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February 23, 2018

**Delivered by Email, RESS & Courier**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Suite 2701  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: InnPower Corporation  
2017 Rate Application (EB-2016-0085)  
Joint Reply Submissions of InnPower Corporation, The School Energy  
Coalition, The Vulnerable Energy Consumers' Coalition, and  
Rogers Communications Canada Inc.**

Pursuant to Procedural Order No. 8, the Board ordered that any written submissions from InnPower and/or the intervenors on OEB Staff's submission regarding the settlement proposal shall be filed and served by February 23, 2018. Please find the enclosed Joint Reply Submission of InnPower Corporation, The School Energy Coalition, The Vulnerable Energy Consumers' Coalition, and Rogers Communications Canada Inc. to the OEB Staff's submission.

If you require any further information, please contact the undersigned.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original signed by John A.D. Vellone*

Per:

John A.D. Vellone

cc: Intervenors of record in EB-2016-0085

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended (the “Act”);

**AND IN THE MATTER OF** an Application by InnPower Corporation under Section 78 of the Act for an order approving just and reasonable rates and other charges for electricity distribution to be effective July 1, 2017.

**JOINT REPLY SUBMISSIONS OF  
INNPOWER CORPORATION  
THE SCHOOL ENERGY COALITION  
THE VULNERABLE ENERGY CONSUMERS’ COALITION, AND  
ROGERS COMMUNICATIONS CANADA INC.**

**February 23, 2018**

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Counsel to the Applicant

## INTRODUCTION:

1. On November 28, 2017, InnPower Corporation (“**InnPower**”) filed an Application, as amended, under Section 78 of the *Ontario Energy Board Act, 1998* seeking an order of the Ontario Energy Board (the “**OEB**”) approving just and reasonable rates and other charges for electricity distribution to be effective July 1, 2017 (the “**Application**”). The Board assigned file number EB-2016-0085 to the Application.
2. On February 2, 2018, InnPower filed a Settlement Proposal with the OEB with regards to the appropriate wireline pole attachment rate for InnPower for the 2017 test year (the “**Settlement Proposal**”). On February 9, 2018, OEB Staff filed *Submissions on the Settlement Proposal* recommending that the OEB should reject the Settlement Proposal (“**Staff Submissions**”).
3. InnPower, together with the School Energy Coalition (“**SEC**”), the Vulnerable Energy Consumers’ Coalition (“**VECC**”) and Rogers Communications Canada Inc. (“**Rogers**”, collectively the “**Parties**”, and each a “**Party**”) file these submissions jointly in reply to the Staff Submissions.
4. Capitalized terms used in these reply submissions but not otherwise defined herein have the meaning ascribed to such terms in the Settlement Proposal.
5. The Settlement Proposal represents a complete settlement with regards to the appropriate pole attachment charge for InnPower. It was arrived at based on detailed evidence prepared by InnPower, a formal written discovery process and extensive negotiations among parties representing energy consumers, pole attachers, and the local distribution company. The Settlement Proposal represents a consensus agreement among representatives of every directly affected interest group, based on the most current and accurate data available about direct and indirect pole attachment costs for InnPower.
6. In the Settlement Proposal, the Parties undertook a systematic approach to establishing the appropriate pole attachment rate for InnPower by addressing two distinct questions:
  - a. What is the appropriate methodology to establish the pole attachment rate?

b. What is the appropriate pole attachment rate?

By its nature, a Settlement Proposal is a compromise by different entities who may not have the same interests. The Parties representing all three different key stakeholders (electricity consumers, third-party attachers, and the local distributor itself) agree that the proposed pole attachment rate in the Settlement Proposal leads to a just and reasonable rate based on the current Board-approved methodology for setting such rates.

