

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF an Application by Hydro Ottawa Limited for an Order approving electricity distribution rates for the period from January 1, 2016 to December 31, 2020.

HYDRO OTTAWA LIMITED
REPLY SUBMISSIONS ON MOTIONS

A. Background

1. On September 3, 2015, Hydro Ottawa Limited ("Hydro Ottawa") provided its submissions in respect of two motions in this proceeding. First, these submissions addressed a motion by Rogers Communication Partnership, TELUS Communications Company and Quebecor Media (collectively, the "Carriers") for an order requiring Hydro Ottawa to produce agreements with Bell Canada and Hydro One Networks Inc. ("Hydro One"), or alternatively, to provide a detailed description of the rights and obligations of each of the parties under these agreements. Second, the submissions addressed a motion by Hydro Ottawa for an order requiring the Carriers to answer questions that they refused to answer at the Technical Conference in this proceeding on August 25, 2015.

2. Hydro Ottawa has received the following submissions in respect of the motions:

- (i) letters dated September 3, 2015 and September 10, 2015 from Fasken Martineau DuMoulin LLP on behalf of the Carriers;
- (ii) a letter dated September 10, 2015 from Allstream Inc. ("Allstream");
- (iii) a letter dated September 11, 2015 from Rogers Partners LLP on behalf of Hydro One Networks Inc. ("Hydro One");
- (iv) a letter dated September 10, 2015 from Bell Canada;

(v) a letter dated September 10, 2015 from Jay Shepherd Professional Corporation on behalf of the School Energy Coalition ("SEC"); and

(vi) OEB Staff Submissions on the Motions filed on September 10, 2015.

3. These are the reply submissions of Hydro Ottawa in respect of the two motions.

B. Reply to Submissions by the Carriers and Allstream

(i) Challenge to Board Methodology

4. In their submissions, the Carriers accept that their opposition to Hydro Ottawa's proposed pole access charge is based on an assumption that the methodology approved by the Board in EB-2003-0249 has been opened up for review in this case.¹ The Issues List in this proceeding does not open up any issue about the methodology approved by the Board in EB-2003-0249. Issue 4.11 in the Approved Issues List attached as Schedule A to the Board's Issues List Decision dated August 21, 2015 is as follows:

4.11 Are the costs underpinning the proposed new charges for the specific charge for Access to Power Poles appropriate and is the rate design appropriate?

5. The Carriers apparently take the position that the reference to "rate design" in Issue 4.11 has opened up the methodology approved in EB-2003-0249 for reconsideration in this case.² However, Issue 4.11 does not make any reference to methodology; it refers to the "costs underpinning" the proposed charge for Access to Power Poles and, as relied on by the Carriers, it refers to "rate design". The "rate design" issue in this case is whether Hydro Ottawa has properly applied Board-approved methodology in determining the charge for Access to Power Poles; the words "rate design" in Issue 4.11 do not in any way imply a reopening of the methodology approved by the Board in EB-2003-0249.

6. The Carriers go on to say that whether "rate design" includes the "methodological considerations" addressed in their expert's evidence is a matter for argument and that the expert should not be asked to engage in argument "over what issues are or are not properly

¹ Fasken Martineau DuMoulin September 10th letter, page 2, second paragraph.

² Fasken Martineau DuMoulin September 10th letter, page 2, second paragraph.

before the Board". However, at no time did Hydro Ottawa ask the Carriers' expert witness to engage in argument about the "methodological considerations" addressed in his evidence. Given that the expert's evidence is not consistent with the approved methodology, Hydro Ottawa sought to have him answer questions that would shed light on the extent to which he accepts the approved methodology and the extent to which his evidence diverges from the approved methodology. It is particularly important to know the extent to which the expert witness accepts or diverges from the approved methodology because, as already stated, the approved methodology has not been opened up for review in this proceeding.

(ii) Amounts Charged by Carriers to Third Parties

7. The Carriers say that no party in this proceeding has proposed anything other than a cost-based pole attachment rate,³ yet they do not accept Hydro Ottawa's cost-based charge, because they seek to advance their own view of what constitutes "reasonable" costs. This is clear from the submissions of both the Carriers and Allstream: the Carriers argue that, by definition, a cost-based pole attachment rate is based on "reasonable costs" and Allstream argues that a "pole rate proceeding needs to consider ... the reasonableness and accuracy of the costs submitted by the regulated utility".

8. Issue 4.11 does not explicitly refer to the "reasonableness" of the costs underpinning Hydro Ottawa's charge for Access to Power Poles. It puts into issue whether the costs underpinning the charges are "appropriate" and whether the rate design is "appropriate". In any consideration of whether the costs underpinning Hydro Ottawa's charges are appropriate, it surely must be relevant to know the extent to which the Carriers are able to charge third parties for access to their "strand" attached to Hydro Ottawa poles. If the Carriers are able to charge amounts to third parties that are significant or meaningful in comparison to the costs charged by Hydro Ottawa, then evidence of such charges by the Carriers is a very good indicator to be considered in the determination of whether Hydro Ottawa's costs are appropriate.

