EB-2015-0141

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

AND IN THE MATTER OF a motion by Rogers Communications Partnership *et al.* for leave to bring a motion for the review and variance of 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.

FINAL SUBMISSIONS OF

THE VULNERABLE ENERGY CONSUMERS COALITION

(VECC)

JUNE 10, 2016

1. Introduction

On March 12, 2015, the Board issued Decision EB-2013-0416/EB-2014-0247 in which it approved distribution rates and charges for Hydro One Networks Inc. ("|Hydro One" or "HON") for 2015 through 2017. Included in HON's application was an increase in the charge that cable and telecommunications companies are required to pay Hydro One for attaching to its power poles, referred to in original Application[1] as the "Joint Use Rate for Telecom Companies" (or the "the Pole Access Charge").

Shortly thereafter, several cable and telecommunications companies (the Carriers) jointly filed for leave to bring a motion to review and vary the OEB's March 12, 2015 decision approving distribution rates and charges for Hydro One Networks Inc. for 2015 through 2017. The Carriers claimed they did not have adequate notice that Hydro One proposed to increase the charge they are required to pay for using Hydro One's power poles (the Pole Access Charge).

On June 30, 2015 the OEB issued a Decision granting the Carriers such leave and the Carrier's notice of motion was filed on July 20, 2015. The Board subsequently noted that the evidence and submissions on the motion should focus on whether HON's proposed increase to the Pole Access Charge was just and reasonable[2].

In parallel, on April 17, 2015, the OEB issued a decision in respect of Hydro One's draft rate order, in which the OEB determined that the Pole Access Charge would remain as an interim rather than a final charge until the Carriers' challenge to the March 12, 2015 decision was resolved. The OEB reiterated this in its final rate order decision on April 23, 2015. As a result, despite the March 12, 2015 decision, the Pole Access Charge remains at $22.35 on an interim basis. The final charge would be set through the hearing of the Carrier's motion[3].

[1] EB-2013-0416, Exhibit G2, Tab 5, Schedule 1,page 38
[2] EB-2015-0141, P.O. #3
[3] EB-2015-0141, P.O. #4

2. Context for Current Review of HON's Pole Access Charge

In Procedural Order #4 the Board re-iterated that the motion would be a hearing on HON's proposed increase to the Pole Access Charge and whether that increase is just and reasonable. The Board also indicated that its review of the Pole Access Charge would be within the context of the current approved OEB methodology as described in Decision and Order RP-2003-0249, issued March 7, 2005.

On January 26, 2016 the Carriers filed a letter saying that the hearing on the motion should be limited to issues relating to vegetation management costs that were factored into HON's calculation of the Pole Access Charge and requested an order to that effect. In Procedural Order #7 the Board declined to issue such an order, noting again that the purpose of proceeding was to fix the final Pole Access Charge at a level that was just and reasonable. The Board also indicated that parties making submissions should take note of the findings of the OEB in the Decision and Rate Order on Pole Attachment Charge in the Hydro Ottawa Limited proceeding EB-2015-0004.

The Approved OEB Methodology

In its RP-2003-0249 Decision[4] the Board noted that there were two elements to the proposed rate for 3rd party attachers to poles owned by electricity distributors – "The first is the incremental or direct costs incurred by electricity distributors that results directly from the presence of the cable equipment. Second, there are common or indirect costs which are caused by both parties".

In terms of direct costs, the Board indicated that there was general agreement amongst parties at the time as to the inclusion of these costs,[5] and in its determination of the rate ultimately approved included allowances for both administration costs and loss in productivity costs[6].

In terms of indirect costs (i.e. the share of the common pole costs that should be borne by 3rd party attachers), this was the area of controversy during the RP-2003-0249

[4] Page 4
[5] RP-2003-0249, page 4
[6] RP-2003-0249, page 12

proceeding[7] and various methodologies for its determination were advanced by the participating parties. Ultimately the Board determined that the "equal sharing" methodology should be used[8] and also specified how the spacing on the pole should be assigned as between what would be considered common versus what would be considered as specific to either 3rd party attachers or the local power distributor[9]. In its determination of the indirect costs the Board made provision[10] for Depreciation, Maintenance Expense and Carrying Costs[11]. The Board also determined that the rate would be applicable per attacher to pole, regardless of the number of attachments an individual attacher has on the pole[12].