***What is the appropriate methodology to establish the pole attachment rate?***

7. It is clear from the Staff Submissions that OEB Staff favors the Draft Methodology over the CCTA Methodology.
8. In this regard, OEB Staff make two distinct recommendations. First, they argue that the OEB should reject the Settlement Proposal and instead await the outcome of the Draft Methodology consultation prior to establishing a new wireline pole attachment rate for InnPower. Second, and in the alternative, they propose an alternative pole attachment charge for InnPower based on an ad hoc methodology that follows neither the Draft Methodology nor the CCTA Methodology.
9. The Parties do not agree with OEB Staff's submissions.
10. First, and as described in greater detail below, OEB Staff's assertion that the facts used in the Settlement Proposal are unreliable is misguided. There is no reason to reject the Settlement Proposal on its merits and its underlying evidence.
11. Second, the Settlement Proposal uses the CCTA Methodology to establish the appropriate pole attachment charge. This is entirely consistent with the OEB's earlier direction to the Parties in Procedural Order No. 7.
12. At this time, no new pole rate methodology has been determined. The Draft Methodology is just that - a draft that has been published for stakeholder comment only.<sup>1</sup> The final

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<sup>1</sup> Each of Rogers, VECC and SEC filed comments regarding concerns with various parts of the Draft Methodology in the EB-2015-0304 consultation process.

methodology, if any, adopted by the OEB could change from the Draft Methodology based on the comments received and the decisions of the OEB following the completion of the consultation. Moreover, nothing precludes any final methodology applying to InnPower in the future. The agreed upon rate in the Settlement Proposal, consistent with the Application as a whole, is being set on a 2017 test year.

13. Third, consistent with the CCTA Methodology, the appropriate pole attachment charge was calculated in the Settlement Proposal based on 2016 actual historical financial data. The Application is for rates effective in 2017. For every other aspect of the Application, the test year was 2017 and the last historic year of data was 2016 actuals. All of the evidence throughout the Application has been in respect of a 2017 test year and 2016 historic year. The same approach should apply to determining the appropriate wireline pole attachment charge.
14. Fourth, OEB Staff have proposed an ad hoc approach in Table 2 of Staff Submissions that combines numbers from the Settlement Proposal (which are all based on historic year 2016 actuals) with adjusted numbers calculated (presumably) based on the Draft Methodology. The result is a piecemeal methodology that has never been used to establish the pole attachment charge for any other local distribution companies (“LDCs”) in Ontario, a methodology that has never been the subject of stakeholder consultations, a methodology that is entirely untested, and is not supported by any of the Parties, as representatives of electricity consumers, third-party pole attachers and LDCs.

***What is the appropriate pole attachment rate?***

15. OEB Staff cite concerns with “the reliability of three data sets underpinning the settlement proposal for InnPower’s pole attachment charge, namely with the number of attachers per pole, administration costs and maintenance costs.” The Parties address each of these allegations in-turn below.
16. Contrary to the unsupported assertions of OEB Staff, the 2016 financial information provided by InnPower has been audited and is correct. A copy of InnPower’s audited 2016 financial statements is included as attachment 1.0-SEC-22 to the August 4, 2017

interrogatory responses.

17. OEB Staff's assertion that the data used in the Settlement Proposal is unreliable is based on a comparison of InnPower's actual costs to the costs the OEB compiled to inform the Draft Methodology.
18. The Draft Methodology costs are, in-turn, based on somewhat irregular data collected by Nordicity from up to 5 (sometimes less) other LDCs (Horizon, London Hydro, Hydro Ottawa, Hydro One and Toronto Hydro) - five (5) out of a total of seventy-seven (77) licensed LDCs in Ontario. The data sample represents a mere 6.49% of all LDCs.<sup>2</sup>
19. The Draft Methodology data sample is clearly biased in favour of larger LDCs. Meaningful comparisons with smaller LDCs, like InnPower, will be difficult as a result. This will be explored in more detail below as we address the three specific criticisms leveled by OEB Staff against the InnPower data.
20. It is noteworthy that Nordicity identified in its report<sup>3</sup> dated December 14, 2017 (the "**Nordicity Report**") the need to collect data from small LDCs as well large LDCs. However, Nordicity indicates that while it sought information from Cornerstone Hydroelectric Concepts Inc. ("**CHEC**") that data was not available at the time the Nordicity Report was published. Consequently, the Nordicity Report does not include any meaningful data from small LDCs such as the CHEC members.<sup>4</sup>
21. The Settlement Proposal provides OEB Staff with the benefit of audited and fully tested data from a smaller LDC. Rather than ignoring and discrediting this data, OEB Staff may benefit by updating and incorporating this data into its Draft Methodology.

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<sup>2</sup> OEB Staff indicate that their data is based on 90% of the pole population in the Province. However, this is misleading. Hydro One alone accounts for ~85% of the pole population in the Province.

