



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*.

AND IN THE MATTER OF a proceeding under
section 74 of the *Ontario Energy Board Act, 1998*
amending Toronto Hydro-Electric System Limited's
licence ED-2002-0497.

Before: Cynthia Chaplin
Presiding Member

Cathy Spoel
Member

Christine Long
Member

DECISION AND ORDER

June 5, 2014

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* (the "Act") that the Board refrain from regulating the terms, conditions and rates for the attachment of wireless telecommunications devices to THESL's utility poles.

A Settlement Agreement was filed with the Board on May 15, 2014. In the Settlement Agreement, the parties agreed that the essence of the relief requested through the application under section 29 was essentially the same as the relief that would have been requested in an application under section 74 of the Act. Parties further agreed that evidence THESL filed in support of a section 29 proceeding would be essentially the same, if not identical, to the evidence THESL would file in an application under section 74.

An oral hearing was held on May 16, 2014 to hear submissions on the Settlement Agreement. At the oral hearing, THESL agreed that it was seeking an amendment to its application to withdraw the relief requested under section 29 and to add a request for relief under section 74. The Board did consider the issue of whether proper notice was given for the amendment to the application and determined that notice under section 29 was adequate to cover the more narrow scope of section 74.

The Board accepted the Settlement Agreement and provided an oral decision on May 16, 2014.

The Board shall amend the licence of THESL to reflect the Board's decision in RP-2003-0249 and the approved Settlement Agreement as follows:

Pole Attachments

The Licensee shall provide access to its distribution poles to all Canadian carriers, as defined by the Telecommunications Act, and to all cable companies that operate in the Province of Ontario. For each attachment, with the exception of wireless attachments, the Licensee shall charge the rate approved by the Board and included in the Licensee's tariff.

The Licensee shall:

- a. annually report the net revenue, and the calculations used to determine that net revenue, earned from allowing wireless attachments to its poles. Net revenues will be accumulated in a deferral account approved by the Board;
- b. credit that net revenue against its revenue requirement subject to Board approval in rate proceedings; and
- c. provide access for wireless attachments to its poles on commercial terms normally found in a competitive market.

THE BOARD THEREFORE ORDERS THAT:

1. Toronto Hydro-Electric System Limited's licence shall be amended as described in this Decision and Order and as deemed by the Board in RP-2003-0249. Toronto Hydro-Electric System Limited must comply with all provisions in the Settlement Agreement. The amended licence is attached to this Order.
2. The licence requirement that THESL charge \$22.35 per pole attachment for wireless attachments is rescinded.

ISSUED at Toronto, June 5, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary