

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

AND IN THE MATTER OF Decision EB-2013-0416/EB-2014-0247 of the Ontario Energy Board (the “**OEB**”) issued March 12, 2015 approving distribution rates and charges for Hydro One Networks Inc. (“**Hydro One**”) for 2015 through 2017, including an increase to the specific charge for cable and telecom companies access to power poles charged by Hydro One (the “**Pole Access Charge**”);

AND IN THE MATTER OF the Decision of the OEB issued April 17, 2015 setting the Pole Access Charge as interim rather than final;

AND IN THE MATTER OF the Decision and Order issued June 30, 2015 by the OEB granting party status to Rogers Communications Partnership (now Rogers Communications Canada Inc.), Allstream Inc., Shaw Communications Inc., Cogeco Cable Inc., on behalf of itself and its affiliate, Cogeco Cable Canada LP, Quebecor Media, Bragg Communications, Packet-tel Corp., Niagara Regional Broadband Network, Tbaytel, Independent Telecommunications Providers Association (ITPA) and Canadian Cable Systems Alliance Inc. (CCSA) (collectively, the “**Carriers**”);

AND IN THE MATTER OF a motion by the Carriers to review and vary Decision EB-2013-0416/EB-2014-0247 as it relates to the Pole Access Charge (the “**Carriers’ Motion**”);

AND IN THE MATTER OF Procedural Order No. 8 of the OEB issued March 31, 2016 (“**Procedural Order No. 8**”) that Hydro One file with the OEB responses to additional written interrogatories with the OEB by April 8, 2016.

NOTICE OF MOTION OF THE CARRIERS

THE CARRIERS will make a motion to the OEB on a date to be determined by the Board at the Board’s office located at 2300 Yonge Street, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Carriers propose that this motion be heard orally.

THIS MOTION IS FOR:

1. An Order that Hydro One serve and file supplementary responses, further to Hydro One's answers (the "**Answers to Interrogatories**") to the Carriers' second set of interrogatories dated April 15, 2016 (the "**Carriers' Interrogatories**") in order to remedy material deficiencies in the Answers to Interrogatories, and to ensure that sufficient information exists on the record for the OEB to determine a just and reasonable Pole Access Charge in this proceeding.

GROUNDS FOR THIS MOTION:

2. In Procedural Order No. 4 dated October 26, 2015 (the "**Procedural Order**"), the OEB ordered that its review of the Pole Access Charge in this Motion "will be within the context of the current approved OEB methodology as described in Decision and Order RP-2003-0249," issued March 7, 2015 (the "**2005 Methodology**").

3. Following Procedural Order No. 4, the Carriers submitted evidence on November 20, 2015 demonstrating that, contrary to the 2005 Methodology, Hydro One had improperly included vegetation management costs as part of its indirect costs used in the calculation of the proposed new Pole Access Charge of \$37.05.

4. By letter to the OEB dated January 26, 2016, the Carriers requested that the OEB hold an oral hearing on the following issues:

- (a) whether Hydro One's inclusion of vegetation management costs as part of its indirect costs used in calculating the Pole Access Charge is inconsistent with the 2005 Methodology and, therefore, outside the scope of this proceeding; and
- (b) if Hydro One's inclusion of vegetation management costs is not inconsistent with the 2005 Methodology (which the Carriers expressly

deny), whether Hydro One has overstated or improperly allocated such costs.

5. At the Technical Conference held on January 16, 2016, certain of the Intervenor¹s raised additional factors and issues (the “**Additional Issues**”) that were not part of Hydro One’s original application before the Board in which it sought approval of its new Pole Access Charge (the “**General Rate Application**”); nor were these Additional Issues raised by the Intervenor¹s during the course of the General Rate Application. The Additional Issues are whether:

- (a) the Pole Access Charge should be calculated using 2015 forecast costs (instead of historical costs as prescribed in the 2005 Methodology and used by Hydro One in its General Rate Application); and
- (b) the Pole Access Charge should be calculated using an average of 1.3 attachers per pole (instead of the 2.5 attachers prescribed in the 2005 Methodology and assumed by Hydro One in its General Rate Application).

6. In Procedural Order No. 7, contrary to the Carriers’ request, the OEB declined to exclude the Additional Issues from the scope of this proceeding and ordered that it proceed by way of a written hearing.

7. In Procedural Order No. 8, the OEB ordered that any party “may request additional information regarding the Pole Access Charge from Hydro One”.

8. Pursuant to this order, the Carriers’ Interrogatories were made to Hydro One in order to seek additional information that is relevant to the determination of the number of poles and attachers per pole, including the basis for Bell and other utility attachments, and costs associated with the poles and attachments, including any cost recovery or cost sharing arising out of Hydro One’s agreements with Bell or others.

