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February 10, 2015

EMAIL AND RESS

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli:

Re: Toronto Hydro-Electric System Limited CIR Application 2015-2019

We are counsel to Toronto Hydro-Electric System Limited in the above noted matter. We are in receipt of Ms. Dinsmore's letter of yesterday's date written on behalf of Rogers Communications Partnership, Allstream Inc. and Cogeco Cable Inc. (the "Rogers Letter"). Among other things, the Rogers Letter seeks orders from the Ontario Energy Board that it strike out Toronto Hydro's request in relation to the wireline attachment rate, as well as its evidence in support of that rate and refuse, entirely, to hear that part of the application. For the reasons that follow, there is no merit to any of these requests and they should be denied by the Board.

The thrust of the Rogers Letter is that Toronto Hydro failed to provide adequate notice of its proposed change to the wireline attachment rate (not to be confused with the wireless attachment rate which was fixed by the Board in EB-2013-0234). This assertion is wrong for at least the following four reasons.

First, Toronto Hydro followed all notice requirements specified by the Board. These requirements satisfy any statutory or common law obligation to provide notice of the application. By letter of direction dated August 28, 2014, the Board directed Toronto Hydro to publish a "Notice" within 14 days of the date of the direction. The form of Notice was prescribed by the Board and provided information both in relation to Toronto Hydro's application and the date by which parties could seek intervenor status. In compliance with the letter of direction, on September 2, 2014 Toronto Hydro published the Notice in the Toronto Star and L'Express, being the English and French language newspapers with the largest circulation in Toronto Hydro's service area. Toronto Hydro also provided the Notice to all intervenors of record in its previous cost of service and IRM proceedings. Toronto Hydro also posted the Notice along with the application and evidence in their entirety on its website. Rogers, a sophisticated entity and itself regulated, did not apply to intervene in the application.

Second, in addition to meeting the Board's formal notice requirements, it is our understanding that Rogers, in particular, was specifically advised of Toronto Hydro's intention to seek a wireline attachment rate change through direct communications between the two companies' respective chief executives in 2014. This communication could not have come as a surprise to Rogers. For some time, Toronto Hydro has expressed concerns that telecommunication companies such as Rogers, Allstream and Cogeco have been receiving a benefit or subsidy from the distribution system and ratepayers, as the cost of providing attachments far exceeds the regulated rate of $22.35. For example, please see EB-2013-0234, Tab I, Schedule 5-18 (attached). Rogers was a registered observer in that proceeding. To the same effect, in the CANDAS proceeding (EB-2011-0120) Toronto Hydro stated its view that "incremental, ongoing costs exceed the $1.92 per pole per year provided for in the current rate. Similarly, the actual non-incremental, ongoing asset carrying and pole maintenance costs exceed the amounts of $18.76 and $1.67 per pole per month respectively as currently set" (CCC-5, attached).

With this current application, Toronto Hydro is simply seeking to adjust the regulated wireline attachment rate to provide cost recovery associated with wireline attachments, so that its ratepayers are not subsidizing the wireline attachment activity of telecommunications' companies.

Third, the suggestion that the requested increase is "buried" in Toronto Hydro's application is manifestly incorrect. To be sure, Toronto Hydro's application is large – hardly surprising for an application covering the period 2015-2019. Nevertheless, Toronto Hydro's proposed wireline attachment rate is specifically discussed at Exhibit 8A, Tab 2, Schedule 1, pages 5-6. Further, Appendix B, pp. 1-9 to that Exhibit provides a break out of Toronto Hydro's estimated direct and indirect costs associated with wireline pole attachments and a full description of all cost allocators.

Fourth, reliance by the Rogers Letter on the memo issued by the Board on December 11, 2014 regarding its wireless attachment consultation is misplaced. As the opening paragraph of that memo makes clear, it relates to the rate for <u>wireless</u> attachments, as opposed to the wireline attachment rate. As the memo indicates, the "Board is now considering whether all distributors should be able to charge market rates for wireless attachments, and is seeking comments from distributors and all interested parties on this proposal." Toronto Hydro is not seeking any change to the wireless attachment rate in this proceeding.

In sum, it is Toronto Hydro's position that there is no proper basis for any of the relief in the Rogers Letter and its requests should be denied.

Toronto Hydro does not oppose Rogers' or other parties' participation in the Hearing for the purpose of testing Toronto Hydro's evidence through cross-examination or to file argument, if any. On the contrary, Toronto Hydro hereby consents and supports late intervenor status being granted to Rogers, Allstream and Cogeco.

Should you have any questions or concerns please do not hesitate to contact me at your convenience.

