



EB-2015-0004

Hydro Ottawa Limited

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

DECISION ON THE MOTION FILED BY HYDRO OTTAWA TO PRODUCE ANSWERS and PROCEDURAL ORDER NO. 9

October 14, 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 starting on August 13, 2015 and continued on August 14, 2015. As described below, certain undertakings from that technical conference were filed pursuant to the OEB's *Practice Direction on Confidential Filings*. An additional technical conference was held on August 25, 2015 which dealt specifically with the issue of pole attachment rates.

Background to Pole Attachment Rate

For more than a decade, Ontario electric utilities have applied a common charge of \$22.35 per pole attachment. The OEB order to establish this rate arose as a result of an application by the Canadian Cable Television Association (CCTA) to seek to amend the licences of all local distribution companies (LDCs) in Ontario to enable access to the power poles of LDCs for the purpose of supporting cable television transmission lines.

The CCTA's proposed amendment was to require a standard pole attachment agreement, including a standard pole rental charge as part of the standard terms and conditions for the purpose of supporting cable television transmission lines. The OEB issued its decision on March 7, 2005.

In December, 2014, the OEB issued a letter to all distributors reminding them of their obligation to charge the rate of \$22.35 for both wireline and wireless attachments. The letter stated the following:

The option remains open to distributors filing a Cost of Service or Custom IR application to file evidence in support of a change to the \$22.35 charge. The Board does recognize that this charge was based on costs that are now more than 10 years old. However, distributors may wish to take into consideration that the Board plans to undertake a review of all Specific Service Charges next fiscal year, including pole attachments.

Hydro Ottawa included in its custom IR application a request for an increase in its pole attachment rate from \$22.35 to \$57.00 per pole per year in 2016, and for the rate to be adjusted annually for inflation from 2017 to 2020.

Motions to Produce Answers

Procedural Steps

Both the Carriers¹ and Hydro Ottawa filed Motions with the OEB with respect to refusals to provide certain information or answers to certain questions. The Carriers Motion was filed with the OEB on August 24, 2015 and Hydro Ottawa filed its Motion on August 26, 2015. In Procedural Order No. 7, the OEB ordered any additional material supporting the Motions be filed by September 3, 2015, OEB staff and intervenors to file submissions by September 10, 2015 and the responding parties to reply by September 17, 2015. The Carriers Motion was dealt with in Procedural Order No. 8 and the subsequent oral hearing on September 30, 2015.

Hydro Ottawa Motion

Hydro Ottawa's Motion relates to certain refusals made by the Carriers to answer questions 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

¹ The Carriers are defined as including Quebecor Media (Quebecor), Rogers Communications Partnership (Rogers), and TELUS Communications Company (TELUS)

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 OEB issued a Decision and Procedural Order No. 8 on September 24, 2015 finding that Hydro Ottawa's motion with respect to the questions relating to the challenge to the OEB methodology were proper refusals; one being a question that calls for legal argument and the other question having been answered by the witness.

The Carriers also refused to answer questions about what Rogers charges 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 overlashing has no relevance to Hydro Ottawa's costs.

OEB staff supported the Motion to provide the requested information regarding overlashing. OEB staff submitted that the charge for overlashing 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. The School Energy Coalition submitted that information regarding what Rogers, as a pole tenant, charges third parties for overlashing is clearly relevant to the question regarding advantages and disadvantages of pole ownership versus tenancy.

OEB Findings

The OEB has considered the submissions filed by the parties and denies Hydro Ottawa's motion to compel the Carriers to answer certain questions related to what charges are recovered from third parties for the reasons that follow.

As a result, the OEB will not hear further evidence or submissions from parties on matters related to cost recovery from third parties by the Carriers. The OEB has decided that these questions are not relevant given that this proceeding is limited to the current OEB approved methodology which is cost based and the rates are based on cost recovery and not some form of revenue sharing.

The OEB plans to undertake a policy review of miscellaneous rates and charges commencing this year, which will include a review of pole attachment methodology and treatment of third party revenues. The OEB informs parties that as a result of the upcoming policy review, the OEB will be asking parties to be prepared on October 16, 2015 to make submissions on whether the decided upon pole attachment rate should be made interim.

Hearing

The purpose of the hearing on October 16, 2015 is to provide an opportunity to the parties for cross-examination of the Hydro Ottawa, Allstream and the Carriers' witness panels on the issue of the appropriate pole attachment rate. The OEB will not hear further evidence or submissions from parties on matters related to methodology or cost recovery from third parties by the Carriers, as the OEB has decided that these questions are not relevant to this proceeding and will be addressed in a future policy review. For example, matters related to methodology are therefore out of scope including proportional versus equal sharing, the number of attachers per pole and the issue of pole ownership versus tenancy.

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

THE OEB ORDERS THAT:

1. The hearing will commence on **October 16, 2015** starting at 9:30 a.m., at 2300 Yonge Street, 25th floor, Toronto to be followed by oral Argument-in-Chief.

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.

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.

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DATED at Toronto, **October 14, 2015**

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary