



January 16, 2015

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St., Suite 2700  
Toronto, ON, M4P 1E4

via RESS and email

Dear Ms. Walli:

**RE: EB-2014-0365 Wireless Attachment Consultation: Comments of the Large Distributors**

The Large Distributors<sup>1</sup> make this submission regarding wireless attachments in response to the Ontario Energy Board's ("OEB" or "Board") invitation for comment dated December 11, 2014 (the "December Memo").

In the December Memo, the OEB asked whether all Local Distribution Companies ("LDCs") should have their licences amended to allow market rates to be charged for wireless attachments, under the same conditions as Toronto Hydro-Electric System Limited ("Toronto Hydro") agreed to by settlement in EB-2013-0234. The Large Distributors view this question as having three sub-parts:

1. *Should all Ontario LDCs be allowed to charge market rates for wireless attachments?*
2. *Should the terms agreed to by Toronto Hydro in its settlement agreement as it relates to charging market rates for wireless attachments be applied to all Ontario LDCs?*
3. *If all Ontario LDCs are allowed to charge market rates for wireless attachments, is a licence amendment the appropriate mechanism?*

What follow are a brief preamble, and the Large Distributor's views regarding each sub-part of the question noted above.

***Preamble***

The comments of the Large Distributors are premised on the general principle that: utilities and customers can benefit when distributors are able to charge market prices for wireless attachments on distribution poles, and share in the net revenues. Utilities should therefore be encouraged and incented to negotiate market prices for such attachments. Encouraging utilities to charge market prices for the wireless attachments on distribution poles provides utilities with an opportunity to

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<sup>1</sup> The Large Distributors making these submissions are comprised of the following electricity distributors: Enersource Hydro Mississauga Inc., Horizon Utilities Corporation, Hydro Ottawa Limited, PowerStream Inc., and Veridian Connections Inc.

maximize the value of their existing assets to create potential sources of revenue. These potential sources of revenue in turn create a potential source of rates relief for customers in the form of revenue offsets.

***1. Should all Ontario LDCs be allowed to charge market rates for wireless attachments?***

The Large Distributors submit that it is appropriate and in the public interest to allow LDCs to negotiate the terms and rates for access to their utility poles by wireless attachers<sup>2</sup>. All Ontario utilities should have the same opportunity as Toronto Hydro to pass along to their ratepayers the benefit of revenue offsets from potential net revenues generated through the negotiation of competitive rates for wireless attachments. Accordingly, the Large Distributors support the policy conclusion that all Ontario LDCs should be allowed – but not required - to negotiate and charge market rates for wireless attachments.

The Toronto Hydro wireless attachments proceeding established that it can be appropriate for Ontario LDCs to negotiate and charge market rates for wireless attachments on distribution poles. As agreed to by the parties in the Toronto Hydro wireless attachments proceeding and accepted by the OEB, where wireless attachers are granted access to distribution poles, it is in the public interest for the utility to seek to negotiate commercial terms and rates for wireless attachments normally found in a competitive market.

The Large Distributors also submit that enabling LDCs to negotiate prices for wireless attachments is a logical extension of the current model as provided for in the original CCTA proceeding. Namely, utilities are already allowed to negotiate terms and conditions (although not price) associated with wireless attachments.

The Large Distributors further submit that no harm is caused by allowing LDCs to negotiate prices for wireless attachments on their poles. As agreed to in the Toronto Hydro wireless attachments proceeding, no wireless attachers or telecom users would be materially harmed by granting the utility such an opportunity.<sup>3</sup> Further, the Joint Written Statement of the experts in that proceeding confirmed that where the utility was allowed to negotiate the price for wireless attachments, the utility's market power would be disciplined or minimized:

“The technical experts agree that only “in rare instances” will it be the case that “a utility pole is by far the preferred option.” In conjunction with the relatively small number of poles used for wireless attachments, therefore, substitution away from poles at most locations is likely sufficient to discipline or minimize the exercise of market power by THESL...

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<sup>2</sup> Canadian carriers, as defined by the Telecommunications Act.

<sup>3</sup> EB-2013-0234 Settlement Proposal dated May 15, 2014; EB-2013-0234 Decision and Order dated June 5, 2014.

...Even if THESL had market power... the efficiency cost and the effect on... the downstream market for wireless services will be small.”<sup>4</sup>

Finally, the Large Distributors submit that sustainment of the current regulated price does create (potential) harm to ratepayers in the form of a subsidy flowing from ratepayers to wireless attachers, by virtue of the non-compensatory nature of the current \$22.35/pole/year rate. As stated in the Joint Written Statement of the experts in the Toronto Hydro wireless attachments proceeding, all three technical experts agreed with question 46 which discusses the direct and indirect costs of regulation and the notion that:

“if regulation results in prices below efficient levels, the indirect costs arise from the consequences of higher rates for THESL ratepayers, excessive use of poles for wireless attachments, and lower prices for wireless services.”<sup>5</sup>

***2. Should the conditions applicable to Toronto Hydro for charging market rates for wireless attachments be applied to all Ontario LDCs?***

The Large Distributors respectfully submit that it is generally not in the public interest to impose terms agreed by one party via a settlement to other parties that were not party to the proceeding or settlement. On numerous occasions the OEB has expressed reluctance to impose a negotiated settlement model onto another company.<sup>6</sup> In the CANDAS<sup>7</sup> proceeding, the OEB granted LDCs the regulatory flexibility to negotiate different terms and conditions for wireless attachments:

“The parties may wish to negotiate different terms and conditions for wireless attachments (but not a different rate), or to negotiate modifications or additions to the model joint use agreement. The Board concludes that this is best left to the parties in the first instance. If the parties are unsuccessful, then the matter may be brought to the Board for consideration.”<sup>8</sup>

As a general matter, and subject to the below commentary, the Large Distributors submit that utilities should not be bound by the Toronto Hydro settlement agreement, and should instead be free to negotiate the specific terms and rates regarding wireless attachments on utility poles.

