

**EB-2015-0141**

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** Decision EB-2013-0416/EB-2014-0247 of the Ontario Energy Board (the “**OEB**” or the “**Board**”) 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 which Hydro One charges (the “**Pole Access Charge**”) for cable and telecom companies (“**Wireline Attachers**”) to access power poles (“**Wireline Attachments**”) from \$22.35 to \$37.05;

**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** a motion by 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 and Canadian Cable Systems Alliance Inc. (collectively, the “**Carriers**”) to review and vary Decision EB-2013-0416/EB-2014-0247 as it relates to the Pole Access Charge (the “**Carriers’ R&V Motion**”).

**REPLY SUBMISSIONS OF THE CARRIERS**

June 15, 2016

**CASSELS BROCK & BLACKWELL LLP**

2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Timothy Pinos LSUC #: 20027U  
Tel: 416.869.5784  
Fax: 416.350.6903  
tpinos@casselsbrock.com

Christopher Selby LSUC #: 65702T  
Tel: 416.860.6737  
Fax: 416.642.7127  
cselby@casselsbrock.com

Lawyers for the Carriers

## TABLE OF CONTENTS

<b>REPLY SUBMISSIONS OF THE CARRIERS.....</b>	<b>1</b>
<b>A. Introduction.....</b>	<b>1</b>
<b>B. Issues of procedural fairness .....</b>	<b>2</b>
<b>C. It is not open to Hydro One to seek a rate in excess of the Pole Access Rate determined in the General Rate Application .....</b>	<b>3</b>
<b>D. The Board has not ruled on the Carriers’ arguments regarding the scope of this proceeding .....</b>	<b>4</b>
<b>E. Consistency with approved methodology not a sufficient condition for determining a “just and reasonable” Pole Access Charge.....</b>	<b>4</b>
<b>F. 2012 historical costs must be used to calculate the Pole Access Charge .....</b>	<b>6</b>
<b>G. <i>De minimis</i> impact on ratepayers; massive impact on Carriers.....</b>	<b>7</b>

## REPLY SUBMISSIONS OF THE CARRIERS

### A. Introduction

1. In addition to the Argument in Chief of Hydro One dated May 27, 2016, the Carriers are in receipt of the Final Arguments of OEB staff, School Energy Coalition (SEC), Power Workers' Union (PWU), Canadian Manufacturers & Exporters (CME) and Sustainable Infrastructure Alliance of Ontario (SIA), all dated June 10, 2016. The Carriers provide this submission in reply to those Final Arguments. In doing so, the Carriers repeat and rely on their submissions dated June 10, 2016 and adopt the definitions of the defined terms used therein.
2. In its original General Rate Application, Hydro One sought, and received approval for, a "just and reasonable" Pole Access Charge of \$37.05. All parties to that proceeding, including the intervenors who are participating in this proceeding, agreed to, or at the very least did not oppose, a Pole Access Charge of \$37.05. There was no concern raised by any party that the Approved Rate would cause Hydro One's electricity customers to subsidize the telecom service providers attaching the Hydro One's poles.
3. Now, through a series of mistakes in its calculations, corrections to its evidence and opportunistic changes to the methodology, Hydro One is seeking an incredible Pole Access Charge of \$70.04 – almost double the rate it sought in the General Rate Application.
4. Not surprisingly, the intervenors support Hydro One's "new" Pole Access Charge. They assert that this rate will ensure that there is no subsidy from Hydro One's electricity customers to the telecom attachers. PWU endorses the new rate without any changes. SEC and CME also endorse the new rate but assert that Hydro One has made yet another error in its calculations – this time to the allocation factor, which, when corrected, would result in an even higher rate of \$72.16. Meanwhile, OEB staff and SIA agree with Hydro One's inputs but take issue with the inclusion of vegetation management costs. They recommend a Pole Access Charge that excludes these costs (\$41.56).

5. A summary of the various Pole Access Charges sought by the parties to this proceeding is set out below:

**Comparison of Pole Access Charges in this Proceeding**

	Approved Rate	Carriers R&V Motion	Hydro One revised PWU	SEC CME	OEB Staff SIA	Carriers Alternative
<b>Pole Rate</b>	<b>\$37.05</b>	<b>\$24.65</b>	<b>\$70.04</b>	<b>\$72.16</b>	<b>\$41.56</b>	<b>\$28.51</b>
<b>DIRECT COSTS</b>						
Admin Costs	\$0.85	\$0.85	\$0.90	\$0.90	\$0.90	\$0.85
Loss in productivity	\$1.51	\$1.51	\$3.09	\$3.09	\$3.09	\$2.06
<b>Total Direct Costs</b>	<b>\$2.36</b>	<b>\$2.36</b>	<b>\$3.99</b>	<b>\$3.99</b>	<b>\$3.99</b>	<b>\$2.91</b>
<b>INDIRECT COSTS</b>						
Net embedded cost	\$745.86	\$840.57	\$944.49	\$944.49	\$944.49	\$504.34
Depreciation cost	\$12.68	\$21.51	\$23.83	\$23.83	\$23.83	\$12.91
Pole maintenance	\$82.41	\$8.92	\$88.56	\$88.56	\$5.52	\$8.92
Capital carrying cost	\$63.32	\$71.36	\$80.19	\$80.19	\$80.19	\$42.82
<b>Total Indirect Costs</b>	<b>\$158.41</b>	<b>\$101.79</b>	<b>\$192.58</b>	<b>\$192.58</b>	<b>\$109.54</b>	<b>\$64.64</b>
<b>Allocate Indirect costs</b>	<b>\$34.69</b>	<b>\$22.29</b>	<b>\$66.05</b>	<b>68.17</b>	<b>\$37.57</b>	<b>\$25.60</b>
<b>COMMENTS</b>						
Year of cost inputs	2012	2012*	2014	2014	2014	2012*
Vegetation costs	Include	Exclude	Include	Include	Exclude	Exclude
Power-only assets	15%	15%	15%	15%	15%	15%
No. of attachers	<b>2.5</b>	<b>2.5</b>	<b>1.3</b>	<b>1.3</b>	<b>1.3</b>	<b>1.1</b>
Allocation factor	21.9%	21.9%	34.3%	35.4%	34.3%	39.6%