Hydro Ottawa Decision (EB-2015-0004)

At the start of the Hydro Ottawa oral hearing, the Board indicated, as it has in the current HON proceeding, that the hearing would be limited to the implementation of the currently approved OEB methodology[13] but that issues regarding the number of attachers, Hydro Ottawa's proposed use of an annual escalator, the use of direct costs per attacher, the use of historical vs. forecast costs and the calculation of power specific assets would be in scope[14]. In its Decision the Board made a number of key determinations regarding the application of the currently approved OEB methodology:

- With respect to the number of attachers, Board determined that "information specific to the utility is the most useful and as a result will rely on the number of attachers per pole information filed by Hydro Ottawa that reflects its specific circumstances"[15]. The Board then went on to indicate that it "prefers to rely on actual information when available, rather than a projection" and "using 2013 actual information is consistent with the approach the OEB has taken in the remainder of this Decision"[16].

[7] RP-2003-0249, page 4
[8] Page 7
[9] Pages 9-10
[10] EB-2003-0249, page 12
[11] Based on the pre-tax weighted average cost of capital.
[12] Page 11
[13] October 16, 2015 Transcript, page 13
[14] October 16, 2015 Transcript, pages 13-14 and 22
[15] Page 7
[16] Page 8

- With respect to the use of historical vs. forecast costs, the Board found that "the use of historical costs with no annual inflation adjustment is consistent with the methodology in the 2005 Decision. Furthermore, it is contrary to OEB practice to use forecast or projected costs to determine specific service charges"[17].
- With respect to the recovery of direct costs, the Board found "it inappropriate to include direct costs on a per pole basis, yet collect the pole attachment charge on a per attacher basis"[18].
- With respect to net embedded cost used in the calculation, the Board found that "a net embedded cost based on 2013 year-end net book value is consistent with the findings in this Decision". The Decision also relied on the Depreciation, Maintenance and pre-tax Carrying costs for 2013[19].
- The Board reduced indirect costs by 5% to account for the inclusion of power-specific assets based on the actual configuration of Hydro Ottawa's assets[20].
- With respect to the number of poles used for purposes of the calculation, the Board determined that this should also be based on 2013 year end values[21].

[17] Page 9
[18] Page 10
[19] Page 12
[20] Pages 13 and 14
[21] Page 13

3. Hydro One's Argument-in-Chief

In its Argument-in-Chief HON submits that the appropriate Pole Access Charge for 2015-2017 is $70.04 per attacher. This proposed rate is based on 2014 year end actual costs and up to date information regarding 2014 year end pole count along with the average current number of attachers per pole[22]. The derivation of the rate is set out below[23]:

HON'S POLE ACCESS CHARGE CALCULATION	
ITEM	**VALUE**
INPUTS	
- Total Number of Poles	1,575,195
- Power Specific Asset Reduction	15%
DIRECT COSTS (per attacher)	
- Administration Costs	$0.90
- Loss in Productivity Costs	$3.09
Total Direct Costs	$3.99
INDIRECT COSTS/POLE	
- Net Embedded Cost	$944.49
- Depreciation	$23.83
- Pole Maintenance Costs	$88.56
- Capital Carrying Costs	$80.19
Total Indirect Costs	$192.58
ALLOCATION	
- # of 3rd Party Attachers/Pole	1.3
- Allocation Factor	34.3%
Indirect Allocated Costs (per attacher)	$66.05
POLE ACCESS CHARGE	$70.04

4. VECC's Submissions Regarding HON"s Proposed Pole Access Charge

4.1 Historic versus Forecast Costs

The Board is aware[24] that, in the Hydro Ottawa case, VECC supported the use of forecast costs. However, in its Decision regarding Hydro Ottawa the Board found that the use of historic costs with no annual inflation adjustment is consistent with the

[22] HON AIC, page 8
[23] HON AIC, page7. See also Exhibit I, Tab 1, Schedule 2.1, Table 2
[24] EB-2015-0004 Decision, page 8

methodology used in the 2005 Decision. VECC still believes[25] that forecast costs are more appropriate but acknowledges that this is an issue to be pursued in the Board's current Policy Review (EB-2015-0304). For purposes of this proceeding, which is also being carried out within the context of the Board's currently approved methodology, VECC accepts that the basis for setting the rate should be historical costs.

In this regard, VECC submits that HON's proposed use of 2014 actuals is appropriate as this is the most recent year for which audited actual results are available[26].

4.2 Number of Poles and Number of Attachers

HON proposes to use the actual pole count as of year-end 2014. The "corrected" pole count for this point in time is 1,575,195 per Exhibit I/Tab 1/Schedule 2.1. VECC submits that this is appropriate value to use as it is consistent with the use of 2014 year-end actual embedded costs (see Section 4.4).