As set out in the December Memo, there are three terms agreed to by Toronto Hydro that the OEB is considering applying to other LDCs:

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<sup>4</sup> Joint Written Statement in EB-2013-0234, excerpts from pp. 4 and 5.

<sup>5</sup> Joint Written Statement in EB-2013-0234, excerpts from pp. 23.

<sup>6</sup> The OEB confirmed this as recently as July 17, 2014 in the Enbridge Gas Distribution decision (EB-2012-0459).

<sup>7</sup> Intervenors in the Canadian Distributed Antenna Systems Coalition (“CANDAS”) Proceeding (EB-2011-0120).

<sup>8</sup> EB-2011-0120, Decision on Preliminary Issue and Reasons dated September 13, 2012, pp. 17.

- (a) The utility must record the net revenue from wireless attachments in a deferral account, and report annually on that net revenue and the calculations used to determine that net revenue;
- (b) The utility must credit the net revenues against its revenue requirement (subject to OEB approval in rate proceedings); and
- (c) The utility must provide access for wireless attachments to its poles on commercial terms normally found in a competitive market.

**Term (a)**

The Large Distributors support the concept of the need for recording and reporting of the activities associated with providing wireless attachment services to wireless attachers. However, the Large Distributors believe that there are other methods for recording and reporting this service than the deferral accounts structure as contemplated in Toronto Hydro's settlement agreement.

The Large Distributors submit that each distributor who is providing wireless attachment services will propose a method to record and report the costs and revenues, as well as how the resulting amount should be distributed to customers and allocated to the different rate classes. The Large Distributors submit that this individualized approach will provide each LDC with the opportunity to address specific needs and issues in their service territory.

**Term (b)**

The Large Distributors support the aspects of term (b) regarding the general mechanics of crediting net revenue offsets against revenue requirement. However, the Large Distributors do not support the implicit aspect of this term that 100% of net revenues should be credited solely to ratepayers. The Large Distributors submit that crediting all net revenues is inconsistent with the general principle set out in the preamble of this submission. In particular, crediting all net revenues to ratepayers fails to encourage or provide utilities an incentive to pursue this potential stream of revenue offsets. Moreover, the Large Distributors respectfully submit that a structure where the distribution of benefits and risk are not in alignment (and in this case are entirely misaligned) is not a sustainable framework, to the detriment of ratepayers and shareholders alike over the long term.

For these reasons, the Large Distributors submit that as part of an application, each utility, excepting Toronto Hydro, should be allowed to bring forward a proposal for sharing of net revenues from wireless attachments between ratepayers and the utility.

### **Term (c)**

The Large Distributors support the applicability of term (c) to all Ontario LDCs, as it is consistent with the general principle set out in the preamble of this submission.

The Large Distributors observe that individual utilities and telecommunications attachers may have specific circumstances which drive different attachment terms and rates, just as prevailing market conditions vary among geographic regions in a competitive environment. These varied circumstances may include pole and service territory configuration, as well as wireless technology and service preferences of the attachers. This term provides utilities and attachers the ability to consider the specific circumstances of potential wireless attachment arrangements in agreeing to applicable contract terms and rates.

### ***3. If all Ontario LDCs are allowed to charge market rates for wireless attachments, is a licence amendment the appropriate mechanism?***

The Large Distributors submit that amending an LDC's licence is *one among* the potential appropriate mechanisms to allow LDCs the ability to charge market rates for wireless attachments on their poles.

The Large Distributors observe there may be more than one regulatory mechanism by which to achieve the outcome of allowing utilities to negotiate terms and rates for wireless attachments on their poles. One such mechanism might be section 29 of the *Ontario Energy Board Act*, which by definition is appropriate when there is (or will be) sufficient competition to protect the public interest.<sup>9</sup>

As well, Enbridge Gas Distribution provides a third party billing service approved by the OEB. Portions of this service were deemed to be competitive in nature and, accordingly, Enbridge charges market rates within certain parameters.

### ***Conclusion***

The Large Distributors support the OEB's proposal to amend the licences of LDCs to allow – but not require – them to charge market rates for wireless attachments, provided the terms of the licences amendments are adjusted to provide that each LDC may propose for itself:

- appropriate recording and reporting on the activities associated with providing wireless attachment services; and
- an appropriate sharing mechanism for the net revenues from wireless attachment services that meet the needs of its ratepayers and shareholders.

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<sup>9</sup> For example, although the parties in Toronto Hydro's proceeding settled on the basis of a licence amendment, the utility initially brought its application under section 29 of the *Ontario Energy Board Act*.

All of which is respectfully submitted by the members of the Large Distributors:

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