

**Hydro Ottawa Limited**  
**Custom Incentive Rate Application**  
**EB-2015-0004**

**OEB Staff Submission on the Motions**

In Procedural Order No. 7, the OEB made provisions for OEB staff and intervenors to file written submissions on the following two Notices of Motion:

OEB staff's submission with respect to each of the motions is set out below.

**Motion by Rogers Communications Partnership; TELUS Communications Company and Quebecor Media (the “Carriers”)**

In the Technical Conference on August 13, 2015, Hydro Ottawa refused to undertake to provide the information listed as 1 – 3 below. On August 24, 2015, the Carriers filed a Notice of Motion for:

1. An order requiring Hydro Ottawa to produce its reciprocal pole agreement with Bell Canada (the “Bell Agreement”);
2. An order requiring Hydro Ottawa to produce its reciprocal pole agreement with Hydro One Networks Inc. (the Hydro One Agreement);
3. In the alternative, an order requiring Hydro Ottawa to provide a detailed description of the rights and obligations of each of the parties under (i) Bell Agreement and (ii) the Hydro One Agreement; and
4. Such further and other relief as the Carriers may request and the Board may grant.

The Carriers submitted that to establish just and reasonable rates, the costs that are being claimed should not also be recovered through reciprocal arrangements with other

parties. The Carriers also submitted that the costs being claimed relate to Hydro Ottawa poles to which the pole attachment rate will apply and not to costs incurred in respect of poles owned by third parties but used by Hydro Ottawa under reciprocal or other arrangements.

The Carriers request that the reciprocal agreements between Hydro Ottawa and each of Hydro One Networks Inc. (Hydro One) and Bell Canada (Bell) be placed on the record, or, in the alternative, to place on the record a detailed listing of the rights and obligations of the parties.<sup>1</sup> The basis for the request is relevance of the documents.

In the Carrier's submission the relevance of these two reciprocal agreements relates to the issue of whether there are costs included in the derivation of the attachment rate that are also being recovered through the reciprocal agreements. In addition the Carriers submit that it is relevant to know whether the pole maintenance costs claimed are the same costs for maintaining third party poles in the reciprocal agreement.

Hydro Ottawa has refused to provide the agreements arguing that the agreements are not relevant as the issue in this proceeding is whether Hydro Ottawa's costs underpinning the charge for Access to Power Poles are appropriate and whether the rate design is appropriate. Hydro Ottawa takes the position that there is no issue in this proceeding about the methodology for calculating pole access charges.

***OEB staff submission***

OEB staff supports the motion brought by the Carriers and submits that the reciprocal agreements are relevant. In establishing any revenue requirement for the purposes of recovering costs from customers through rates, adjustments are made for removal of non-utility expenses and for other revenues earned from economic rents, such as jobbing contracts on customers' premises, property rentals, pole attachment revenues, etc. If Hydro Ottawa is receiving revenues through these reciprocal agreements from using distribution assets, or is assigning costs that are also included in the revenue requirement, then OEB staff submit that these are relevant factors in this proceeding.

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<sup>1</sup> Tr. Day 1 p.30, l 21 - 26

## **Motion by Hydro Ottawa Limited**

Hydro Ottawa filed a Notice of Motion on August 26, 2015 seeking an order that the Carriers answer questions that they refused to answer at the Technical Conference held on August 25, 2015. The questions that the Carriers refused to answer are found in the transcript of the Technical Conference at the following pages:

- (1) page 7, line 24 to page 8, line 17;
- (2) page 8, line 22 to page 9, line 9;
- (3) page 16, line 23 to page 17, line 21;
- (4) page 26, line 24 to page 27, line 7;
- (5) page 27, lines 8 to 14;
- (6) page 27, lines 15 to 19;
- (7) page 27, lines 20 to 25;
- (8) page 27, line 26 to page 28, line 2;
- (9) page 28, lines 3 to 5; and
- (10) page 28, lines 6 to 9.

The refusals relate to questions directed to the Carrier's witness David McKeown and Rogers witness Kevin Richard. Hydro Ottawa groups these refusals in two categories; 1) the challenge to Board methodology, and 2) costs recovered by third parties by Rogers<sup>2</sup>.

## **OEB staff Submission**

OEB staff submits transcript references 1, 3 set out above are proper refusals. OEB staff submits that the first transcript reference above is a proper refusal as the question calls for legal argument. The third transcript reference above is also, in OEB staff's submission a proper refusal as the question was asked and answered.

With respect to the remaining transcript references OEB submits the following

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<sup>2</sup> Hydro Ottawa Limited Submission on Motions September 3, 2013

***Challenge to OEB's Methodology – Transcript reference (2) above***

The OEB reviewed the need to regulate access to power poles and the charge for access in its *Decision and Order, RP-2003-0249, March 7, 2005* (the CCTA Decision). The Canadian Cable Television Association (“CCTA”) applied to the OEB on December 16, 2003 on behalf of the twenty-three cable companies that operate in Ontario to have a rate set for pole attachments. In the CCTA Decision, the OEB, among other matters, determined the appropriate methodology for assigning costs for setting the rate. Two different methodologies were considered for sharing the common costs. The cable companies favoured the “proportionate use”, and the electricity distributors preferred equal allocation.<sup>3</sup> In the CCTA Decision, the OEB found:

*“The Board recognizes that a case can be made for both the proportionate use and the equal sharing methodology. On balance, however, the Board prefers the equal sharing theory for the reasons stated.”<sup>4</sup>*

In this application, Hydro Ottawa’s proposal is based on the equal sharing method, while the Carriers proposal is the proportionate use method.

Hydro Ottawa requested the Carriers’ witness if, in his view, all aspects of the OEB’s methodology are to be open for review. The Carriers refused to answer this question.<sup>5</sup> OEB staff submits that this is a relevant question and it is necessary for the OEB to determine the full range of aspects of the methodology as determined in the Combined Proceeding that the Carriers’ witness may contest in this proceeding given his expertise in the area.

***Third Party Recoveries by Rogers – transcript references (4) – (10) above***

Hydro Ottawa requested Rogers provide information about overlashing, which is a method to attach a cable to an existing cable without separately attaching the cable to the pole.<sup>6</sup> By overlashing the owner of the overlashed cable avoids paying the electricity pole owner the attachment rate. The carriers charge for overlashing. Hydro Ottawa asked a series of questions related to revenues Rogers might receive from overlashing. Rogers refused to answer in each instance.<sup>7</sup>

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<sup>3</sup> Decision and Order, RP-2003-0249, March 7, 2005. P. 5

<sup>4</sup> Decision and Order, RP-2003-0249, March 7, 2005. P. 7

<sup>5</sup> Tr. Day 3 p. 8, l 18 – 27

<sup>6</sup> Tr. Day 3 pp. 26 – 28

<sup>7</sup> Tr. Day 3 pp. 26 – 28

OEB staff supports the motion to provide the requested information. OEB staff point out that this is a rate that the OEB does not regulate. However, revenues from charging for overloading offset the costs the Carriers incur from the rate set by the OEB for pole attachments. OEB staff submit that in setting a just and reasonable rate, the total impact on the customer is a consideration. The Carriers seem to have been able to offset the impact of the attachment rate through charging for overloading, and may continue to be able to do so, thereby mitigating the total costs they bear. Not knowing this information would again harm the ability of the OEB to make a just and reasonable finding.

All of which is respectfully submitted.