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

Vulnerable Energy Consumers Coalition (VECC)

Dr. Marc Van Audenrode
Analysis Group

April 2, 2014

Reference: **ISSUE 4(b) / VECC / 1**

Preamble: At paragraph 80 of his evidence, Dr. Van Audenrode states:

> "Given the difficulty for THESL to identify particular locations where there are few good economic substitutes to access to THESL poles from locations with plenty of reasonable siting alternatives for wireless carriers, it is appropriate to define the upstream geographic market to be THESL's service territory, the City of Toronto. [footnote omitted]"
>
> At paragraph 74, Dr. Van Audenrode states:
>
> "The City of Toronto has issued a licence fee schedule as part of its agreement with Rogers (and any other carriers): The annual license fee for 2014 for a pole with height less than 15 meters ranges from $8,000 to $15,000, depending on city zone and proximity to major highways. [footnote omitted]"

Interrogatories:

Does Dr. Van Audenrode believe that THESL could use the same criteria for differential pricing of poles and pole attachment locations as does the City of Toronto? If so, does Dr. Van Audenrode agree that the pertinent geographic markets are smaller than the entire City of Toronto?

THESL could certainly use the same criteria as the City of Toronto, or any other criteria, to differentiate pricing for pole attachments across locations if the Board decided to forbear from regulation. Although the license fee schedule for poles built in the City of Toronto's public right-of-way is differentiated by city zone, the varying rates are unlikely to reflect competitive conditions for wireless pole attachments.[1]

The City of Toronto is composed of thousands of small, localized markets because wireless service providers cannot substitute pole access at location A for pole access at location B kilometers away, no matter the respective pole access rate. However, for convenience of analysis, these small localized markets can be aggregated if the competitive conditions are sufficiently homogeneous.[2]

Typical considerations to assess the homogeneity of competition are the number and market share of suppliers, barriers to entry, or potential differences in prices or services. The relevant product market, THESL's network of utility poles, and the lack of geographic rate differentiation of unregulated rates for pole attachments in the City of Toronto,[3] suggests that the competitive conditions are unlikely to significantly differ across the City of Toronto. If the Board is concerned about geographic differentiation

[1] Two of the primary objectives of the *Telecommunication Tower and Antenna Protocol* by Toronto City Council are the minimization of new structures and the discouragement of new structures within or adjacent to residential neighborhoods and other sensitive land uses (City of Toronto, *Telecommunication Tower and Antenna Protocol*, amended December 18, 2013).
[2] *Merger Enforcement Guidelines*, footnote 27; *Church Report*, ¶70
[3] *Church Report, p. 8, para. 25*.

of pole access rates to THESL's network of utility poles, it may decide to impose a condition that bans differentiation of rates by location.

Reference: **ISSUES 7 and 11 / VECC / 2**

Preamble: At paragraph 93 of his evidence, Dr. Van Audenrode states:

> "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]"

At paragraph 94, Dr. Van Audenrode goes on to say:

> "Rate regulation can be highly detailed, contentious, time-consuming and expensive for all parties involved. In addition to these direct administrative costs of regulation, a regulated pole attachment rate is inflexible and unresponsive to a changing market environment (costs of providing pole access, technological change)."

Interrogatories:

(a) *Does Dr. Van Audenrode agree that the relevant regulatory burden (i.e. direct administrative costs) is the incremental costs, resources, and time of regulating pole access rates, given the continuing regulation of other services under the Board's current regulatory scheme?*

Regulation involves two different types of costs: First, there are the direct costs of regulation, which include administrative costs in the form of time and resources for the regulatory agency, the regulated firm(s), and any other participants in the regulatory framework. Second, regulation may create inefficiencies and lead to a misallocation of resources since regulated rates are inflexible, unresponsive to a changing market environment, and dampen incentives to invest and innovate.[4]

(b) *If yes, please quantify, to a rough order of magnitude, the ongoing incremental regulatory burden (i.e. putting aside the present proceeding).*

Dr. Van Audenrode has no evidence to quantify either direct administrative costs, or the burden of regulation-induced inefficiencies.

(c) *If it is not possible to quantify the incremental burden, please describe the incremental elements required to continue to regulate pole attachment rates, given that the rest of the regulatory framework will continue.*

[4] See for example *Van Audenrode Report*, ¶33, footnote 110; *NGEIR Decision*, pp. 25-26; Church, J.R. and R. Ware, *Industrial Organization: A Strategic Approach*, (San Francisco: McGraw-Hill-Irwin), 2000, p. 752; Joskow, P.L and N.L. Rose (1989): "The Effects of Economic Regulation," *Handbook of Industrial Organization*, ed. R. Schmalensee and R. Willig, Ch. 25.

The question appears to be related to the direct administrative burden of pole attachment rate regulation. Dr. Van Audenrode has not analyzed the overall regulatory framework and the regulatory processes of the Board and THESL to answer this question in a satisfactory way.

(d) Please provide Dr. Van Audenrode's views on how existing regulation of pole attachment rates limit or retard changes in the costs of providing poles and pole access.

Dr. Van Audenrode can only provide a theoretical answer; he has not performed an empirical study of the relevance and size of potential regulatory inefficiencies in THESL's provision of pole access.

The annual pole attachment rate may only be part of the overall cost of pole access. Poles may require additional make-ready work, or need to be entirely replaced in order to attach wireless network equipment,[5] costs that are generally borne by wireless service providers.[6] While regulated cost-based pole attachment rates provide limited incentives to minimize costs borne by other parties, rates exceeding the cost of access may provide THESL with an incentive to maintain, modify and invest in its network of poles such that pole attachment is an attractive option for wireless service providers (e.g. power, backhaul, co-location, etc.).

(e) Please provide Dr. Van Audenrode's views on how existing regulation of pole attachment rates influences technological change in the provision of poles and pole access. As part of the answer, please describe technological changes that have taken place in the past, and changes that could have taken place, but didn't, because of regulation.

Dr. Van Audenrode does not have any expertise in the technological aspects of utility poles and associated pole attachments.

[5] *THESL Pre-Filed Evidence*, ¶2.
[6] *THESL Interrogatory Responses*, Tab J, Schedule 2-15.