



100 WELLINGTON STREET WEST, SUITE 500
P.O. BOX 255, TORONTO, ON M5K 1J5
WWW.ROGERSPARTNERS.COM
T. 416.594.4500 | F. 416.594.9100

SENT BY FAX OR E-MAIL ONLY

D. H. ROGERS, Q.C.
Donald H. Rogers Professional Corporation
Direct Dial : 416.594.4501
E-mail: don.rogers@rogerspartners.com

Assistant: Debbie Baldassarra
Direct Dial: 416.594.4511
E-mail: debbie.baldassara@rogerspartners.com

April 7, 2015

Our File Number: 72738

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700, P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Networks
2015 – 2019 Distribution Custom Rate Application (EB-2013-0416)**

We are counsel to Hydro One Networks Inc. ("Hydro One") in the above matter. I write further to our letter of April 2, 2015 and further to letters dated April 1, 2015 and April 7, 2015 delivered to the Board by:

- Ms. Pamela Dinsmore on behalf of Rogers Communications Partnership ("Rogers");
- Ms. Natalie MacDonald on behalf of Bragg Communications Inc. operating as Eastlink ("Eastlink");
- Ms. Bianca Sgambetterra on behalf of Cogeco Cable Inc. ("Cogeco");
- Mr. Paul Cowling on behalf of Shaw Communications Inc. and Shaw Cablesystems Limited (each "Shaw");
- Mr. Russ Friesen on behalf of Allstream Inc. ("Allstream"); and

- Mr. Dennis Beland on behalf of Videotron G.P. (“Videotron”).

Each of the parties above has requested that the Board grant it leave to file a motion pursuant to section 40.02 of the Board’s Rules of Practice and Procedure asking the Board to review that part of its recent decision as it relates to Joint Use Rates; extend the time for doing so to 20 days after the Board grants leave; and staying that part of the Decision that relates to Joint Use Rates pending the requested motion.

Hydro One opposes the relief sought by each of the above parties (“the Cable parties”) as noted in our April 2, 2015 correspondence and asks that the Board deny leave to each of Rogers, Eastlink, Cogeco, Shaw, Allstream and Videotron. Hydro One’s position is outlined below.

Timeline of Events

Hydro One filed a custom cost of service application for approval of distribution rates from 2015 – 2019 on December 19, 2013. Prior to filing that application, Hydro One held four stakeholder sessions (April 29, 2013, June 26, 2013, October 16, 2013 and December 2, 2013). John Armstrong of Rogers was an invitee to each of those sessions as Rogers was an intervenor in a prior Hydro One distribution rates proceeding. Paula Zarnett from Rogers attended the final stakeholder session.

The application was filed on December 19, 2013, with further materials filed on January 31, 2014. The Board issued a Notice of Application and Hearing (“Notice”) on January 24, 2014.

The Notice was published in the Business section of one addition of the Globe and Mail, the Toronto Star, the Ottawa Citizen, the National Post and the Ottawa Le Droit newspapers on February 5, 2014.

In addition, a copy of the Notice was served on Hydro One’s intervenors of record for the previous cost of service rate application, EB-2009-0096, of which Rogers was an intervenor.

Numerous requests for Intervention and letters of comment were received. The first Procedural Order was issued on March 14, 2014 providing a schedule for Technical Conferences and an Issues day. The schedule was amended by Procedural Order issued March 19, 2014.

The three Technical Conferences proceeded on April 10, 24 and 30, 2014. Hydro One filed a proposed issues list on May 9, 2014, which was discussed following a transcribed presentation on May 12, 2014. This was followed by interrogatories,

responses to the interrogatories and further Technical Conferences to clarify evidence and interrogatory responses.

A settlement conference proceeded on July 28, 2014, but no settlement was reached. Parties did agree that Issues 7.5 and 7.8 and the methodology component of Issue 6.4 could be dealt with by way of written hearing (argument only).

The oral hearing began on September 8, 2014 and continued to September 17, 2014. Hydro One presented its Argument in Chief on September 24, 2014, followed by intervenor and Board Staff arguments with Hydro One filing its final argument on October 27, 2014. The Board issued a decision and interim rate order on December 18, 2014, with its final decision issued on March 12, 2015.

The entire hearing process took almost two years to complete.

Opportunities to Participate

Hydro One submits that the Cable parties have had numerous opportunities to participate in this hearing, had they chosen to do so.

The process began in April 2013, nearly two years ago when Hydro One held its first stakeholder session. The Invitee list of the stakeholder sessions was based upon those parties that had intervened in prior Hydro One proceedings, in keeping with Hydro One's past practice. Rogers was on the invitee list. Hydro One acknowledges that the other Cable parties were not on the invitee list.

Hydro One then filed its Notice of Application and pre-filed evidence which was followed by the Board issued Notice of Hearing. Hydro One also published Notice as it is required to do in all cases. The Notice was as prescribed by the Board and utilized by Hydro One in numerous past proceedings. Many parties requested intervention status, while numerous other filed letters of comment with the Board. None of the Cable parties did so.