<sup>3</sup> <http://www.rds.oeb.ca/HPECMWebDrawer/Record/594127/File/document>

<sup>4</sup> InnPower is a member of CHEC. Had CHEC data been included in the Draft Methodology analysis, InnPower submits the results would be more directly comparable to InnPower.

*Number of Attachers per Pole*

22. The Settlement Proposal uses the results of a field survey undertaken by InnPower of 2,040 of its 10,210 poles to estimate the number of attachers per pole. To do so, the Settlement Proposal applies two different methodologies for extrapolating the result of the field survey to the entire pole population, and then averages the two results to obtain a value of 1.38 third-party attachers per pole with telecom attachers.
23. The first approach (Method 1) uses the number of attachers per pole with telecom attachers as determined by the field survey, along with the total number of invoices issued to telecom attachers, to estimate the total number of poles with telecom attachers.
24. The second approach (Method 2) uses the proportion of poles in the survey with telecom attachers to estimate the total number of poles with telecom attachers, and then determines the number of telecom attachers per pole based on the number of invoices issued.
25. The Parties to the Settlement Proposal consider either method to be a valid way of estimating the characteristics of InnPower's total pole population (i.e., number of poles with telecom attachers and number of third party attachers per pole).
26. In its submission, OEB Staff assert that the approach used in the Settlement Proposal is not representative of the data, and that a more appropriate number would be 1.13. Appendix A of the Staff Submissions sets out OEB Staff's supporting calculations.
27. The approach used by OEB Staff is similar to that used in the Settlement Proposal in that it develops two estimates for "attachers per pole", and then takes the average of them. Furthermore, one of the methodologies used (OEB Staff Method 2) is actually the same as that used in the Settlement Proposal. This method estimates the number of poles with third-party attachments by extrapolating the number of poles with telecom attachers (1,276) to the entire pole population (i.e.,  $1,276 * 2,040 / 10,240$ ) for a result of 6,386.255 (62.5% of the pole population) and dividing the result into the total number of attachers (6,558 telecom attachers {based on invoices issued} plus 778.7 other attachers {based on 62.5% of the total number of other attachers}) for a result of 1.149.

28. However, it is the first estimation method used in the Settlement Proposal that OEB Staff takes exception to and where it proposes an alternative calculation approach.
29. In the Settlement Proposal, the First Method estimates the total number of poles with telecom attachers by using the number of telecom attachers per pole based on the survey (1.47, based on 1,876 telecom attachers and 1,276 poles with telecom attachers) and then applying this result to the total number of invoices to derive an estimated total number of poles with telecom attachers of 6,386 (6,558/1.47). After incorporating the additional streetlight and HON attachments, this method (as used by the Settlement Proposal) yields a value of 1.592 as the number of third-party attachers on poles with telecom attachers.
30. The OEB Staff's concern is that the 1,276 value derived from the field survey was (as identified in InnPower's Application) the number of *attachments* whereas the rate calculation is based on number of *attachers*. (They are different concepts as an *attacher* can have more than one *attachment* on the same pole). Based solely on this concern, OEB Staff insist on using an alternative calculation ("**OEB Staff Method 1**") that prorates the total number of telecom invoices (6,558) over the proportion of total poles accounted for the Field Survey ( $\{2,010/10,240\}$  or 20% when rounded) to yield an estimate of 1,310 telecom attachers for the field survey sample. This calculation then compares this value with the number of poles with telecom attachers to derive a value of 1.0279 telecom attachers per pole (1310.5/1276). After allowing for other non-telecom attachers, the total number of third-party attachers on poles is calculated by OEB Staff to be 1.113.
31. However, OEB Staff appear to have over looked the fact that questions of whether the field survey reported *attachments* or *attachers* was specifically addressed during the IR process in responses to IRs from Staff (8-Staff 2), SEC (8-SEC-46), VECC (8-VECC-61) and Rogers (8-Rogers-4).
32. These responses confirmed that the field survey reported number of *attachers* and, furthermore, noted that the number of attachers and attachments were the same for the surveyed poles. As a result, there is no need to estimate the number of telecom attachers in the field survey as the OEB Staff's Method 1 does since the actual number of telecom attachers in the field survey data is known (1,876). In this regard, the OEB Staff's Method

1 is flawed and actually misrepresents the field survey results.

33. Furthermore, the OEB Staff's Method 1 is not an alternative methodology. In fact, it is just another formulation of Method 2 where, instead of prorating the number of poles with telecom attachers to the total population of poles and comparing with the total number of invoices, the number of invoices was prorated over the number of poles in the field survey and then compared to the number of poles with telecom attachers as reported in the survey. The difference in the results calculated by OEB Staff (1.149 versus 1.133) is due to the fact that, in OEB Staff Method 1:
- Staff use a rounded value of 1/5 for purposes of prorating the invoices as opposed to the actual percentage ( $2,010/10,240= 19.63\%$ ).
  - In its Method 1, Staff did not revise the estimate used in the Settlement Proposal as to the number of other attachers on poles with telecom attachers to reflect its revised estimate as to the number of poles with telecom attachers.
34. If the OEB Staff Method 1 is corrected for these two factors, the results would be the same as in Method 2 – 1.149. In this regard, the Staff approach really just uses one method.
35. For the foregoing reasons, the Parties continue to agree that the Settlement Proposal provides the best estimate of the number of attachers per pole in the InnPower service area. OEB Staff's alternative calculation is based on flawed assumptions that are not supported by the evidence found at 8-Staff-2, 8-VECC-61, 8-SEC-46, and 8-Rogers-4.

#### *Administrative Costs*

36. In accordance with Procedural Order No. 7, InnPower filed updated evidence on its pole attachment costs on November 28, 2017, including \$6,064.16 in administrative costs. The costs were determined based on an assessment of actual 2016 timesheet data multiplied by the appropriate hourly burdened rates to (i) prepare billing, financial reconciliations and annual statements, (ii) complete GIS system updates and maintenance, and (iii) process joint use permit applications.
37. In response to 8-Staff-4, 8-VECC-58, and 8-Rogers-9, InnPower provided further

- evidence detailing the calculation of administrative costs, including showing how the hourly burdened rates were determined, confirming that the timesheet information was based on 2016 actuals, and detailing the specific work completed for each of the different tasks.
38. OEB Staff acknowledge that InnPower's administration costs exceed Hydro One's administration costs of \$0.90 per attacher (EB-2015-0141). InnPower's administration costs also exceed the CCTA Decision administration costs of \$0.69 (RP-2003-0249), but are still within the range of administration costs proposed in the Draft Methodology.
  39. In this context, "OEB staff submits that based on the evidence on the record of InnPower's cost of service application, there are a number of new poles (joint use poles) that have been installed because of the recent growth in the area. Therefore, for InnPower, the Administration Costs should be higher, e.g. closer to the draft methodology number and there is no satisfactory explanation from the company as to why this should not be the case. A higher Administration Cost raises the overall charge."
  40. The Parties note that OEB Staff did not ask for any such explanation during the IR process. InnPower's administration costs of \$6,064.16 have not changed since InnPower's November 28, 2017 filing.
  41. OEB Staff's argument is based upon a false assumption that has not been proven or even explored. While it is true that InnPower has been managing a high rate of growth in its service territory, it is false to assume that growth in the number of new distribution poles is directly correlated with the number of new telecom attachers (assumption 1) or higher administrative costs (assumption 2). OEB Staff have provided no evidence, quantitative or qualitative, to support its assertion that administrative costs should be higher as a result of an increase in pole population.
  42. By contrast, in 8-Rogers-9, InnPower confirmed that in 2016 it processed 4 joint use permit applications covering a total of 21 new joint use attachments. InnPower's 2016 administration costs are based on the costs associated with processing these 4 actual permit applications, updating the GIS for these 21 new joint use attachments, and the costs

for preparing bills, financial reconciliations and annual statements for a very small number of telecom attachers (Bell, Rogers, Rogers (Atria), Vianet, and MTS Allstream).

43. For the foregoing reasons, the Parties continue to agree that the Settlement Proposal provides the best evidence of administration costs incurred by InnPower in 2016. OEB Staff's argument is based on a flawed assumption that is not supported by the evidence found at 8-Rogers-9.

#### *Pole Maintenance Costs*

44. OEB Staff argue in respect of Account 5120 that "InnPower's submitted cost of \$6,064 for this account is extremely low for maintaining 10,210 poles. Even if a large portion of the pole population is new, the maintenance costs on the older assets should be comparable to the Draft Methodology which is based on approximately 90% of the pole population in the province. OEB Staff submits that InnPower's evidence underpinning the settlement proposal does not accurately reflect the true cost of maintaining its poles. In the 2005 Decision this cost was \$7.61, in the Hydro One decision it was \$4.69 and in the Hydro Ottawa decision it was \$11.89. In OEB staff's view, this item alone raises sufficient doubt as to the veracity of the data provided by InnPower."
45. The Parties respectfully disagree, for the following three reasons.
46. First, as the Settlement Proposal clearly explains, the ratepayer intervenors already raised concerns "about the relatively low account balance in Account 5120 as it related to Pole Testing Costs." InnPower confirmed as part of the settlement that pole testing is contracted out to a third party, and that historically those costs have not been recorded in Account 5120. InnPower further confirmed that a third-party vendor does pole testing for InnPower, and that the total invoiced costs for pole testing work completed in 2016 was \$26,646. All of the Parties agreed that these costs should be included in the Pole Maintenance Cost calculation, and InnPower further agreed to record these costs in Account 5120 going forward. This results in a total pole maintenance cost of \$3.03 per pole. In this regard, the Parties submit that OEB Staff's concern has already been addressed by the Parties in the Settlement Proposal by including 2016 actual Pole Testing

Costs in the calculation of Pole Maintenance Costs.

47. Second, OEB Staff have failed to acknowledge the limitations in their own data that they use for comparison purposes. In this regard, it is helpful to review pages 52-54 of the Nordicity Report.<sup>5</sup> It confirms that, based on the data obtained by Nordicity between 2007-2015, the simple average maintenance cost per pole was \$13.22; however only 6.8% (or \$0.90) of this total cost was directly attributable to poles. The balance was related to power fixtures. This is shown in Table 25 of the Nordicity Report.
48. Nordicity further identified that, according to the data submitted, the ratio of Account 5120 costs attributable to poles varies significantly between Hydro Ottawa (92%) and Hydro One (5%). Nordicity explains “the range of 92% to 5% may imply either inconsistency in accounting practices across LDCs or peculiar characteristics of individual LDCs’ pole cost structure. Without an independent substantive assessment of LDCs’ accounts it is not possible to clearly ascertain the cost attributable to poles in Account 5120 and other related accounts, if any. Based on the available data, Nordicity believes it is reasonable to presume that the allocation factor may range from a minimum of 5% (Hydro One) to a maximum 92% (Hydro Ottawa).”
49. Applying this range to the \$13.22 average maintenance cost per pole means that Nordicity believes that it is reasonable to presume that pole maintenance costs could range between \$0.661 and \$12.16. InnPower’s pole maintenance costs of \$3.03 per pole as set out in the Settlement Proposal falls squarely into this range of reasonable costs.
50. In addition, unlike the Draft Methodology which assumes a pole maintenance cost based upon a somewhat arbitrary decision to use a simple average of two data points (92% and 5%) to arrive at an average maintenance cost of \$6.41, the Settlement Proposal’s pole maintenance costs are based on actual 2016 results for InnPower.
51. Third, and as is explained in the Distribution System Plan, 100% of InnPower’s poles are wooden. InnPower’s evidence is that its wood poles are generally not actively maintained. If a wood pole splits, or the base shows signs of rot, the pole typically gets replaced not

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<sup>5</sup> <http://www.rds.oeb.ca/HPECMWebDrawer/Record/594127/File/document>

maintained. InnPower's evidence is that its wood pole maintenance practices are limited and fact specific. They include activities such as filling woodpecker holes with an epoxy or glue (but only if woodpecker holes are an issue) or treating the poles with a chemical to combat termites (but only if termites are a problem). If woodpecker holes and termites are not a problem, then wood pole maintenance costs are going to be low. By contrast, concrete poles and metal poles each utilize different maintenance practices. Unlike wooden poles, a cracked concrete pole could be patched rather than replaced. And unlike wooden poles, certain metal poles must be painted periodically to prevent rusting. The Parties submit that OEB Staff has failed to account for differences in pole types and associated maintenance practices when comparing InnPower's costs to those in the CCTA Decision, the Hydro One Decision and the Hydro Ottawa Decision.

52. In light of the foregoing, InnPower respectfully requests that the Board accept the settlement agreement which was drafted by the Parties in accordance with the direction given by the Board in Procedural Order No. 7.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23RD DAY OF FEBRUARY, 2018

**BORDEN LADNER GERVAIS LLP**

**Per:**

*Original signed by John A. D. Vellone*

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John A.D. Vellone

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