cost allocation specialist positions in both the electricity and natural gas sectors, she was promoted to the position of Manager of Marketing and Energy Management at Toronto Hydro, the electric distribution utility serving Toronto, Canada. There, her responsibilities included all rate and regulatory issues, customer research including load research and forecasting, and customer program design with a focus on conservation and demand management.

In her consulting practice, Paula provides a variety of advisory and analytical services to clients facing the challenges of both traditional and restructured energy markets, with a focus on issues impacted by regulatory policy and process. Her work includes business case and project feasibility analysis, cost allocations and pricing designs, energy sector mergers and acquisitions, and expert testimony before regulators. She is a skilled hands-on analyst and facilitator of cross-functional project teams. She was an instructor in Cost Allocation and Rate Design at CAMPUT's Energy Regulation Course, 2006, 2007 and 2008, and in 2014 delivered a two-day seminar on these subjects to the New Brunswick Energy and Utilities Board. She has been accepted as an expert witness in cost allocation in New Brunswick, Québec and Ontario.

She has performed assignments for clients in North America, China, Ghana, and Barbados.

**SELECTED EXPERIENCE BY SUBJECT AREA**

(INCLUDES PROJECTS UNDERTAKEN AS A CONSULTANT, AND IN THE COURSE OF RESPONSIBILITIES WITHIN ORGANIZATIONS)

*Shared and Corporate Cost Allocation*

**Gazifère** – study to allocate shared costs between regulated and unregulated businesses (to Régie de l'Énergie, jointly with Elenchus)

**Greater Sudbury Hydro** – study to allocate costs of services purchased from affiliate (OEB)

**Bluewater Power** – study to allocate costs of services provided to and purchased from affiliates (OEB)

**Kingston Hydro** – study to review transfer pricing methodologies and allocation of shared costs for services provided by non-regulated affiliates. (OEB)

**FortisOntario** – Five studies to allocate corporate and shared costs among regulated and non-regulated affiliates (OEB)

**EnWin Utilities** – study to allocate corporate and shared costs among corporate affiliates (OEB)

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**Oakville Hydro Electricity Distribution Inc.** – study to allocate shared corporate costs and the costs of services provided to and by unregulated affiliates.

*Rate Designs and Pricing Studies*

**Municipal Utilities of New Brunswick** – advised the municipal utilities and participated on their behalf in stakeholder sessions related to a rate design approval application by New Brunswick Power (Matter 357)

**Canadian Federation of Independent Business** -- Advised and represented CFIB in stakeholder processes of the Ontario Energy Board to design electricity distribution rates applicable to all sizes of non-residential metered customers

**Saint John Energy** – comprehensive recommendations to re-align rates to customer classes based on results of cost allocation study

**IGPC Ethanol Inc.** – supported the intervention of this industrial consumer in the rate application of its gas supplier, Natural Resource Gas

**Rogers Cable and Communications Inc.** – representation at Ontario Energy Board staff consultation process with regard to rate designs for Ontario's electric distribution utilities; development of policy and position documents, attendance at stakeholder meetings, analysis in support of positions on rate design for General Service classification and unmetered scattered loads; distribution cost allocation stakeholder process and 2006 distribution rate handbook.

**City of Markham (Ontario)** – recommendations for restructuring water and wastewater rates

**Oklahoma Gas and Electric** – review of results of residential time of use rate pilot including estimation of impact of the rate design on total customer consumption and peak hour consumption (load shifting).

**Summerside Electric/City of Summerside** – advisory and analysis service with regard to proposals of Maritime Electric for an Open Access Transmission Tariff.

**Nova Scotia Department of Energy** – advisory and analysis services to support intervention in Nova Scotia Power's request to the regulator for approval of a fuel adjustment mechanism.

**BC Hydro** – assisted a staff team in development of a Phase I report on long-term rate strategy; research on rate designs in several North American jurisdictions.

**Energy East (RGE and NYSEG)** – analysis as to the potential value of load shifting which might take place as result of rate-driven (time of use or critical peak pricing) programs supported by universal interval metering in the State of New York; regulatory precedents as to cost recovery for advanced metering and meter reading technology

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**East China Grid Company** – advice in developing and simulating an unbundled electricity distribution tariff for Shanghai Municipal and four provincial electric power companies

**British Columbia Ministry of Energy and Mines** – advisory and due diligence services with regard to recommendations by the British Columbia Utilities Commission for implementation of proposed Heritage Contract and stepped rates to wholesale and industrial customers.

**Perth-Andover Electric Light Commission** – long-term rate strategy and detailed bundled retail rate designs for all electricity consumer classifications.

**Volta River Authority (Ghana)** – development of tariff structure and preliminary rates for open access use of the national electric transmission system in Ghana.

**Enwave District Energy Limited** – determination of appropriate customer classification and pricing design alternatives for a district steam system in a context of competitive electricity and gas markets and wider service choices for existing and potential customers.

**Toronto Hydro** – development and initial implementation of time of use rates for residential and large industrial customers; development of pricing strategies and policies for all customer classes.

**Toronto Hydro** – development of all customer rate designs, implementation strategy, and preparation of annual submissions for approval of the rates. Managed a team of specialists in the preparation of associated detailed studies, load forecasts and load research.

**ICG Utilities** – coordinated preparation of applications, supporting materials, and other aspects of regulatory process for regional gas utility managements, as member of a head office specialist team; provided expert technical services in rate design, cost allocation, and working capital allowance determination (lead-lag)

*Testimony before Regulators*

**ORAL:**

**Gazifère** – study to allocate shared costs between regulated and unregulated businesses (to Régie de l’Energie, jointly with Elenchus)

**Toronto Hydro-Electric System** – Testified before the Ontario Energy Board in support of the allocated costs of service to customers that are individually metered suites in multi-unit residential buildings.

**Saint John Energy** – Testified before the New Brunswick Public Utilities Board in support of intervention in the Cost Allocation and Rate Design application of New Brunswick Power Distribution and Customer Service Corp.

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**Rogers Cable and Communication Inc.** – Testified before Ontario Energy Board in support of consensus for treatment of certain unmetered electricity loads in the development of guidelines for electricity distribution rates.

**ICG Utilities** testified in three hearings before British Columbia regulator on the subject of lead-lag studies.

**WRITTEN ONLY:**

**Essex Power, Bluewater Power and Niagara-on-the-Lake Hydro** – expert testimony in support of intervention in the application to the Ontario Energy Board for approval of an acquisition by Hydro One Networks Inc. of Norfolk Power

**Greater Sudbury Hydro** – study to allocate costs of services purchased from affiliate (OEB)

**Bluewater Power** – study to allocate costs of services provided to and purchased from affiliates (OEB)

**Kingston Hydro** – study to review transfer pricing methodologies and allocation of shared costs for services provided by non-regulated affiliates. (OEB)

**FortisOntario** – Five studies to allocate corporate and shared costs among regulated and non-regulated affiliates (OEB)

**EnWin Utilities** – study to allocate corporate and shared costs among corporate affiliates (OEB)

**Ontario Power Authority** – model development and analysis in support of evaluation of a potential generation, transmission and demand response alternatives in York Region; report in support of generation alternative to the Ontario Energy Board.

*Customer Class Cost Allocation  
and Load Research*

**Municipal Utilities of New Brunswick** – advised the municipal utilities in their intervention in the application to NBEUB of NB Power, for approval of cost allocation methodology; assignment includes participation at preliminary stakeholder meetings on methodology; review and analysis of all filed material, assistance in development of interrogatories, advice on position and strategy for the intervention, work with legal counsel in developing cross examination of applicant and intervenor witnesses. (Matter 271)

Also supported interventions by the municipal utilities, specifically related to issues of cost allocation, in NB Power's General Rate Application Matters 272, 336 and Matter 375 (current)

Also advised the municipal utilities in cost allocation and rate design hearings at NBEUB in 2005 and 2007; testified on their behalf before NBEUB on cost allocation in 2005.

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**Electricity Distributors Association** – advice, analysis, and representation at stakeholder processes with regard to proposed allocation by Hydro One Transmission of costs related to proposed new transmission facilities in southwestern Ontario

**New Brunswick Energy and Utilities Board** – prepared and presented a two day seminar on customer class cost allocation and selected rate design issues.

**Rogers Cable and Communications Inc.** – represented this consumer stakeholder in a regulator-driven process to resolve issues in regulator-mandated methodology for the allocation of costs to street lighting and other unmetered loads

**Toronto Hydro-Electric System** – Study to allocate the cost of service to customers that are individually metered suites in multi-unit residential buildings.

**Rogers Cable and Communications Inc.** – represented a consumer stakeholder in a regulator-sponsored stakeholder process to determine a cost allocation methodology and analysis approach for information filings by all electric distribution utilities in Ontario.

**Perth-Andover Electric Light Commission** – study to allocate the bundled costs of electricity service to customer classes and assess the impacts on cost allocation of changes to the wholesale rate structure.