Numerous procedural steps followed, all of which provided the Cable parties an opportunity to participate. This included technical conferences, interrogatories and the public hearing itself which began in September 2014.

The Cable parties have taken a similar position in the current Toronto Hydro Proceeding (EB-2014-0116). In that proceeding, some of the Cable parties including Rogers, Allstream and Cogeco wrote to the Board on February 9, 2015 requesting the Board strike out Toronto Hydro's request for an increase to its wireline attachment rates on the basis of inadequate notice. The Board refused to do so, instead granting

those parties late intervention status, while preserving the hearing date of February 17, 2015 (see Board Decision and Procedural Order dated February 23, 2015).

Hydro One observes that at the time of the events relating to Toronto Hydro, the Board had not yet issued its final decision in this case. Nevertheless, the Cable parties took no steps to participate until after the Board had rendered its decision on March 12, 2015.

Hydro One's position is that the Cable parties had numerous opportunities to participate in the above proceeding, yet chose not to do so for reasons that have not been adequately explained.

Adequacy of Notice

The Cable parties say that Hydro One did not provide adequate notice of the proposed increases to joint use rates, part of Hydro One's miscellaneous charges. They presumably do so based on the above-noted decision in Toronto Hydro where the Board found that the Notice in that proceeding was not adequate. The Board's reasons for that finding were: that Toronto Hydro's proposed change was significant, from \$22.35 to \$92.53 per pole and the Notice of Application did not refer to this large increase.

In Hydro One's case, the essential factor underlying the Board's reasoning is missing. The increase approved for Hydro One is for an increase from \$22.35 per pole to \$37.05 per pole. The increase is much smaller than that proposed in the Toronto Hydro case. Moreover, the existing rate of \$22.35 per pole was set in March of 2005, 10 full years ago, and has not been adjusted since.

Hydro One submits that, in view of the relatively small increase, the notice was adequate.

History of Joint Use Rates

The joint use rates for pole attachments were initially established by order of the Board dated March 7, 2005 in RP-2003-0249 in the matter of an Application under section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the electricity licences of electricity distributors ("the CCTA decision").

In the CCTA decision, the Board amended electricity distribution licences requiring access to cable parties to have wire attachments and fixing those rates in accordance with a Board established formula. The amount established in accordance with that formula was \$22.35 per pole which is what Hydro One has been charging for that

miscellaneous service since. The rate has not changed since, despite increases in costs over the past 10 years.

In EB-2010-0228, Hydro One filed an application requesting approval of new Joint Use charges for generation projects. In that decision, at page 9, the Board directed Hydro One to revisit all joint use charges in its next rebasing application. That is precisely what Hydro One has done.

Joint use charges in the within proceeding were not contentious. The matter proceeded by way of written proceeding as part of Issue 7.8. The Board approved Hydro One's proposal, but for 3 years, not 5 as initially requested. The Board approved an increase of the joint use charge from \$22.35 to \$37.05 in 2015, \$37.42 in 2016 and \$37.80 in 2017. These rates were set using the formula which was approved by the Board in the original application, RP-2003-0249.

Lack of Due Diligence

Each of the Cable parties are large, sophisticated corporations that are regulated entities themselves. All of them had the opportunity to participate but failed to do so. Each had an obligation and every opportunity to determine whether the application would impact them, particularly Rogers which was invited and did, in fact, participate at an early stage.

Finality of Proceedings

There must be finality to proceedings. Hydro One has filed its draft rate order. It is hoped that it will soon be approved. To now reopen or set aside the matter will further delay the implementation of new rates for 2015, already in the 4th month. Hydro One would be prejudiced by any further delays.

A reconsideration of the issue could also change the amount of external revenue to be collected. This would affect all customers and require a recalculation of the distribution rates contained in the draft rate order recently filed with the Board.

The Cable parties have not sufficiently explained the basis for their delay, given that Hydro One's proceeding has been a two year open and collaborative process. The Cable parties apparently decided not to observe or intervene in the proceeding.

In addition, in order to succeed on a motion for request, there must be sufficient ground to doubt the correctness of the Board's decision in approving the new joint use rates. There are none. Indeed none was raised by any of the Cable parties.

Conclusion

Based on the foregoing, Hydro One submits that the Cable parties request should be denied. The request is too late. The proposed increase in the charge is small. It has not been increased for 10 years. It is being calculated based on the Board approved formula.

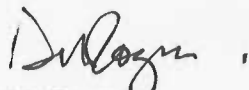
The Cable parties, sophisticated, large, regulated entities should be taken to understand that miscellaneous charges form part of a utilities rate application. Nevertheless, they chose not to participate in this proceeding. No adequate explanation has been offered.

Most importantly, contrary to the recent Toronto Hydro decision, the proposed increase is relatively small. Accordingly, no special notice should be required.

Finally, there is no reason to doubt the correctness of the Board's decision.

Accordingly, Hydro One submits that each of the requests by Rogers, Allstream, Cogeco, Eastlink, Shaw and Videotron should be dismissed.

Yours very truly,



D.H. Rogers
DHR:db