The most comprehensive data provided by HON regarding the number of attachers and number of joint use poles is for the summer of 2015 where there were a total of 746,434 3rd party attachers consisting of:

- 628,966 Telecom attachers consisting made up of[27]:
    - 331,238 Bell Canada attachments,
    - 254,891 Telecom attachments paying the full rate,
    - 23,788 Non-Reciprocal Service pole attachments paying 75% of the full rate,
    - 15,614 Bell MEU attachments paying the full rate, and
    - 3,435 Generator Telecom attachments paying the full rate
- 117,468 non-Telecom attachers consisting of[28]:
    - 11,729 LDC power attachments paying sliding scale rate,
    - 3,880 Generator power attachments paying a sliding scale rate, and
    - 101,859 street and traffic light attachments paying $2.04.

[25] Explanation provided in EB-2015-0004, VECC's Final Submissions, pages 21-24
[26] Technical Conference, January 12, 2016, page 30
[27] Undertaking JT3; Exhibit I/Tab 1/Schedule 1 a) and Exhibit I, Tab 2, Schedule 2.10 c)
[28] Exhibit I, Tab 4, Schedule 1 d)

HON has used these values in combination with the total number of joint use poles as of the same point in time (576,068) to derive a value of 1.3 for the number of attachers per pole[29].

VECC also notes that a number of the attachers are not paying the full rate (e.g. Bell, Service Poles and Street/Traffic Lights)[30]. In the Ottawa Hydro case[31] the determination of the number of attachers per pole accounted for situations where attachers were not paying the full rate by converting their numbers (on a pro-rata basis) to "equivalent full rate attachers". However, In HON's case, most of the instances where attachers are not paying the "full rate" represent situations where there is a legitimate quid-pro-quo in terms of reduction to HON's overall revenue requirement. In the case of Bell, this comes in terms of HON's ability to use Bell's poles at no charge[32]. In the case of the municipal street and traffic lights, the lower rate remains in place to avoid the potential of much higher reciprocal charges for the use of municipal owned roads and right of ways[33]. Finally, with respect to the Non-Reciprocal Service attachments, it is noted that HON plans to change their next negotiated agreement such that they too will be paying full rates[34]. Furthermore, incorporating an adjustment for these attachments would not change the 1.3 value.

Overall, VECC submits that the value of `1.3 attachers per pole, which reflects HON's specific circumstances, is the appropriate value to use for purposes of deriving the Pole Access Charge.

4.3 Direct Costs

Unlike Hydro Ottawa, HON has not performed an analysis of the individual tasks and associated costs for its operations related to either Administration or Loss in Productivity with respect to 3rd party pole access[35]. Instead, HON has adopted the values from the Board's 2005 RP-2003-0249 Decision and escalated them by 3% per annum (2005-

[29] Exhibit I, Tab 2, Schedule 2.10 e)
[30] The rates for other Power attachers are derived using the same methodology as applied to Telecom – Exhibit H2/Tab 5/Schedule 1, page 32
[31] EB-2015-0004, J2.1 and J2.3
[32] May 19, 2016 Transcript, pages 30 and 42
[33] Exhibit I, Tab 2, Schedule 2.11 c)
[34] Exhibit I/Tab 3/Schedule 5 c)
[35] Exhibit I, Tab 4, Schedules 9 a) and 10 a)

2014)[36]. Absent any utility specific cost estimates, VECC submits that HON's use of the cost estimates used in the 2005 Decision is reasonable. VECC also submits that the use of 3%/annum inflation rate is appropriate as it aligns reasonably well with the utilities industry inflation over roughly the same period[37].

In the case of Loss in Productivity costs, HON has also adjusted[38] the value to account for the fact the Board's 2005 value was calculated assuming 2.5 attachers[39] while HON is proposing a value of 1.3. VECC agrees with the need for such an adjustment.

However, in the case of Administration costs, there was no similar adjustment. It is clear from following excerpt from the evidence prepared by Mr. Ford and filed by the CCTA as part of their Application[40] in the RP-2003-0249 proceeding that the derivation of the $0.61 in the CRTC 99-13 Decision, and subsequently used by the OEB in its RP-2003-0249 Decision, did not make any adjustment for the number of attachers but rather was calculated on a per pole basis:

> The most recent available measure of administration costs is from NSPI in the 2001 proceeding before the NSUARB. Based on 2000 data, their estimate of the annual cost of support structure administration attributable to cable operators was $0.51 per pole. In Telecom Decision CRTC 99-13, the Commission arrived at an estimate of $0.62 per pole. Using the latter figure along with the increase in the CPI from 1999 to 2003 provides an estimate of the annual administration cost per pole of $0.69.