Yours truly,

Crawford Smith

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RESPONSES TO ENERGY PROBE RESEARCH FOUNDATION INTERROGATORIES

INTERROGATORY 18:

Reference(s): **THESL Prefiled Evidence Page 3, Para 16 and 17**

ISSUE(S): 9

16. As a result of the Decision and Order of the Ontario Energy Board dated March 7, 2005, THESL is authorized to charge $22.35 for each pole attachment. That figure is intended to cover THESL's direct and indirect costs. THESL's direct and indirect costs for pole attachments are higher than that.

17. THESL proposes to charge a competitive rate for wireless attachments to its poles. Doing so will improve THESL's ability to recover its true costs, and provide a benefit to its ratepayers and to its shareholder.

a) Does the $22.35/yr rate/charge apply to wireless only or to cable or other attached utilities? Please clarify and provide any other rates/charges for other types of attachments/connections.

b) Please provide a breakdown of THESL's costs and contribution to revenue requirement for the existing services/attachments.

c) Provide 2013 revenue and calculate the cost recovery ratio(s) for each type of Attachment/connection.

d) Discuss the Issue of cross subsidy and how this will change under forebearance.

e) Please List # 2013 applicants/customers renting attachments under the THESL OEB rate $22.35/yr. Provide 2013 revenues and costs.

f) Please provide # (NO NAMES) 2013 applicants /customers renting attachments from THESI (specify rate(s)). Provide aggregate revenue

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RESPONSE:

a) Unless otherwise noted, the $22.35/yr rate applies to all Canadian carriers as defined by the *Telecommunications Act* and all cable companies that operate in the Province of Ontario. Please also see THESL's confidential response to OEB Staff interrogatory 22 (Tab F, Schedule 1-22).

b) THESL is only able to provide a breakdown of its costs in respect of telecommunications attachments (i.e., wireline and wireless) on a typical 40' distribution pole; please see THESL's response to CCC interrogatory 16 (Tab J, Schedule 2-16) for this breakdown. The estimated contribution to revenue requirement of these types of attachments in 2013 was approximately $4M (estimated $6M cost less $2M revenue).

c) In 2013, the revenues for both types of attachments were as follows:

Type of Attachment	2013 Revenues
A	

In accordance with THESL's response to part b), above, the cost recovery ratios can only be provided for telecommunications attachments on typical 40' distribution poles: 0.33 ($2M revenue divided by $6M cost).

d) It is clear that wireless attachers are currently receiving a benefit or subsidy from the distribution system to the extent that the cost of providing the attachment or maintaining an attachment exceeds the current regulated rate of $22.35. Under THESL's application, the rate for wireless attachments would be a negotiated rate,

RESPONSES TO ENERGY PROBE RESEARCH FOUNDATION INTERROGATORIES

and in the unlikely event that that negotiated rate falls below the cost of providing the attachment or maintaining it, the attachment would not be permitted.

e) In 2013, eight customers leased attachments at the $22.35 rate. These customers were: Allstream, Astral Media, Beanfield, Bell, Blink Communications, Cogeco, Rogers, and Telus. The 2013 revenues from these attachments were approximately $1,950,000. Based on the cost model detailed in THESL's response to CCC interrogatory 16 (Tab J, Schedule 2-16), THESL estimates that the total indirect and direct costs to accommodate these attachments were approximately $6,000,000.

f) [redacted]

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

INTERROGATORY 15:

Reference(s): Affidavit of Mary Byrne

THESL's current charge for wireline attachers is $22.35/pole/per year. In addition, THESL has historically charged prospective telecom attachers a $95 application charge to recover the costs of processing those applications.

a) Do these charges fully recover the costs associated with the attachments? If not, please explain the extent to which other customers subsidize the attachments.

b) For 2008, 2009, and 2010 please list the number of wireline and wireless attachments on THESL's system and the associated revenue received for each type for each year. What was the estimated annual cost for each type of attachment in each of those years?

RESPONSE:

a) The hosting costs driven by wireless attachments can be divided into two categories: non-incremental asset carrying and maintenance costs related to existing poles, and incremental administrative, application processing, and make ready costs. These costs can also be further divided into two categories depending on whether they are one-time costs or ongoing.

In the CCTA Decision, the formula used to derive the charge of $22.35 per pole per year predominantly reflected non-incremental costs, or what the Board termed Indirect Costs. Indirect or non-incremental costs are those which do not (materially) vary with the presence of wireless attachments. These were the asset carrying costs including depreciation, return, and taxes, as well as pole maintenance

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

costs. 'Indirect Costs' constituted $20.43 out of a total of $22.35, or more than 91% of the total. Of the indirect costs, asset carrying costs were $18.76, and maintenance costs were $1.67. 'Direct Costs' or incremental costs were set at $1.92.