(iii) Agreements with Bell Canada and Hydro One

9. Unlike the amounts charged by Carriers to third parties, which are not known in this proceeding because of the refusal of the Carriers to answer questions about them, the Carriers

³ Fasken Martineau DuMoulin September 10th letter, page 3, second full paragraph.

know the amounts charged by Hydro Ottawa to Bell Canada and Hydro One for access to poles. The evidence is that Bell Canada pays the current Board-approved pole attachment rate for all of its wireline attachments on Hydro Ottawa poles⁴ and the evidence provides the pole attachment rate paid by Hydro One for power attachments on Hydro Ottawa poles.⁵

10. Notwithstanding this disparity of information on the record (the Carriers know the amounts charged by Hydro Ottawa to Bell Canada and Hydro One, yet the Carriers refuse to disclose the amounts that they charge to third parties), the Carriers seek production of the actual agreements with Hydro One and Bell Canada on the ground that the “rights and obligations” of the parties to those agreements are relevant.⁶ Needless to say, the relevance of amounts actually charged by the Carriers to third parties is obvious and inescapable in comparison to the relevance of the terms and conditions of agreements that Hydro Ottawa has made with Hydro One and Bell Canada, particularly when the amounts charged to Hydro One and Bell Canada are already in evidence.

11. The rights and obligations of the parties under agreements with Bell Canada and Hydro One do not have any bearing on whether Hydro Ottawa’s costs “underpinning” the proposed pole access charges are appropriate, nor do they assist with any consideration of whether the “rate design” is appropriate. Thus, the agreements are not relevant in this proceeding. Indeed, as pointed out by Hydro One,⁷ the agreement between Hydro Ottawa and Hydro One relates to the “power space” on Hydro Ottawa’s poles, not the space on the poles used for telecommunications attachments. The terms and conditions of an agreement between Hydro Ottawa and Hydro One in respect of the power space on poles can have no relevance whatsoever to whether the underpinning costs or rate design of Hydro Ottawa’s charges for access to telecommunications space are appropriate.

12. The Carriers argue that “rights and obligations” in the agreements with Bell Canada and Hydro One are relevant to whether the pole attachment rate proposed by Hydro Ottawa is “just and reasonable”.⁸ On the one hand, in order to justify their refusal to answer questions from

⁴ Response to Carriers Interrogatory #1, part c, IR:H-7-1(Carriers #1).

⁵ Response to Technical Conference Undertaking JTC1.6.

⁶ Fasken Martineau DuMoulin September 3rd letter, page 2, fourth paragraph; transcript of Technical Conference on August 13, 2015 (“August 13th Transcript”), page 30.

⁷ Rogers Partners LLP letter, page 2.

⁸ Fasken Martineau DuMoulin September 3rd letter, page 2, fourth paragraph.

Hydro Ottawa, the Carriers argue for a narrow cost-based view of relevance,⁹ but, on the other hand, in order to justify their request for production of agreements with Bell Canada and Hydro One, the same parties argue for a broader view of relevance based on whether the proposed charges are “just and reasonable”. Hydro Ottawa submits that the Board should reject the arguments of the Carriers that are founded on these contradictory positions.

C. Reply to Other Submissions

13. The letters filed by Bell Canada and Hydro One support Hydro Ottawa's position in response to the Carriers' motion and hence Hydro Ottawa will not reply to those submissions. SEC's submission is that both motions in this proceeding should be granted. Hydro Ottawa notes, however, that SEC's submission provides compelling reasons why questions that the Carriers refused to answer are “clearly relevant” but provides no reason why the agreements with Bell Canada and Hydro One are relevant.

14. Board Staff support the Carriers' motion and, in doing so, assert that:

If Hydro Ottawa is receiving revenues through these reciprocal agreements ... or is assigning costs ... then OEB staff submit that these are relevant factors ...¹⁰

(Emphasis added.)

The difficulty with this argument is that it is speculative and without evidentiary foundation. There is evidence in this proceeding about Hydro Ottawa's charges to Bell Canada and Hydro One for pole access and the agreements do not need to be produced for the purpose of understanding these charges for pole access. If the basis for production of the agreements is the possibility that Hydro Ottawa may be receiving other revenues under the agreements, or may be assigning costs, the Hydro Ottawa witnesses should have been asked questions in this regard, so that the record would reveal whether there is an evidentiary foundation for the production of the agreements. Speculation about what might be in the agreements, when questions in this regard were not put to the Hydro Ottawa witnesses, does not create any evidentiary foundation for the production of the agreements.

⁹ As referred to above, see Fasken Martineau DuMoulin September 10th letter, page 3, second full paragraph.

¹⁰ OEB Staff Submissions on the Motions, page 2.

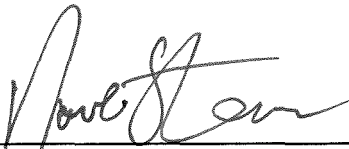
15. Board Staff also support Hydro Ottawa's motion, with the exception of two specific questions that the Carriers refused to answer.¹¹ Board Staff submit that one question¹² calls for a legal answer and that the other question¹³ was asked and answered. As stated above, Hydro Ottawa did not at any time ask the Carriers' expert witness to give a legal view about the "methodological considerations" addressed in his evidence; Hydro Ottawa sought to have the witness answer questions in order to gain a better understanding of the extent to which he accepts the approved methodology and the extent to which his evidence diverges from the approved methodology. As for the question that Board Staff says was asked and answered, the Carriers have not, to the best of Hydro Ottawa's knowledge, taken the position that they refused to answer this question on the ground that it was asked and answered and Hydro Ottawa submits that the question was not answered.

D. Order Requested

16. For the reasons set out above, Hydro Ottawa reiterates its requests that the Board dismiss the motion by the Carriers, allow the Hydro Ottawa motion and require the Carriers to answer the questions that they refused to answer during the Technical Conference on August 25, 2015.

All of which is respectfully submitted.

September 17, 2015.



for
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¹¹ OEB Staff Submissions on the Motions, pages 3 to 5.

¹² Transcript of Technical Conference on August 25, 2015, page 7, line 24 to page 8, line 17.

¹³ Transcript of Technical Conference on August 25, 2015, page 16, line 23 to page 17, line 21.