

Suite 1300
55 Metcalfe Street
Ottawa, Ontario, Canada K1P 6L5

613 236 3882 Telephone
613 230 6423 Facsimile



Leslie Milton
Direct +1 613 696 6880
lmilton@fasken.com

September 10, 2015

BY EMAIL AND COURIER

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

Dear Ms. Walli:

Re: File Number EB-2015-0004, Hydro Ottawa Limited - Application for 2016-2020 Distribution Rates (the “Application”), Hydro Ottawa Motion

We are writing on behalf of Rogers Communications Partnership, TELUS Communications Company and Quebecor Media Inc. (the “**Carriers**”) further to Procedural Order No. 7 which provided for the filing of responding submissions to the motion filed by Hydro Ottawa on August 26, 2015.

Questions to Mr. McKeown

In its motion, Hydro Ottawa has requested the Board to order the Carriers to respond to questions that were ostensibly raised and not answered at page 7, line 24 to page 8, line 17, at page 8, line 22 to page 9, line 9 and at page 16, line 23 to page 17, line 21 of the transcript of the Technical Conference held on August 25, 2015.

Based on these transcript references, Hydro Ottawa appears to be seeking further responses from Mr. McKeown concerning:

- (1) how this Board should treat his evidence on the appropriate methodology for setting Hydro Ottawa’s pole attachment rate (also referred to as the rate for access to power poles) in light of the Board’s consideration of the methodology for setting the pole attachment rate in a decision issued more than 10 years ago; and,
- (2) whether the Board has expressly stated that a *per attacher* pole attachment rate should reflect *per attacher* administration costs.

In its additional written submissions filed September 10, 2015, Hydro Ottawa maintains that a “central issue” in this proceeding is whether the Carriers’ evidence raises “points of methodology which are not within the Approved Issues List in this proceeding” (para. 20).

With respect, issue 4.11 of the Approved Issues List clearly identifies the appropriate “rate design”, as well as the cost inputs to that “rate design”, as issues in this proceeding. Indeed, the Carriers relied on the reference to “rate design” in agreeing to the Approved Issues List. While Hydro Ottawa is of course free to continue to make the procedural argument that “rate design” has no meaning or does not include the appropriate methodology for setting the pole attachment rate, it is not appropriate to demand that Mr. McKeown engage in argument over what issues are or are not properly before the Board in this proceeding.

Mr. McKeown is being tendered as an expert witness in regulatory cost allocation and cost-based rate design. Consistent with this expertise, his evidence addresses the methodology for setting the pole attachment rate and the cost inputs to that methodology, based on the evidence provided by Hydro Ottawa. The issue of whether “rate design” includes the methodological considerations addressed in Mr. McKeown’s evidence and the Board’s treatment of its precedents are matters for argument, not clarification at a Technical Conference.

Furthermore, Hydro Ottawa has access to all published Board decisions and is more than capable of reviewing those decisions and making argument on whether or not they specifically addressed a particular matter.

Questions to Mr. Richards

The remainder of Hydro Ottawa’s motion seeks responses to questions concerning rates the Carriers may charge third parties for use of Carrier strand (also referred to as “overlashing”) that is attached to Hydro Ottawa poles, the names of any such third parties, a model agreement for any such attachments, “how many strands of attachments each of these attachers have”,¹ and revenues received by each of the Carriers for these attachments.

At the Technical Conference, counsel for Hydro Ottawa asserted that this information was relevant as he understood “the Carriers to be asserting that Hydro Ottawa’s proposal to recover costs for these attachments is not reasonable.” If “these attachments” refers to third party overlash attachments, there is absolutely no basis for this claim. Nothing in

¹ Strand is the metal supporting wire attached to poles that supports communications wires. Third parties that overlash to this strand do not have “strands of attachments”.

the Carriers' evidence suggests in any way that Hydro Ottawa should not recover its pole costs from overlash attachers. To the contrary, the Carriers seek to ensure that these attachers are properly considered as third party attachers, consistent with the fact that Hydro Ottawa levies a pole attachment fee from them.

In its written submissions, Hydro Ottawa refers to whether pole attachment costs are "passed on" by the Carriers to other parties, without any indication of how the "passing on" of costs has any relevance to this proceeding or indeed, how information on *strand* access rates would address this issue.

In any event, the information sought by Hydro Ottawa is irrelevant. No party, including Hydro Ottawa, has proposed anything other than a *cost-based* pole attachment rate. Any rate the Carriers (or any other third parties that attach to Hydro Ottawa's poles) charge for use of their *strand* or for any other services they provide using facilities attached to Hydro Ottawa poles is irrelevant to the determination of a *cost-based* rate for access to Hydro Ottawa's *poles*. By definition, a cost-based pole attachment rate is based on the reasonable costs of providing access to the poles in issue. Whether an attaching third party "passes on" the costs associated with the pole attachment rate has no bearing on, and does not change, the reasonable costs of providing access to the poles.

Furthermore, Hydro Ottawa's evidence is that it charges all or a portion of the pole attachment rate to third parties that overlash to the Carriers' strand supported on its poles. Accordingly, unless its records are inaccurate, Hydro Ottawa knows the number of all such attachments and the names of all such attachers and should have put this information on the record if it thought it was relevant. Indeed, the only complete source of this information would be Hydro Ottawa, as many attachers, including attachers such as Bell Canada and Hydro One, are not participating in this proceeding.

The Carriers also note that information concerning the rates they charge third parties for access to their strand, and the revenues received for these services, is confidential information the disclosure of which could materially harm the Carriers in future negotiations with these parties.

Conclusions

For these reasons, the Carriers submit that the additional responses sought by Hydro Ottawa in its motion are inappropriate and irrelevant. Accordingly, the Carriers respectfully request the Board to deny Hydro Ottawa's motion.

In accordance with Procedural Order No. 7, the Carriers intend to submit reply submissions with respect to all responding arguments on the Carriers' motion on September 17, 2015.

Sincerely,



Leslie J. Milton

cc Applicant and other interested parties