INDIRECT (NON-INCREMENTAL) COSTS

The principle underlying the predominant portion of the $22.35 rate was that of the sharing of non-incremental costs among pole occupants, rather than recovery of the incremental costs of hosting attachments. The sharing of these costs was based on the proportions of pole occupancy.

Asset Carrying Costs: Although the component parts of the asset carrying costs have varied in different directions since the CCTA Decision, THESL believes that the $18.76 figure significantly understates the proportion of asset carrying costs that should be borne by wireless attachments, both because: (a) the asset carrying costs for utilities are higher than those represented by the proxy for provincial average costs employed at the time; and (b) the pole occupancy assumed in the formula understates that of wireless attachments. In particular, due to the much greater size and (non-uniform) configuration of wireless ancillary equipment attachments compared to wireline attachments, the assumption of approximately 2.5 attachments per pole is not realistic or appropriate.

f necessary and at the appropriate time, THESL will bring evidence as to its carrying costs and the occupancy factor that it believes should apply to wireless attachments.

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

Pole Maintenance Costs: These costs (including tree trimming) may to some degree be affected by the presence of wireless attachments. However, even if it is assumed there are no incremental pole maintenance costs due to wireless attachments, they should nevertheless be shared based on proportions of pole occupancy. While this general principle was reflected in the CCTA Decision, THESL believes that the proxy figure incorporated in the formula understates the share of costs that should be borne by wireless attachments due to the understatement of their pole occupancy. Further, pole maintenance costs themselves may also be higher than those reflected in the proxy figure used in the CCTA Decision. In particular, because wireless attachments were not contemplated in the CCTA Decision or CCTA proceeding, the $1.67 figure did not take account of the additional complexities posed by the presence of wireless attachments on utility poles, and in particular, the way in which those attachments can lengthen and complicate maintenance work in the ordinary course (see affidavit of Ms. Byrne at paragraphs 40-50).

DIRECT (INCREMENTAL) COSTS

Incremental costs of hosting attachments include items such as application processing, records management, billing and payment processing, and ongoing asset administration costs related to pole management (i.e., relocation of poles etc). In addition, circumstances at individual poles may dictate that make ready work is necessary, ranging from the relocation of existing attachments to pole replacement.

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

Incremental costs (excluding make ready work) are reflected to an inadequate extent in the CCTA Decision. That formula reflected a total of $1.92 per pole per year for 'Administration Costs' and 'Loss in Productivity'. THESL's position is that, *de facto*, this portion of the rate clearly excludes the considerable costs incurred by THESL to process wireless attachment applications.

A categorical breakdown of these attachment hosting costs is given in the table below.

Cost Type/ Category	**INCREMENTAL**	**NON-INCREMENTAL**
ONGOING	Record Keeping, Billing & Payment Processing, Pole Management	Pole Maintenance*, Asset Carrying Costs
ONE-TIME	Application Processing, Make-Ready Costs	

* *assumes that incremental pole maintenance costs are not material*

Of the One-Time costs, make-ready costs are charged directly to attachers on a cost-recovery basis in the same manner as other demand-billable work. With respect to application processing costs, THESL sets out below the shortfalls it has experienced between the revenues generated (and credited to customers through revenue offsets) by the $95 application charge.

	2008	**2009**	**2010**
Permit	$39, 710	$107,825	$95,755

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

administration charge ($95) revenue			
Staff costs to process permits	$160,781.84	$114,595.84	$695,798.80

SUMMARY

THESL believes incremental, ongoing costs exceed the $1.92 per pole per year provided for in the current rate. Similarly, the actual non-incremental, ongoing asset carrying and pole maintenance costs exceed the amounts of $18.76 and $1.67 per pole per month respectively as currently set.

b) The table below provides information on the number of permits processed, revenue from permit administration, and associated staff costs of the permitting function. It also provides the number of invoiced attachments and the corresponding revenue from the attachment rate. However, THESL has not completed, and cannot complete within the timeline for this proceeding, an exhaustive analysis of the categorical costs set out in a) above that correspond to the attachment revenue. Further, any such cost analysis would be dependant on future contingent factors, such as the Board's decision in this proceeding.

RESPONSES TO CONSUMERS COUNCIL OF CANADA INTERROGATORIES

Wireless and Wireline Attachments			
	2008	**2009**	**2010**
Number of permits	418	1,135	1,029
Number of attachments invoiced	75,462	77,550	79,590
Total revenue from invoices (taxes not included)	$1,686,576	$1,733,243	$1,778,837