As noted previously the Board has determined that the scope of the current hearing is limited to the current methodology that has been approved and implemented by the Board[41]. Therefore, in VECC's view the treatment of Administration costs rests on whether the Board views the "approved methodology" as extending to the calculation of Administration costs on per pole basis (using the appropriate inputs for the total Administration costs and number of poles).

[36] Exhibit I, Tab 1, Schedule 2.1, page 5
[37] Exhibit I, Tab 2, Schedule 2.13
[38] Exhibit I, Tab 1, Schedule 2.1, page 5
[39] See the RP-2003-0249 Decision, Appendix 2
[40] Appendix C, page 23
[41] October 16, 2015, page 13

In the Hydro Ottawa case, the Board found that it was inappropriate to include direct costs on a per pole basis, yet collect the pole attachment charge on a per attacher basis and found that Hydro Ottawa's direct Administration costs (and Loss In Productivity costs) should be determined on a per pole basis and then divided by the number of attachers per pole[42]. Applying a similar principle to HON would reduce the Administration costs from $0/.90 per attacher to $0.69/attacher[43].

While arguments can be made that the basis for including Administration costs in the Pole Access Charge (i.e., with no adjustment for number of attachers) is part of the currently approved methodology, if the objective is to set just and reasonable rates then the same logic the Board applied in the Hydro Ottawa case should apply here and the Administration cost component of the proposed charge reduced accordingly otherwise users will effectively be overcharged.

4.4 Indirect Costs

Embedded Cost of Poles

HON's proposed embedded cost per pole of $944.49 is based on:

- A 2014 year-end Net Book Value for Account #1830 (Poles, Towers and Fixtures) of $1,750,300[44].
- A 2014 year-end pole count of 1,575,195[45], and
- An 85% adjustment to account for power-specific assets[46].

The use of 2014 year end-values is consistent with the Board's Decision regarding Hydro Ottawa to use actual values and also consistent with the Decision's use of year-end values.

The 85% adjustment is the same as that used in the RP-2003-0249 Decision[47]. Unlike Hydro Ottawa, HON has not done any analysis as to the portion of power-specific

[42] EB-2015-0004 Decision, pages 10-11
[43] $0.90/1.3
[44] Exhibit I/Tab 4/Schedule 4 h) and Exhibit I/Tab 1/Schedule 2.1 – Table 2
[45] Exhibit I/Tab 1/Schedule 2.1 a) – Table 2
[46] Exhibit I/Tab 1/Schedule 2.1 c)
[47] Exhibit I/Tab 1/Schedule 2.1 c)

assets in Account #1830 and, therefore, the use of the 85% per the Board's 2003 Decision is appropriate.

Overall, VECC submits that HON's proposed embedded cost of $944.49 should be adopted for purposes of setting the Pole Access Charge.

Depreciation and Carrying Costs

The depreciation costs used in HON's calculation are the 2014 actuals (adjusted by 85% to account for power-specific asset factor) and the carrying costs are based on the 2014 embedded costs and the 2012 Pre-Tax Weighted Average Cost of Capital[48].

Use of the actual 2014 depreciation expense is consistent with the basis for determining the embedded costs and the Board's approach of relying on actual values. Similarly, the use of the 85% adjustment factor is consistent with the approach used to determine embedded cost and the Board's approved methodology.

The Pre-Tax Weighted Average Cost of Capital is based on the values used to determine HON's 2011 rates (EB-2009-0096[49]). The 8.49% represents the approved pre-tax weighted average cost capital for 2014 as subsequent year's rates through to 2014 were set under the Board's IRM approach.

VECC's submits that the depreciation and carrying costs used by HON are appropriate for determining the Pole Access Charge.

Maintenance Costs

HON's proposed Maintenance cost are based on the actual 2014 costs and included Line Maintenance cost of $5.52 per pole and Vegetation Management costs of $83.04 per pole[50].

With respect to the Line Maintenance, the costs used exclude the maintenance costs associated with power specific assets[51]. As result, there is no need to apply the power specific adjustment factor to these costs and the costs as proposed by HON are appropriate.

[48] Exhibit I/Tab 1/Schedule 2.1 Table 2. See also Exhibit I/Tab 4/Schedule 7 a)
[49] See Schedule 1.4 of HON's 2011 Draft Rate Order, December 17, 2010
[50] Exhibit I/Tab 1/Schedule 2.1, page 6
[51] Technical Conference, January 12, 2016, pages 43-44

With respect to Vegetation Management costs, the current Board approved methodology explicitly excluded tree trimming costs, with the expectation that power utilities should be permitted to levy a separate charge to recover these costs[52]. However, in HON's case the utility determined that the rate approved by the Board in 2003 ($22.35/pole) was sufficient (at that time) to also cover vegetation management costs such that the agreements HON subsequently established with carriers explicitly provided that vegetation management costs were included in the pole rental rate and would not be charged for separately[53].

Therefore the issue with respect to this proceeding is whether or not vegetation management costs should be included in the calculation of the Pole Access Charge for 2015-2017. VECC's submission on this issue reflects the following considerations:

- By Agreement between HON and the individual carriers, the pole access charge the latter are currently paying includes vegetation management costs.
- The past decision to exclude vegetation management costs envisioned that such costs would be charged for separately. Indeed, in this proceeding, a representative of the Carriers agreed that, if not covered by the pole access charge, it would reasonable for HON to bill separately for legitimate tree trimming costs related to their facilities[54].
- However, there is no established process for determining how those bills would be determined or procedures for invoicing. This too has been acknowledged by the Carriers who suggested that this is something that should be discussed as part of the upcoming policy review[55].
- Furthermore, since the Pole Access Charge is being set for the period 2015-2017, the exclusion of vegetation management costs from the Pole Access Charge gives rise to not only to the question of how HON was to recover future vegetation management costs but also how it would retroactively recover such costs incurred in 2015 and 2016.

[52] Evidence of Michael Piaskoski, page 6.
[53] Technical Conference, January 12, 2016, page 9
[54] Technical Conference, January 12, 2016, pages 50-51
[55] Technical Conference, January 12, 2016, page 51

Based on these considerations, it is VECC's submission that the determination of the 2015-2017 Pole Access Charge for HON should include vegetation management costs.

Allocation Factor

HON's proposed allocation factor is 34.3%. However, based on the Board's formula for the 3rd party allocation factor the value should be 35.4% as set out in the following table.

		3RD PARTY ALLOCATION FACTOR				
SPACE	**LENGTH**	**USERS/POLE**			**3rd PARTY**	
		COMM.	**POWER**	**TOTAL**	**ALLOCATION FACTOR**	
Buried	6	1.3	1	2.3	2.6087	
Clearance	17.25	1.3	1	2.3	7.5000	
Comm.	2	1.3	0	1.3	1.5385	
Separation	3.25	1.3	0	1.3	2.5000	
Power	11.5	0	1	1	0.0000	
Total	40				0.354	
Notes:	1) Space Lenghts per Exhibt I/Tab 4/Schedule3 d)					
	2) Allocation factor per EB-2015-0004 Decision, page 14					
	- 3rd Party Allocation Factor for Buried & Clearance = Length/2.3					
	- 3rd Party Allocation Factor for Comm. & Separation = Length/1.3					
	- Total 3rd Party Allocation Factor = (2.6087+7.5+1.5385+2.5)/40					

VECC submits that the appropriate 3rd party allocation factor based on the Board's currently approved methodology and 1.3 third party attachers per pole is 35.4% and that this is value that should be used to determine the Pole Access Charge for 2015-2017.

4.5 Summary

The following table sets out the determination of the Pole Access Charge utilizing the values recommended by VECC. Values that differ from HON's proposal are highlighted.

VECC'S RECOMMENDED POLE ACCESS CHARGE CALCULATION	
ITEM	**VALUE**
INPUTS	
- Total Number of Poles	1,575,195
- Power Specific Asset Reduction	15%
DIRECT COSTS (per attacher)	
- Administration Costs	$0.69
- Loss in Productivity Costs	$3.09
Total Direct Costs	$3.78
INDIRECT COSTS/POLE	
- Net Embedded Cost	$944.49
- Depreciation	$23.83
- Pole Maintenance Costs	$88.56
- Capital Carrying Costs	$80.19
Total Indirect Costs	$192.58
ALLOCATION	
- # of 3rd Party Attachers/Pole	1.3
- Allocation Factor	35.4%
Indirect Allocated Costs (per attacher)	$68.17
POLE ACCESS CHARGE	$71.95

5. Reasonably Incurred Costs

VECC submits that its participation in this proceeding has been focused and responsible. Accordingly, VECC requests an award of costs in the amount of 100% of its reasonably-incurred fees and disbursements