¹ School Energy Coalition, Vulnerable Energy Consumers Coalition (“**VECC**”), Power Workers Union and Canadian Manufacturers & Exporters.

9. The issues raised for the first time at the Technical Conference were not the subject of the Carriers' Motion; nor were they raised by the Carriers or Hydro One in the initial interrogatory process which took place in 2015. Accordingly, the Carriers' Interrogatories filed pursuant to Procedural Order No. 8 cannot be characterized as "supplementary" since they are the first opportunity that the Carriers have had to join issue with, and inquire into, facts which are or may be relevant to the Additional Issues. As a consequence, the OEB should not construe the scope of permissible inquiry narrowly or restrictively.

10. The Carriers submit, generally, that Hydro One's Answers to Interrogatories are unduly restrictive, if not dismissive, and erroneously take the position that many questions posed by the Carriers are "out of scope". For the reasons set out herein, the Carriers reject that position and seek orders from the Board requiring Hydro One to provide full answers to the Interrogatories as posed.

11. In the Answers to Interrogatories, Hydro One declined to respond to, and/or provided insufficient or deficient responses to, many of the Carriers' Interrogatories. The Carriers have identified deficiencies in Hydro One's responses to the Carriers' Interrogatories nos. 2.1(a), 2.2(a)(i) and (a)(ii), 2.5(a) and 2.11(b) (the "**General Interrogatories**"). The Carriers have outlined the nature of the deficiencies in Hydro One's responses to the General Interrogatories and the reasons for which Hydro One's fulsome and complete responses are required in the following chart.

Interrogatory		Deficiency
2.1	(a)	<p>Hydro One's response does not answer the questions as posed. Hydro One merely restated the definition of "joint use" from a joint use agreement without confirming whether that definition is consistent with Hydro One's application of the term "joint use" in respect of joint use poles, as well as with the clear intent of the original questions. Accordingly, Hydro One's intended meaning of "joint use" is not in evidence.</p> <p>Specifically, it is unknown whether Hydro One has defined "joint use pole" to include poles that have actual communications attachments on them or whether that definition also includes poles that have been designed and built as joint use poles, but may or may not have</p>

		communications attachments on them.
2.2	(a)(i)	Hydro One's response does not answer the question posed, being whether the 959,276 poles which have been identified as "Non-Joint Use" are single use poles designed only for use by Hydro One or whether those poles are used by other parties. It is necessary for the record to reflect whether any of the "Non-Joint Use" poles are used by or are designed for the use of other parties, in addition to Hydro One, and, as a result, whether they should be counted as part of the pool of joint use poles used to calculate the Pole Access Charge.
	(a)(ii)	The number provided in Hydro One's response (including the purported total number of 997,604 "Non-Joint Use" poles) do not match numbers posed in question 2.2(a)(i) (including that there are 959,276 "Non-Joint Use" poles). Hydro One must reconcile this discrepancy.
2.5	(a)	Hydro One's response fails to provide complete answer to this question by declining to explain how the number of its poles in inventory, including the total number of poles (including Joint Use Poles, etc.) have been calculated, assessed, and otherwise determined. This information is necessary for the OEB to test and understand the reliability of the various numbers provided by Hydro One which are used to calculate the Pole Access Charge.
2.11	(b)	Hydro One's response does not answer the questions as posed by failing to provide the amounts paid to Hydro One by third parties for tree trimming or vegetation management for each year from 2010 to 2015. This information is necessary in order for the OEB to determine the impact of such a contribution on the amount of Hydro One's vegetation management costs, if such costs are recoverable as part of the Pole Access Charge (as is denied by the Carriers).

12. Furthermore and in addition to the General Deficiencies, Hydro One has declined to respond to proper questions in Carriers' Interrogatories nos. 2.1(c), (d) and (e), 2.2(b), 2.3 (a)(ii), (a)(iv) and (b)–(h), 2.4(b) and #2.8, all respecting particulars of Hydro One's pole and cost sharing arrangement with Bell and other utilities (the "**Reciprocal Agreement Interrogatories**") on the basis that those questions are not within the scope of this proceeding.

13. Specifically, Hydro One attempts to justify its refusal to respond to the Reciprocal Agreement Interrogatories on the basis that the OEB had “denied the Carriers’ request for the production of any agreements with Bell [Canada (“**Bell**”)] in respect of joint use and pole attachments” in Procedural Order #8.

14. In the Reciprocal Agreement Interrogatories, however, the Carriers do not request the actual production of any of Hydro One’s agreements with Bell. Instead, they posed questions which relate specifically to the issues the OEB stated were relevant in Procedural Order 8:

“(a) whether any of the costs that are being claimed... in this proceeding being recovered elsewhere such as through reciprocal arrangements with Bell or other parties, and (b) how the ... attachments ... associated with reciprocal arrangements factor into the determination of the number of attachers per pole”

15. The number of poles in the joint use pool, on what terms Bell or other utilities have has access to them, and how many are owned by each of Bell/other utilities and Hydro One are all relevant to the determination of the number of poles and number of attachers per pole. These numbers are used to calculate the Pole Access Charge. If they are incomplete or inaccurate, there will be considerable doubt as to the whether a just and reasonable Pole Access Charge will be established.

16. Further, the basis for which Bell/other utilities and Hydro may share costs with respect to those joint use poles is relevant to both costs and the true number of attachers that might be responsible to share those costs. The Reciprocal Agreement Interrogatories go directly to these questions and the issues identified by the OEB in Procedural Order No. 8.

17. Hydro One’s failure to explain the nature of its arrangements with Bell and other utilities has prevented the participants in this proceeding and the OEB from assessing

its impact on amounts which are absolutely relevant to, and in fact determinative in, establishing a proper Pole Access Charge, including the number of attachers per pole.²

18. At the Technical Conference, Hydro One gave evidence that attachments by Bell to Hydro One's poles have been excluded from the aggregate number of attachments calculated by Hydro One.³ As a result, Hydro One's evidence that 576,068 of its total of 1,525,344 poles are "joint use" poles is entirely unsubstantiated, thereby putting the reliability of that number for use in calculating the number of attachers per pole at doubt. Hydro One's evidence does not disclose whether the 576,068 joint use poles, according to Hydro One, represent the entire pool of joint use poles, or excludes those that are covered by Hydro One's agreement with Bell.

19. Furthermore, in Hydro One's response to Carriers Interrogatory #1(a), Hydro One identified Bell as a Wireline Attacher (as defined therein) with a reciprocal agreement with Hydro One that pays the Pole Access Charge. However, Hydro One has otherwise stated that Bell does *not* pay the Pole Access Charge, including in its response to Carriers' Interrogatory #2.4(a). In order to determine the potential impact of Hydro One's joint use agreement with Bell on the number of attachers per pole, this inconsistency in Hydro One's evidence must be explored and tested.

20. Hydro One's evidence in respect of each of these issues could materially impact the actual number of attachers per pole and, accordingly, the Pole Access Charge (even though the General Rate Application remains unchanged at 2.5 attachers per pole and Hydro One has not sought an amendment in that regard).

21. Ultimately, the Carriers' objective is to ensure that the record in this proceeding contains sufficient evidence for the OEB to answer the following questions regarding the number of attachers per pole, if indeed the issue of attachers per pole is determined to be in issue in the hearing:

² The number of attachers per pole is calculated by dividing the total number of poles with attachments by the aggregate number of attachments.

³ Technical Conference Transcript, page 34, lines 16-18.

- (a) whether all of the poles that are part of a pool of joint use poles Hydro One shares with Bell (and other utilities) should be included in the total number of joint use poles for the purpose of calculating the average number of attachers per pole (regardless of whether Bell and the other utilities actually have an attachment on a pole);
- (b) whether any or all of the poles for which the Carriers pay the Pole Access Charge but do not use should be removed from the number of joint use poles; and
- (c) whether any contribution, financial or otherwise, by Bell or other utilities to the joint-use poles shared by Hydro One and Bell and/or the other utilities should be deducted from the cost of those poles, thereby reducing the common costs of the poles that would be allocated among the remaining attachers.

22. The Carriers submit that, as a result of Hydro One refusing to respond to, or providing insufficient or deficient responses to, the Carriers' Interrogatories, the evidentiary record in this proceeding is insufficient for the OEB to set a Pole Access Charge which is "just and reasonable". Accordingly, the Carriers seek the relief set out in paragraph 1.

23. This Motion is brought without prejudice to the position of the Carriers that the Additional Issues are not properly before the OEB on the Carriers' Review and Vary Motion.

MATERIALS TO BE RELIED UPON:

24. The Carriers will rely on the following materials at the hearing of this motion:

- (a) The evidentiary record to date in the proceeding EB 2105-0141;
- (b) The Interrogatories, Answers to Interrogatories, Written Evidence, Oral Evidence and Submissions of the Parties to the Carriers' Motion;

- (c) The *Ontario Energy Board Rules of Practice and Procedure*; and
- (d) Such other materials may be advised and the Board may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

April 22, 2016

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