



EB-2015-0004

Hydro Ottawa Limited

**Application for electricity distribution rates for the
period from January 1, 2016 to December 31, 2020.**

**DECISION
and
PROCEDURAL ORDER NO. 8**

September 24, 2015

Hydro Ottawa Limited (Hydro Ottawa) filed a custom incentive rate application with the Ontario Energy Board (OEB) on April 29, 2015 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Hydro Ottawa charges for electricity distribution, to be effective January 1, 2016 and for each following year through to December 31, 2020.

A Notice of Hearing was issued on May 27, 2015.

A Technical Conference was held on August 13, 2015, and continued on August 14, 2015 for the purpose of clarifying interrogatory responses from Hydro Ottawa. Another Technical Conference was held on August 25, 2015 which dealt specifically with the evidence of Quebecor Media (Quebecor), Rogers Communications Partnership (Rogers), and TELUS Communications Company (TELUS) (the Carriers) and Allstream Inc. (Allstream) related to Hydro Ottawa's proposed pole attachment rate. This Decision and Order addresses three topics: a confidentiality request by the Carriers, and motions by both the Carriers and Hydro Ottawa. It also sets out further procedural steps.

Carriers' Request for Confidentiality

On August 31, 2015, Quebecor Media (Quebecor), Rogers Communications Partnership (Rogers), and TELUS Communications Company (TELUS) filed responses to Undertaking JTC3.3 and requested that the invoices contained in their responses be treated in confidence pursuant to the OEB's *Practice Direction on Confidential Filings*. They claimed that the invoices contained commercially sensitive information that is consistently treated as confidential in their respective businesses and that the disclosure would cause harm to them. No one made submissions on this request for confidentiality.

The OEB agrees with the Carriers that these invoices contain commercially sensitive information and will grant these invoices confidential status. The OEB may have some questions about these invoices during the oral hearing. If so, the Carriers and Hydro Ottawa should be prepared to answer these questions which will be done in an in-camera session.

Carriers' Motion for Production of Reciprocal Agreements

The Carriers filed a motion on August 25, 2015 to have two reciprocal agreements filed. Reciprocal agreements in this case are agreements between pole owners who share each other's poles.

The Carriers' motion requests:

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 it is in the public interest to determine whether any of the costs that are being claimed by Hydro Ottawa in this proceeding are being recovered elsewhere pursuant to reciprocal arrangements with other parties.

Hydro Ottawa submitted that the agreements are not relevant and that the issue in this proceeding is the appropriate costs for pole attachment rate. It submitted that the rights and obligations of the parties in the subject agreements do not shed any light on whether the costs used to develop the proposed pole access charges are appropriate.

Hydro Ottawa also stated that it requires consent from the respective parties to produce the agreements. Although they are not intervenors in this application, Bell Canada and Hydro One filed submissions. Bell Canada submitted that it agrees with Hydro Ottawa that the rights and obligations set out in the agreement are wholly irrelevant to setting a charge for pole attachments. Bell Canada submitted that each agreement is uniquely tailored to each Local Distribution Company (LDC), and it is imperative that agreements be maintained in confidence, as the disclosure of the terms of a given agreement could significantly interfere with its ability to negotiate future agreements with other LDCs. Hydro One agreed with Hydro Ottawa and Bell Canada.

In their Reply Submission of September 17, 2015 the Carriers submitted that the rate certain attachers pay to access space on Hydro Ottawa poles is relevant because the methodology for cost allocation that underpins the applicant's rates calls for equal sharing of costs among all attachers. Reciprocal agreements were expressly considered in the establishment of the OEB approved methodology outlined in proceeding RP-2003-0249.¹

OEB staff supported the motion brought by the Carriers. OEB staff submitted that if Hydro Ottawa is receiving revenues from distribution assets, through the reciprocal agreements, or is assigning costs that are also included in the revenue requirement, then these are relevant factors in this proceeding.

The OEB finds that the details of these reciprocal agreements are not relevant to this proceeding in terms of establishing an appropriate pole attachment rate. However, the OEB finds that the following question is relevant and orders Hydro Ottawa to answer it prior to the oral hearing:

Are any of the costs that are being claimed by Hydro Ottawa in this proceeding being recovered elsewhere such as through reciprocal arrangements with other parties?

¹ EB-2003-0249, March 7, 2003 Decision and Order on the Application by the Canadian Cable and Television Association for uniform terms of access including a province-wide uniform rate or pole charge for such access.

Hydro Ottawa's Motion for Answers to Technical Conference Questions

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 refusals relate to questions directed to the Carriers' witness, Mr. David McKeown, and Rogers' witness, Mr. Kevin Richard. Hydro Ottawa groups these refusals in two categories: 1) the challenge to OEB methodology; and 2) costs recovered from third parties by Rogers. The basis for the Carriers' refusal to answer questions related to methodology was that these questions constituted legal argument or involved strategic matters, and in the case of costs recovered from third parties, the questions were not relevant.

The questions that the Carriers refused to answer are found in the transcript of the Technical Conference at the following pages:

Methodology

- (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;

Costs Recovered by Third Parties

- (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.

Challenge to OEB's Methodology

Hydro Ottawa stated that it sought neither legal opinion nor strategy from the witness. Hydro Ottawa submitted that Mr. McKeown was an expert witness and that he was being asked his view of what the OEB should do about the issues raised in his evidence

that have already been addressed by the OEB in its approved methodology. Hydro Ottawa submitted that the Carriers' evidence raises points of methodology that are not within the approved issues list for this proceeding. Hydro Ottawa submitted that it wanted to distinguish between the areas where the Carriers are departing from the OEB methodology and the areas where they are not questioning the methodology.

The Carriers submitted that issue 4.11 of the approved issues list identifies both the appropriate rate design and the cost inputs as issues in this proceeding. Issue 4.11 states: *"Are the costs underpinning the proposed new charges for the specific charge for Access to the Power Poles appropriate and is the rate design appropriate?"* The Carriers also submitted that Hydro Ottawa has access to all of the OEB's decisions and can form its own opinion. The Carriers submitted that these questions are inappropriate and irrelevant.

OEB staff submitted that Hydro Ottawa appeared merely to have requested from the Carriers' witness if, in his view, all aspects of the OEB's methodology are to be open for review. OEB staff submitted that the question is relevant and it is necessary for the OEB to determine the full range of aspects of the methodology that the witness may contest.

The Schools Energy Coalition (SEC) submitted that Mr. McKeown's proposed methodology differs, in part, from the OEB approved methodology. This difference results in a lower proposed rate. SEC submitted that it is relevant to this proceeding to understand if there are any other aspects of the RP-2003-0249 decision that it disagrees with. SEC submitted that this may include aspects of the decision that were favorable to pole attachers at the expense of electricity ratepayers.

The OEB will not direct the Carriers to answer questions 1 and 3 in the above list and finds that they are proper refusals; one being a question that calls for legal argument and the other question having been answered by the witness. Question 2 asked the Carriers' witness their view of whether all aspects of the OEB methodology are open for review. The OEB finds that this is a relevant question to determine the specific aspects that the Carriers may contest in this proceeding. The OEB, therefore, orders the Carriers to answer question 2 prior to the oral hearing.

Costs Recovered from Third Parties by Rogers

At the technical conference on August 25, 2015, the Carriers refused to answer a question about what Rogers charges to third parties to "overlash" on their lines attached to Hydro Ottawa's poles. The Carriers also refused to answer questions related to

whether Rogers recovers costs from multiple parties in a way that Rogers may be profiting from the access that it gains on Hydro Ottawa poles. Hydro Ottawa submitted that the requested information is relevant in order to assess whether the appropriate amount is charged by Hydro Ottawa.

The Carriers submitted that the information is not relevant because Hydro Ottawa's proposal is for a cost-based rate and that any revenues that Rogers receives for overloading has no relevance to Hydro Ottawa's costs.

OEB staff supported the motion to provide the requested information regarding overloading. OEB staff submitted that the charge for overloading is a rate that the OEB does not regulate, and that failing to take into account the value of the revenues earned through the practice would harm the ability of the OEB to make a just and reasonable finding regarding the rates that pole attachers must pay.

SEC submitted that information regarding what Rogers, as a pole tenant, charges third parties for overloading is clearly relevant to the question regarding advantages and disadvantages of pole ownership versus tenancy.

The OEB will not decide the motion as it relates to questions 4-10 at this time. The OEB will make a decision on that part of the motion at the oral hearing as it does not have enough information at this time to make a determination as to whether the questions asked are relevant. The parties to the motion should be prepared to make oral submissions regarding the relevance of the questions asked. If determined to be relevant, the parties should have witnesses prepared to address the questions.

Hearing

The Carriers filed a letter on September 15, 2015 stating that they do not oppose an oral hearing, but that they do not believe cross examination is required given the existing evidentiary record in this proceeding. The Carriers would like to proceed with written and oral arguments. The Carriers submitted that the filing of written submissions in advance of oral argument, as well as oral argument by the Applicant and intervenors, would also provide the OEB with a more thorough opportunity to hear all parties and assess the issues relating to the determination of the pole attachment rate.

On September 18, 2015, Hydro Ottawa filed a settlement proposal on behalf of the participating parties. The Carriers were not parties to the settlement proposal. The participating parties agreed that issue 4.11 should be dealt with by way of an oral

hearing, followed by written arguments. The parties submitted that that would result in the most efficient and expedient use of the OEB's and parties' time and resources.

The OEB does not find additional evidence is warranted and agrees that proceeding to an oral hearing followed by written arguments is the most efficient approach.

The OEB has reviewed the settlement proposal and expects Hydro Ottawa to have a panel of witnesses to address questions from the OEB at the outset of the oral hearing on Wednesday September 30, 2015.

The OEB considers it necessary to make provision at this time for the following procedural steps.

THE OEB ORDERS THAT:

1. An oral hearing on the settlement proposal and the unsettled issue 4.11 will commence on Wednesday September 30, 2015 starting at 9:30 am at the OEB's offices at 2300 Yonge Street, 25th floor, Toronto. If required, the hearing will continue on **October 2, 2015**.
2. Hydro Ottawa shall provide witnesses to answer the OEB's questions on the settlement proposal.
3. Hydro Ottawa and the Carriers shall provide witnesses to answer any questions the OEB may have on Undertaking JTC 3.3.
4. Hydro Ottawa shall answer the stated question on the reciprocal agreements before Friday **September 25, 2015**.
5. The Carriers shall answer the stated question 2 asking if, in their view, all aspects of the OEB's methodology for establishing a pole attachment charge are open for review before Friday **September 25, 2015**.
6. Argument in Chief will be a written argument on a date to be determined at the conclusion of the oral hearing.
7. The hearing day scheduled for **October 16, 2015** is cancelled.

All filings to the OEB must quote the file number, EB-2015-0004, be made in searchable / unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed

at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.ontarioenergyboard.ca/OEB/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

Unless otherwise stated, all communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the case manager, Christie Clark at christie.clark@ontarioenergyboard.ca and OEB counsel, Maureen Helt at maureen.helt@ontarioenergyboard.ca.

ADDRESS

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

E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **September 24, 2015**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary