



EB-2015-0141

Motion to review and vary Decision EB-2013-0416/EB-2014-0247 as it relates to the Specific Charge for Cable and Telecom Companies Access to the Power Poles charged by Hydro One Networks Inc.

**DECISION AND PROCEDURAL ORDER NO. 8
March 31, 2016**

Eleven cable and telecommunications companies and associations (the Carriers), with leave of the Ontario Energy Board (OEB), jointly filed a Notice of Motion to review and vary the OEB's March 12, 2015 decision approving distribution rates and charges for Hydro One Networks Inc. (Hydro One) for 2015 through 2017, as it relates to the charge they (or in the case of the associations, their members) are required to pay to use Hydro One's poles (the Pole Access Charge).

On March 8, 2016, the OEB issued Procedural Order No. 7 which denied the Carriers' request for a pre-hearing order to exclude certain issues from the scope of this proceeding and established a schedule for a written hearing.

On March 18, 2016, the Carriers filed a Notice of Motion in which they ask for the following:

- (a) an order that the matter will proceed by way of an oral hearing, rather than a written hearing as required by Procedural Order No. 7;
- (b) an order that Hydro One produce its agreement or agreements with Bell Canada ("Bell") in respect of joint use and pole attachments; and
- (c) an order allowing for further interrogatories to Hydro One by the Carriers, in advance of the hearing.

Hydro One responded to the Notice of Motion in a letter dated March 23, 2016. Hydro One opposes all three elements of the Carriers' request, arguing that the Carriers have

already had sufficient opportunity to seek information from Hydro One, and that further interrogatories and an oral hearing would add to the costs of the proceeding.

The OEB will deal with the three elements of the Carriers' request in reverse order.

The Carriers' Request for Further Interrogatories

The Carriers in their Notice of Motion point to certain "inconsistencies and deficiencies in the evidence from Hydro One", in particular regarding the number of attachers per pole. The Carriers argue that they require further opportunity to seek clarification from Hydro One on these matters.

The OEB notes that the discovery process in this proceeding – one round of interrogatories directed at each of Hydro One and the Carriers, and a technical conference – concluded before the OEB issued its decision on the Pole Access Charge collected by Hydro Ottawa Limited (Hydro Ottawa).¹ The parties therefore did not have the benefit of that decision in formulating their questions. As the Carriers point out, the OEB in the Hydro Ottawa case used the actual number of attachers per pole to determine a just and reasonable Pole Access Charge, rather than the 2.5 attachers per pole assumed by Hydro One in its initial rate application.

To reiterate what the OEB said in Procedural Order No. 7, "While not bound by [the Hydro Ottawa] decision, the OEB will have regard to those findings in making its decision in this case." The OEB is therefore of the view that evidence supporting the number of actual attachers may be relevant to the current proceeding, and to the extent the Carriers or other parties believe it is lacking, they should have another chance to ask Hydro One for clarification.

More generally, the OEB would like to ensure that the record is sufficient to enable the calculation of the Hydro One Pole Access Charge in accordance with the applicable findings in the Hydro Ottawa decision (e.g., that the charge should be based on historical rather than forecast costs, and on the actual number of attachers per pole rather than the presumed 2.5 attachers per pole). While this panel is not bound by the Hydro Ottawa decision, an understanding of that decision's applicability to Hydro One's circumstances would be helpful.

Hydro One acknowledges in its letter of March 23, 2016 that "there is some information not on the current record that would likely be required by the Board in order to make

¹ Decision and Rate Order on Pole Attachment Charge February 25, 2016 (EB-2015-0004). The four carriers involved in that proceeding have appealed the Decision and Rate Order to the Divisional Court.

findings consistent with those in the Hydro Ottawa decision.” Hydro One suggests that this information could be introduced through Hydro One’s argument-in-chief, rather than through another round of interrogatories.

The OEB has decided to require Hydro One to answer one more round of interrogatories from all parties. In the circumstance, the benefits of ensuring a robust record outweigh any costs to Hydro One or the other parties. It is preferable to fill any gaps in the record before the argument phase of the proceeding, rather than during it as suggested by Hydro One.

The Carriers’ Request for the Bell Agreements

The Carriers ask that Hydro One be ordered to produce any agreements it may have with Bell in respect of joint use and pole attachments. They say those agreements are needed in order to substantiate Hydro One’s evidence concerning the number of attachers per pole.

The same issue arose in the Hydro Ottawa proceeding. Rogers Communications Partnership, Quebecor Media, and TELUS Communications Company brought an interlocutory motion for Hydro Ottawa to produce two reciprocal pole agreements: one between Hydro Ottawa and Bell, and another between Hydro Ottawa and Hydro One.² After hearing submissions from the parties, as well as from Bell and Hydro One, which were not parties, the OEB decided not to require Hydro Ottawa to produce the agreements or to provide a detailed description of their contents: “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.”³ The OEB then added:

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?*⁴

In light of the similarity of facts and issues between this proceeding and the Hydro Ottawa proceeding, it would not be an efficient use of the OEB’s or the parties’ time and resources to reargue this procedural question. The OEB finds that the resolution reached in the Hydro Ottawa case is applicable here, and will not require Hydro One to produce any reciprocal pole agreements it has with Bell. However, to ensure the OEB

² Rogers Communications Partnership and Quebecor Media are also parties to this proceeding, and are included under the “Carriers” umbrella.

³ Decision and Procedural Order No. 8, September 24, 2015 (EB-2015-0004), at p. 3.

⁴ *Ibid.*, at p. 3 (italics in original).

has the information it needs to approve the Pole Access Charge at a level that is just and reasonable, OEB staff is directed to ask Hydro One, by way of interrogatory, (a) whether any of the costs being claimed by Hydro One in this proceeding are being recovered elsewhere such as through reciprocal arrangements with Bell or other parties, and (b) how the Bell attachments and any other attachments associated with reciprocal arrangements factor into the determination of the number of attachers per pole.

The Carriers' Request for an Oral Hearing

In Procedural Order No. 7, the OEB ordered that the proceeding continue by way of a written hearing. The Carriers now ask the OEB to revisit that determination. The Carriers' filed their Notice of Motion only two business days before the deadline for Hydro One to file its written argument-in-chief. In a letter to all parties dated March 22, 2016, the OEB suspended the schedule for written arguments until further notice.

The OEB will defer consideration of this aspect of the Carriers' request until the completion of the next round of interrogatories. If, at that point, the Carriers remain of the view that an oral hearing is warranted, they may file a brief written submission explaining why there is good reason for not proceeding with a written hearing, to which all other parties may respond.

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. The Carriers, OEB staff, or any other party may request additional information regarding the Pole Access Charge from Hydro One by written interrogatories filed with the OEB and served on all parties on or before April 8, 2016.
2. Hydro One shall file with the OEB complete written responses to all interrogatories and serve them on all parties on or before April 15, 2016.
3. The Carriers' request for Hydro One to produce any agreements with Bell in respect of joint use and pole attachments is denied.
4. The Carriers may file a brief written submission explaining why there is good reason for not proceeding with a written hearing, and serve it on all parties on or before April 19, 2016.
5. Any other party may file a brief written response to a submission by the Carriers made under item No. 4 on or before April 20, 2016.

All filings to the OEB must quote the file number, EB-2015-0141, 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 motion, parties must include the Case Manager, Harold Thiessen at harold.thiessen@ontarioenergyboard.ca and OEB Counsel, Ian Richler at ian.richler@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, March 31, 2016

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary