



12 November 2015

by RESS

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

Dear Ms. Walli:

Subject: Hydro Ottawa Limited Application for electricity distribution rate for the period from January 1, 2016 to December 31, 2020, EB-2015-0004 – Submissions of Allstream Inc.

1. The following constitute the submissions of Allstream Inc. (Allstream) on the above noted application by Hydro Ottawa Limited (Hydro Ottawa). These submissions are made in accordance with the Board's Procedural Order No. 10 in this matter. Allstream's comments are limited to the issue of the pole attachment rate proposed by Hydro Ottawa in its application. Failure by Allstream to address any particular point raised by any other party should not be construed as agreement with that point.

I. Introduction

2. Electricity distributors in Ontario are required to make their power poles available to Canadian Carriers (as defined in the *Telecommunications Act*) and cable companies at a rate established by the Board.¹ By default, distributors must charge the province-wide rate established by the Board.²
3. It is open to distributors, by virtue of Decision and Order RP-2003-0249,³ to apply to the Board for permission to have the rate modified where the distributor believes that the

¹ Decision and Order RP-2003-0249, page 3.

² Decision and Order RP-2003-0249, page 8.

³ Page 8.

province-wide rate is inappropriate.⁴ In such cases, the application is to be for a modified rate based on the distributor's own costing.⁵

4. The Board must very carefully scrutinize any such proposal for a modified rate to ensure that the claimed costs are in fact accurate and appropriate. If the rate is based on miscalculated or over-inclusive costs, the resulting rate will be neither just nor reasonable. A rate that is too high will lead to windfall profits for the distributor and will be a misuse of an essential facility. Such a rate would undermine the findings and purpose of the regulatory directives found in Decision and Order 2003-0249.
5. The burden of establishing that the province-wide rate is not appropriate for a particular distributor is on the applicant, in this case, Hydro Ottawa. Where that burden is not met, it is Allstream's submission that the Board must deny the application and require that the distributor continue to make its poles available to third-party attachers at the province-wide rate.
6. Gathering the appropriate data in support of a rate for access to an essential facility is neither a simple nor a straightforward task. This is borne out by Hydro Ottawa's claims regarding the time take to prepare evidence for a new pole rate proposal.⁶ As it is a complex task, there are ample opportunities for errors to be made or inappropriate assumptions to occur. When the results of this complex task are orders of magnitude different from the results of the same exercise undertaken by similar companies, it is a sign that the results are not appropriate.
7. In this proceeding, Hydro Ottawa has sought to increase the rate it is permitted to charge by a substantial margin. In fact, the rate it proposes is well over double the province-wide rate.

⁴ Decision and Order RP-2003-0249, page 8.

⁵ Decision and Order RP-2003-0249, page 8.

⁶ Transcript, October 16, 2015, page 77 lines 15-18: "MS. COLLIER: Yes, we chose 2013. We had planned to do this calculation for a long time. We, you know, had the most data in relation to 2013 in terms of the number of permits processed and the hours of GIS." Also, page 101 lines 18-20: "Mr. Malone: ... We were very conservative when we started these calculations a year ago with respect to the attachers, and not just in that particular area."

8. Allstream submits that Hydro Ottawa has failed to meet its burden and that the application for a Hydro Ottawa-specific pole attachment rate should be denied. At a minimum, any rate approved at the conclusion of this proceeding must be substantially lower than the one proposed by Hydro Ottawa.

II. Methodology

9. In Procedural Order No. 9, the Board restricted the scope of this proceeding. The Board ruled that

[t]he 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.⁷

10. The inquiry will consider solely a review of the costing information provided by the applicant.
11. It is Allstream's respectful submission that it would be inappropriate for the Board to approve a new rate for Hydro Ottawa in the present circumstances. The Board is empowered by statute to "make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under s. 29 of the *Electricity Act*, 1998, c. 12, Sched. D., s. 12(1)".⁸
12. It is not possible for the Board to approve or fix a rate that is "just and reasonable" if there are doubts as to the adequacy of the methodology employed in calculating that rate. In this proceeding, as is recognized in Procedural Order No. 9, the applicant and intervenors alike have led or sought evidence that challenges the existing methodology. Moreover, the Board has now announced the initiation of a review of the methodology

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Procedural Order No. 9, page 4.

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Ontario Energy Board Act, 1998, S.O. 1998, s. 15, Sched. B., s. 78(3).

used to establish pole attachment rates.⁹ The adequacy of the existing methodology is, therefore, very much an open question and one that is plainly before the Board.

13. In these circumstances, until the Board establishes a new methodology or determines that the existing methodology continues to be appropriate, it is unable to approve or fix a just and reasonable pole attachment rate. To do otherwise would be to exceed the jurisdiction given to the Board by statute. It cannot say with any certainty that a rate is just and reasonable if it has already acknowledged that the methodology may not be adequate.
14. Allstream believes that the appropriate conclusion to this proceeding would be a denial of Hydro Ottawa's proposed new pole attachment rate. The current province-wide rate should continue to apply to Hydro Ottawa. Once the Board concludes its policy review and determines what the appropriate methodology should be, Hydro Ottawa can apply to change its rate, calculated using the new methodology.
15. However, for the purpose of these submissions and in response to Procedural Order no. 9, Allstream will restrict its comments to matters of costing and will not address methodology. In particular, Allstream will focus its comments on two particular items of concern: failure to divide direct costs by the number of attachers, and inappropriate indirect costs. In each case, the costing information supplied by the applicant is flawed and over-inclusive. Third-party attachers would be compensating Hydro Ottawa to a much greater degree than is appropriate having regard to the methodology established by the Board in Decision and Order 2003-0249. The attachment rate derived from this information is, therefore, unreasonably high, even without considering whether the methodology is appropriate. As such, Allstream requests that the Board reject Hydro Ottawa's application and rule that the province-wide rate continue to apply to Hydro Ottawa. In the alternative, the Board should approve a much lower rate than the one proposed to address the flaws in the costing evidence.

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Review of Miscellaneous Rate and Charges, EB-2015-0304, Board Letter dated November 5, 2015, page 2. "The subsequent review of pole attachments will consider the methodology used for determining charges, including the appropriate treatment of any revenues that carriers may receive from third parties".

III. Direct Costs

16. In Hydro Ottawa's application, it is readily apparent that the direct costs are incorrectly calculated. The direct costs, consisting of administrative costs and loss in productivity costs, were divided by the number of poles to arrive at a total cost per pole. However, these costs were not then divided by the number of attachers.¹⁰ This, very obviously, would lead to over-recovery, since each attacher would be compensating Hydro Ottawa for the entire direct cost associated with access to the pole. Where, for example, a pole has two attachers, Hydro Ottawa would recover twice their direct costs. This is surely not an appropriate result for a cost-based rate.
17. Hydro Ottawa has now conceded that it "sees merit in dividing the Administration Costs and Loss in Productivity by the number of 'charge-paying' attachments instead of the number poles".¹¹ It followed this statement by recalculating its proposed rate, by which the direct costs were reduced from \$12.66 to \$6.33. Allstream concurs with this approach, and notes that no party to this proceeding has suggested that not doing so would be appropriate.¹²

IV. Indirect Costs

18. Using the Board's existing methodology, the rate must include a portion of the "indirect costs" associated with the pole.¹³ Included in this aspect of the rate are three components: a depreciation expense per pole, a pole maintenance expense per pole, and a capital carrying cost per pole.¹⁴ The capital carrying cost is calculated as a percentage of the "net embedded cost per pole",¹⁵ which may also be referred to as the "net book value per pole".
19. Net embedded cost is itself calculated by taking the gross carrying amount and then subtracting accumulated depreciation (this provides the net book value of the assets).

¹⁰ In IR:H-7-1(Allstream#1).

¹¹ Hydro Ottawa, Argument in Chief, November 5, 2015, paragraph 40.

¹² In IR:H-7-1(Allstream#1), Hydro Ottawa confirmed that it had not divided direct costs by the number of attachers, and stated its belief only that the "OEB rate methodology does not divide Total Admin per Pole by the number of Attachers". It did not suggest that the result was appropriate or rational.

¹³ Decision and Order RP-2003-0249, Appendix 2.

¹⁴ Decision and Order RP-2003-0249, Appendix 2.

¹⁵ Decision and Order RP-2003-0249, Appendix 2.

The net embedded cost per pole is simply the net book value divided by the number of in-service poles.

20. In both the province-wide attachment rate and Hydro Ottawa's application, capital carrying cost is the largest contributor to the indirect costs.¹⁶ Therefore, understanding whether the net embedded costs are appropriate is a matter of significant importance when setting the attachment rate.

a) Context – Other Regulated Rates

21. Focusing on the "net embedded costs", it is helpful to compare the evidence in the present case with costs that have been approved by regulators for other utilities in Canada.
22. A summary of approved rates and net embedded costs is provided as appendix A to the evidence of Allstream Inc. dated August 21, 2015. The average approved net embedded cost is less than \$225/pole.¹⁷ Approved pole attachment rates range from \$9.58 to \$42.¹⁸ It is notable, in this regard, that the highest of these rates was arrived at by virtue of a settlement under which the parties expressly did not agree to the underlying costs, and therefore is not supported by any *approved* cost inputs, including a net embedded cost.¹⁹
23. What is apparent from this evidence is that Hydro Ottawa's claimed costs are grossly out of scale to those of other utilities that own pole systems. The claimed net embedded costs are more than seven times higher than the average, and more than three times higher than even the highest other approved net embedded cost. As a consequence, since the capital carrying cost is based on the net embedded cost, the proposed attachment rate is also much higher than the rates approved for other utilities.

¹⁶ Decision and Order RP-2003-0249, Appendix 2, Hydro Ottawa, Argument in Chief, November 5, 2015, Table 2.

¹⁷ Evidence of Allstream Inc., August 21, 2015, attachment A.

¹⁸ Evidence of Allstream Inc., August 21, 2015, attachment A.

¹⁹ Evidence of Allstream Inc., August 21, 2015, attachment A. See also Decision and Order on Settlement Proposal, EB-2014-0116, Toronto Hydro Electric System Limited, July 23, 2015.

b) No Explanation for Why Costs are Out of Scale

24. Hydro Ottawa has provided no compelling justification for why its poles should be so much more expensive than other utilities who employ poles in their outside plant. In response to questioning, Hydro Ottawa claimed that its pole replacement costs were in line with other utilities operating in large urban areas,²⁰ but did not point to even one example. Allstream contends that, in fact, Hydro Ottawa's costs are not in line with other utilities and the evidence cited above demonstrates just that.
25. Hydro Ottawa also implied that the nature of its serving area contributed to the high net embedded costs per pole.²¹ However, this claim too does not withstand scrutiny. While Hydro Ottawa does serve a large urban area, its serving area has both urban and rural components.²² This is similar to the serving territories of many other utilities with regulated pole access rates, and therefore does not explain the extreme difference in costs.
26. Furthermore, no evidence is provided showing that working in a large urban area is more expensive than working in a small to mid-size urban area, or a rural one. On the contrary, it is Allstream's evidence that costs of poles should not differ so significantly between a large urban area and a smaller one.²³ Poles themselves are essentially the same from place to place, and the costs of the bare poles should be no more expensive for a utility in a large urban area than a small urban area.²⁴ Moreover, in Allstream's experience, underground infrastructure is more common in the densest urban areas.²⁵ As such, even if the costs of working in a dense urban area are greater than working elsewhere, those costs should not have any significant bearing on the costs of installing and maintaining poles, since poles are less used in the densest areas.

²⁰ IR: H-7-1(Allstream#4(a))

²¹ IR: H-7-1(Allstream#4(b)): In response to a question of why the net embedded cost per pole was so much higher than the costs on which the province-wide rate is based, Hydro Ottawa responded: "The current province wide rate was based on a small to mid-sized municipal local distribution company from 1995 where the net embedded cost per pole was lower than HOL's current cost".

²² See Hydro Ottawa amended presentation, dated July 7, 2015, slide 6 entitled "Our Customers and Environment", bullet four stating "High density urban, suburbs and rural customers".

²³ Evidence of Allstream Inc., August 21, 2015, paragraph 11.

²⁴ Evidence of Allstream Inc., August 21, 2015, paragraph 12.

²⁵ Evidence of Allstream Inc., August 21, 2015, paragraph 13.

27. The task before the Board is to assess Hydro Ottawa's costs. While the rate must ultimately be based on Hydro Ottawa's specific costs, it is certainly relevant for the Board to consider whether those costs bear any relation to those of other similar companies. It is to be expected that costs will differ somewhat between different utilities. However, where the claimed costs are vastly higher than any others, it is necessary to scrutinize why that should be. This is particularly so when there is no apparent, credible reason for the costs to be substantially different. Careful inspection of Hydro Ottawa's claimed costs reveals several flaws that may explain in part this divergence from industry norms.

c) Hydro Ottawa's Evidence Includes Power-Specific Assets

28. Beyond a contextual comparison, a review of Hydro Ottawa's evidence shows that the claimed costs are over-inclusive. The claimed net embedded costs were calculated based on USofA Account 1830, entitled "poles, towers and fixtures".²⁶ Accumulated depreciation was subtracted from this gross value.²⁷ As the title of Account 1830 suggests, this account includes much more than just poles. It also includes items from which pole attachers receive no benefit, such as fixtures that are specific to power distribution and support structures to which third-party communications attachers do not have access (including towers). Therefore, it is inappropriate to calculate a net embedded cost per pole on the basis of this number. To do so is to require pole attachers to contribute to the cost of assets to which they do not attach. This is plainly unreasonable.
29. A more appropriate approach is to base the cost of the attachment rate on a "bare pole" basis: that is, the cost of the poles excluding the fixtures and expenses that are power-specific. One method of estimating the "bare pole" cost is to remove 15% of the net book value as a proxy for removing hydro-specific fixtures.²⁸ Allstream agrees that such an approach should be used in the present case, and notes that Hydro Ottawa has failed to do so.²⁹ Indeed, a similar approach should be taken with respect to depreciation

²⁶ See IR:H-7-1(Allstream#2(c)).

²⁷ IR:H-1-7(Carriers#6 page 2 part c).

²⁸ Expert Evidence of David McKeown, August 21, 2015, paragraph 76.

²⁹ See IR:H-7-1(Allstream#2(c)), "[t]he net embedded cost is not based on a 'bare pole' basis, but rather, includes the cost associated with USofA account 1830 –Poles, Towers & Fixtures".

expense³⁰ and maintenance expense.³¹ Hydro Ottawa's claims to have excluded power-specific costs by way of an "attacher space allocation factor"³² is unsupported. The purpose of the allocation factor is to recognize that each attacher should only be apportioned part of the costs of the pole. It does not have the effect of excluding power-specific assets.

d) Cyclical Investment

30. Another factor driving the cost upwards is that Hydro Ottawa is, by its own evidence, in the midst of a period of unusually high pole investment.

Large Segments of Hydro Ottawa's system were constructed in the 1960s, 70s and 80s. As most assets have a life span on the order of 50 years, a considerable proportion of the system is approaching or has exceeded the anticipated end-of-life.³³

31. The consequence of this spike in investment is that there is a higher than normal percentage of assets at an early stage in their lifecycle. These assets, with 50 year life spans, have depreciated very little. As such, calculating the net book value of the assets at this stage leads to an abnormally high net book value. The net book value is the gross carrying cost amount minus the accumulated depreciation. At this early stage, very little depreciation will have accumulated.
32. This is borne out when reviewing the evidence on the record of this proceeding. The net book value of Hydro Ottawa's poles has increased by nearly \$28 million between 2011 and 2015, even while the number of in-service poles has actually decreased.³⁴
33. Calculating an attachment rate during a period of unusually high investment leads to a rate that is too high, unless the rate will be continuously adjusted over time. As time goes on, the depreciation of those assets will accumulate, and will therefore lead to a lower net book value. In turn, this leads to a lower net embedded cost per pole and a lower capital carrying cost per pole, which should trigger a reduction in the pole

³⁰ Expert Evidence of David McKeown, August 21, 2015, paragraph 77.

³¹ Expert Evidence of David McKeown, August 21, 2015, paragraph 95.

³² Hydro Ottawa, Argument in Chief, November 5, 2015, paragraph 36.

³³ Application and Evidence of Hydro Ottawa, Exhibit B Tab 5 Schedule 4 page 3.

³⁴ IR: H-7-1(Carriers#6(a)).

attachment rate. Where “large segments” of infrastructure need to be replaced on a 50 year basis, the book value will peak while they are being replaced and gradually decrease over the subsequent 50 years. If the Board sets the rate based on the current calculations, attachers will be compensating Hydro Ottawa for indirect costs that are based on a book value at its peak. That book value, and hence the indirect costs, will be much too high as time goes on.

34. As a consequence, the Board must either periodically re-set the rate, to ensure that it declines along with the net book value, or set a lower rate intended to be more stable over time. The latter approach is by far preferable as it is more stable for both the pole owner and third-party attachers and is less consumptive of regulatory resources than a rate that requires a fresh proceeding every several years.

V. Interim vs. Final Rate Status

35. The Board has requested submissions on whether Hydro Ottawa’s pole attachment rate should be made interim or final, in light of the Board’s stated intention to commence a review of all specific service charges, including a review of the methodology for establishing a pole rate. If the Board rejects Hydro Ottawa’s application, as Allstream has requested in these submissions, this issue need not be decided. Hydro Ottawa will simply be in the same situation as most other distributors: it will have the province-wide rate which may or may not be open to adjustment pending the outcome of the methodology review.
36. If the Board rejects this approach and opts to set a new rate in this proceeding, Allstream is less concerned about whether the rate is called “interim” or “final”, and more concerned about the practical effect of such designation.
37. Allstream’s view is that any rate established by this proceeding should be subject to change should a new methodology be approved by the Board in the general policy review it intends to commence. However, we do not believe that such change should have a retroactive effect. Retroactivity would introduce too much uncertainty into the affairs of all parties. Attachers and the pole owner would be subject to the risk of making significant retroactive payments should the final rate differ from the interim rate. This

would be destabilizing, particularly as the general miscellaneous charge review has not yet commenced. A rate approved on an interim basis here could have interim status for many months. During such time, no party would have any certainty as to the rates.

38. If designating the rate “interim” necessarily implies that the final rate will be retroactive to the date that the rate is made interim, Allstream opposes making the rate interim. However, if the rate is given “final” status, it must be explicitly and automatically be subject to adjustment should the methodology change. Parties should not be required to bring a new application to adjust the rate in those circumstances.

VI. Conclusion

39. Allstream believes that the Board is not empowered to establish a new pole access rate for Hydro Ottawa in this proceeding. It must first make a determination on an appropriate methodology. Until such a determination is made, the Board will be unable to conclude that a rate is just and reasonable.
40. Even considered under the existing methodology, Hydro Ottawa has presented an incomplete and unworkable proposal for a rate that it is greatly out of scope and plainly over-reaching. It is Allstream’s view that the evidence presented does not support a revised pole access rate, and requests that the Board rule that the current rate of \$22.35/pole/year continue to be the applicable rate for attachment to Hydro Ottawa poles.
41. In the alternative, Allstream requests that the Board ensure that the direct costs are appropriately divided by the number of attachers, reduce by 15% each component of the indirect costs to remove hydro-specific assets, and to adjust the net book value to account for cyclical investment and promote stability and predictability over time. Any rate calculated making these adjustments would be substantially lower than that proposed by Hydro Ottawa.

Yours truly,

A handwritten signature in dark ink, appearing to read "David Parker". The signature is written in a cursive, flowing style.

for Pauline Jessome
Director, Regulatory Allstream

c.c.: Distribution List

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