



# **ONTARIO ENERGY BOARD**

## **BOARD STAFF SUBMISSION**

**Toronto Hydro-Electric System Limited**

**Board File No. EB-2013-0234**

**March 17, 2014**

## **BACKGROUND**

On June 14, 2013, Toronto Hydro-Electric System Limited (“THESL”) filed an application with the Ontario Energy Board seeking an order pursuant to section 29 of the *Ontario Energy Board Act, 1998* that the Board refrain from regulating the terms, conditions and rates for the attachment of wireless telecommunications devices (“Wireless Attachments”) to THESL’s utility poles.

THESL is currently required by the Board’s Decision and Order in EB-2003-0049 dated March 7, 2005 to give Canadian carriers’ and cable companies’ access to its distribution poles for Wireless Attachments at a regulated rate. THESL is proposing to charge a competitive rate for Wireless Attachments to its utility poles.

In Procedural Order No. 5 that was issued on March 7, 2014, the Board provided Board staff and intervenors with the opportunity to provide a submission on the request for confidentiality identified in THESL’s letter dated February 28, 2014. The following are Board staff’s submissions.

## **BOARD STAFF SUBMISSIONS**

The Board’s general policy is that all filings should be placed on the public record. Only in instances where an applicant (or other party) satisfies that Board that information should be kept confidential will the Board stray from this practice.

Board staff offers the following submission on the specific confidentiality requests made by THESL.

### **CCC IRs 3, 5, 6(a) and 16; VECC IRs 12 and 15; SEC IR 6(a), EP IR 18**

These interrogatories sought information relating to THESL’s costs for wireless attachments. THESL argues that revealing this information publicly would prejudice its ability to compete in a competitive market.

Currently, the rate that THESL charges for wireless pole attachments is regulated by the Board. Ordinarily information relating to THESL’s costs to provide that service would not be eligible for confidential treatment; indeed this is the type of information that is routinely filed (publicly) in rate hearings.

Board staff recognizes that if THESL is successful in its application, however, then wireless pole attachments will no longer be regulated by the Board. If this were to occur then THESL might have some legitimate concerns about revealing its costs. Although, Board staff notes that regardless, the poles themselves will remain a regulated asset and therefore the cost of these poles should not be kept confidential.

To the extent that the Board determines that this information is confidential, it should consider making this an interim finding. If THESL's application is ultimately unsuccessful the rationale for confidentiality evaporates, and Board staff submits that in this eventuality the information should no longer be afforded confidential treatment.

#### **Board staff IR #21**

Board staff interrogatory #21 asks for the locations of THESL and THESI poles that have wireless attachments. THESL argues that revealing this information publicly would be prejudicial both to THESL and the wireless attachers, as the wireless attachers consider this information to be confidential and would be less likely to do business with THESL in the future if it were revealed.

Board staff is not opposed to affording confidential treatment to the actual street addresses of the poles with wireless attachments. In fact, the precise street location may not be relevant to the case at all. However, staff does not believe that the "district", which is also identified in the response, should be confidential.

#### **Board staff IR #23**

THESL argues that its agreements with wireless attachers are confidential pursuant to the terms of those contracts.

The Board is not bound by the terms of contracts, and has in the past ordered that similar documents be placed on the public record even where the document purported to be confidential.

It is not clear to Board staff how any of the terms of the contract would prejudice THESL or the wireless attachers. Board staff does not oppose a request to redact the names of the wireless attachers. However, the other information in the contract

appears to be more or less standard contractual terms, and it is not obvious how revealing them would impair anyone's competitive interests. The price for attachments is regulated by the Board, and therefore it should not be prejudicial to any party to have this revealed – indeed the regulated rate is the subject of a Board order and is already a matter of public record.

To the extent that THESL has specific concerns about publicly revealing any particular clauses of the contracts, it should provide a better explanation as to why these are confidential.

### **SEC IR #7**

SEC interrogatory #7 asks for THESL's annual revenues for wireless pole attachments from 2008-2013. THESL argues that these revenues are partially derived from attachments that are subject to confidentiality agreements, and should not be revealed publicly.

Board staff does not see how the information presented in response to SEC interrogatory #7 is confidential. From 2008-2013, the rate for pole attachments was regulated by the Board (as it remains, pending the outcome of this proceeding). THESL's revenues from pole attachments are currently being used as a revenue offset to its revenue requirement and the pole attachment revenues were filed on the public record of THESL's last cost of service application (EB-2010-0142). Board staff sees no reason why any of this information would be confidential.

In addition, the response provided by THESL reveals only the total revenues for each year. It does not reveal to allow a party to determine the cost of any single wireless connection.

All of which is respectfully submitted.