

ONTARIO ENERGY BOARD

EB-2013-0234

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 pursuant to section 29 of the Ontario Energy Board Act, 1998.

Interrogatory Responses to
Toronto Hydro-Electric System Limited (THESL)

Dr. Marc Van Audenrode
Analysis Group

April 2, 2014

Reference: ISSUE 4

Preamble: Expert Report, footnote 129

The statement is made that “If rates for wireless attachments are forborne, the regime is not technologically neutral since wireline attachments continue to be regulated.”

Interrogatories:

- a) *Is it Dr. Van Audenrode’s position that the rate for wireline and wireless attachments should be the same?*

Not necessarily. The rates of wireline and wireless pole attachments need not be identical under either cost-based rate regulation or regulatory forbearance. If the Board continues cost-based regulation, wireless rates may differ from the wireline rates if, on an application by THESL, the Board determines that wireless pole attachment costs are not adequately covered by the regulated wireline rate. In the alternative, if the Board decides to forbear from regulating wireless pole attachment rates, THESL may decide to set wireless pole attachment rates that differ from (regulated) rates for wireline attachments. The footnote simply points out that regulatory forbearance would modify the *CCTA Decision*, which established a non-discriminatory, technology-neutral right of pole access.¹

- b) *Is it Dr. Van Audenrode’s position that the rate for all wireless attachments should be the same?*

Not necessarily. Under cost-based regulation, the pole attachment rates for wireless network equipment are based on the cost of attaching the equipment to utility poles. If different types of equipment have differing pole attachment costs, pole attachment rates will naturally vary. If the Board decides to forbear from regulating wireless pole attachment rates, a requirement that dissimilar equipment such as Wi-Fi attachments, cellular attachments, M2M sensors, or communication transmitters owned by the TTC have identical pole attachments rates may be economically harmful.

¹ *CANDAS Decision*, pp. 6-9.

Reference: ISSUE 11

Preamble: Expert Report, paragraph 93

“The economic and administrative cost of regulatory oversight of pole access rates should be compared to the size of the market for wireless pole attachment and the possible harm from THESL’s exercise of market power in the provision of pole access for wireless attachments. Although Section 29(1) of the Act mentions explicitly only the competition rationale for regulatory forbearance, “competition sufficient to protect the public interest,” the regulatory cost rationale for forbearance should, from the perspective of an economist, be considered in THESL’s application before the Board.[footnote omitted] The Board may consider exercising its discretion to forbear if the continued regulatory burden exceeds the benefits to the public even if THESL has market power in the provision of pole access for wireless attachments. [footnote omitted]”

Interrogatories:

- a) *Is it Dr. Van Audenrode’s position that, even if the “competition rationale” is sufficient to warrant regulatory forbearance, the Board should nonetheless continue to regulate?*

Dr. Van Audenrode’s report analyzes the state of competition in the relevant market for wireless pole attachments and the expected competitive effects if the Board decides to forbear from regulating the rates, terms and condition of wireless pole attachments. In the NGEIR regulatory forbearance proceedings, the Board did not subscribe to the view that competition in itself protects the public interest.² It is for the Board to consider the relevant public interest factors and to determine whether competition is sufficient to protect the public interest.

² NGEIR Decision, p.42.

b) *Will Dr. Van Audenrode confirm that it is his view that the costs of regulation should be included in an assessment of whether competition is sufficient to protect the public interest?*

Yes. A comprehensive economic analysis of regulation must consider the costs associated with regulatory intervention.³ This has been recognized by regulatory agencies, including the Board in its *NGEIR Decision* to forbear from regulating the rates of natural gas storage.⁴

³ See for example Church, J.R. and R. Ware, *Industrial Organization: A Strategic Approach*, (San Francisco: McGraw-Hill-Irwin), 2000, Ch. 24; "The second component of the public interest theory of regulation is that government ought to adopt regulatory strategies that cope with these market failures. [...] If economic analysis does demonstrate that a market has failed and that additional economic welfare is available if the failure is cured, only the necessary condition for government regulation has been satisfied. In addition, it must also be demonstrated that a regulatory policy is the most effective remedy." (Noll, R.G. (1989): "Economic Perspectives on the Politics of Regulation," *Handbook of Industrial Organization*, ed. R. Schmalensee and R. Willig, p. 1258).

⁴ *Van Audenrode Report*, ¶133, ¶193, footnote 121; *NGEIR Decision*, pp. 25-26.