**Saint John Energy** – three (3) studies to allocate the bundled costs of electricity service to customer classes; one of these studies included analysis of metered system load profiles and publicly available typical customer profiles to develop demand allocation factors (third study including load research data analysis completed 2015).

**Enwave District Energy Limited** – study to allocate costs of service for a district steam system as a basis for pricing redesign; study included analysis of detailed time-related customer consumption data as a basis for allocation of costs, as well as operating and financial data.

**Toronto Hydro** – planning and execution of customer load research projects, including deployment of research metering, load data analysis and related customer research and surveys.

**Toronto Hydro** – coordination of first comprehensive cost of service study, a one-year cross-functional project, including in-depth data collection, selection of allocation methodologies and development of computer-based analytical tools. Led subsequent updates and refinements to the study.

**ICG Utilities Ltd.** – fully allocated cost of service studies for natural gas distribution systems in Manitoba and Alberta, including data analysis and development of computer-based analytical framework.

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**Ontario Energy Board** – cross-jurisdictional review and assessment of regulatory approaches to the issue of farm stray voltage across North-America

**Ontario Energy Board** – comparison of heritage contracts and similar arrangements in leading jurisdictions

**Ontario Energy Board** – identification of appropriate roles and responsibilities for the OEB under alternative industry and market structure scenarios, including default supply arrangements

**Barbados Public Utilities Board** – study to recommend procedures, rules and systems for oversight of the natural gas sector by a new regulatory agency.

**Toronto Hydro** – testimony in public hearings before the Ontario Energy Board on subjects of wholesale and retail rate policy and electricity market development; advised management in strategy related to regulatory compliance and industry regulatory issues.

**Electricity Distributors Association** -- analysis of cash flow patterns of electricity distribution utilities in Ontario reflecting customer payment patterns and market settlement requirements

**Electricity Distributors Association** – study to determine the financial benefit to municipalities of ownership of local distribution companies (LDCs).

**National Grid Co.** -- Assessment and overview report on regulatory framework and issues in Ontario.

**Bruce Power** – Assessment and overview on industry structure, generation and transmission capacity, pricing and issues in New Brunswick

**CMS Energy** – report on Ontario electricity industry structure, market, and regulatory environment, in support of decision to respond to RFP for new generation in the province

**New Brunswick Municipal Electric Utilities Association** – cross jurisdictional survey with respect to policy as to regulation of municipal utilities and rural cooperatives.

## CAREER HISTORY

*2001 – Present*

**BDR** – consultant specializing in rate designs, cost and financial analysis, business planning and mergers and acquisitions in the energy sector

*1998 – 2001*

**In association with Acres Management Consulting** – consultant specializing in rate designs, cost and financial analysis, business planning and energy market restructuring issues.

1995 – 1998	<b>Toronto Hydro</b> – Manager, Marketing and Energy Management
1993 – 1995	<b>Toronto Hydro</b> – Special Assistant to the General Manager (responsible for organizational performance improvement initiatives)
1986 – 1992	<b>Toronto Hydro</b> – Supervisor of Rates and Cost Analysis
1984 – 1986	<b>Toronto Hydro</b> – Senior Rate Analyst
1981 – 1984	<b>ICG Utilities Ltd.</b> – Coordinator, Rate Administration
1979 – 1981	<b>H. Zinder &amp; Associates Canada Ltd.</b> , Senior Analyst

### **EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS**

<i>Degrees and Designations</i>	CPA, CMA (Manitoba) University of Calgary, Masters of Business Administration (Finance) University of Toronto, Bachelor of Arts (Hon), Anthropology
<i>Professional Association</i>	Chartered Professional Accountants of Manitoba (CPA Manitoba)
<i>Continuing Professional Development</i>	Queens University School of Business, Marketing Program Queens University School of Business, Sales Management Program Society of Management Accountants of Canada—Customer Profitability Analysis Society of Management Accountants of Canada—Strategic Cost Management Society of Management Accountants – Auditing I

### **PROFESSIONAL INVOLVEMENT**

<i>Teaching, Training ,and Industry Committees</i>	Instructor in Cost Allocation and Rate Design for Annual Energy Regulation Course, CAMPUT (Canadian Association of Members of Public Utility Tribunals) 2006, 2007, 2008. Member and Vice-Chair, Electricity Distributors Association Commercial Members Steering Committee (2007 to 2014) Member – Ontario Energy Board Cost Allocation Working Group (2003 and 2005-6) Member – Ontario Energy Board Working Group on Cost Allocation for Unmetered Electricity Loads (2012-2013) Member – Municipal Electric Association Cost of Service Sub-Committee (1986-1988)
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