\* Corrected for errors in Hydro One's evidence

**B. Issues of procedural fairness**

6. First and foremost, the Carriers reiterate that the Board's procedural orders in this proceeding have, inappropriately and unfairly, altered the scope of the Carriers' R&V Motion, and have done so in a manner that exceeds the proper scope of a review and vary motion, and failed to afford the Carriers a fair and adequate opportunity to respond to the shifting sands of this proceeding.
7. This proceeding commenced as a simple review and vary motion brought by the Carriers to determine whether vegetation management costs should have been included in the Pole Access Charge approved by the Board. However, as a result of the Board's procedural orders and directions, it has now turned into a *de*

*novo* application by Hydro One for an increase to its Pole Access Charge, and the original proceeding has been effectively discarded.

8. In PO 7, the Board determined that it would allow issues that had not been raised in the General Rate Application (referred to as the “New Issues”). This expanded the scope of the Carriers’ R&V Motion significantly. The Board further expanded the scope with its direction that the parties take note of its findings in the Hydro Ottawa Decision
9. What is particularly troubling in respect of procedural unfairness, is that these recent orders are fundamentally inconsistent with the Board’s earlier procedural order, PO 4, which mandated that the Carriers’ R&V Motion was to be determined “within the context of the current approved OEB methodology” (*i.e.*, the Approved Methodology) from the 2005 Decision.
10. The Board ought to seriously consider these overarching issues of procedural unfairness as it decides on the issues in this proceeding.

**C. It is not open to Hydro One to seek a rate in excess of the Pole Access Rate determined in the General Rate Application**

11. Certain intervenors, including PWU and CME, asserted that the Board is not prohibited from setting a Pole Access Charge that is in excess of the Approved Rate in this proceeding. The Carriers reject this submission and reiterate that the OEB does not have the jurisdiction, within this Carriers’ R&V Motion, to consider or act upon Hydro One’s request to abandon the Approved Rate of \$37.05 and to approve a new Pole Access Charge well beyond that.
12. The Carriers’ R&V Motion was brought to provide the Carriers, who were not given notice of the General Rate Application, an opportunity to make submissions on the Pole Access Charge sought by Hydro One at that time. In fact, the Board itself framed the Carriers’ R&V Motion consistent with the Carriers’ understanding. In PO 4, the OEB directed that its review of the Pole

Access Charge would be conducted to determine whether *the increase sought by Hydro One* in the General Rate Application is just and reasonable:

“As described in Procedural Order #3, the motion will be a hearing on Hydro One’s proposed increase to the Pole Access Charge and whether that increase is just and reasonable” [emphasis added.]

13. Accordingly, the Carriers object to Hydro One’s attempt to indirectly refile its rate application for the Pole Access Charge on the basis of corrected and new evidence and new methodology and arguments for the purpose of achieving a Pole Access Charge that substantially exceeds the Approved Rate.

**D. The Board has not ruled on the Carriers’ arguments regarding the scope of this proceeding**

14. In their submissions, certain of the intervenors, including CME, have asserted that the Board already “rejected” the Carriers’ prior requests that the scope of this proceeding be limited to issues related to vegetation management costs . This is not true. In PO 7, the Board only ruled that “the Carriers’ request for a pre-hearing order to exclude certain issues from the scope of this proceeding is denied” [emphasis added.]

15. Accordingly, the Board has yet to rule on whether the New Issues are within the scope of this proceeding, and it is anticipated that it will do so in its decision.

16. For the reasons outlined in Part III of the Carriers’ Submission, consideration of the New Issues by the Board in this proceeding would be outside of its jurisdiction, contrary to *res judicata*, and an abuse of process.

**E. Consistency with approved methodology not a sufficient condition for determining a “just and reasonable” Pole Access Charge**

17. In their submissions, OEB Staff and certain of the interveners fail to establish whether the Pole Access Charges they propose are actually “just and reasonable” as is required. Instead, they merely cite adherence to the Hydro Ottawa Decision. In particular, OEB Staff reach the tenuous conclusion that a

Pole Access Charge of \$41.56 would be “consistent with the approved methodology and therefore just and reasonable.”<sup>1</sup>

18. In the Carriers’ view, consistency with the “approved methodology” is not a sufficient condition to establish a “just and reasonable” Pole Access Charge in this proceeding. In fact, as the Carriers have stated (and the Board determined in the 2005 Decision), in order for the Pole Access Charge to be “just and reasonable”, there must be no preference granted to the owner of pole.<sup>2</sup> Accordingly, a proper review of Hydro One’s pole costs and, accordingly, the OEB’s determination of a just and reasonable Pole Access Charge cannot be conducted without, *inter alia*, due consideration of the joint use pole-sharing arrangement that exists between Hydro One and Bell Canada.<sup>3</sup>
19. Furthermore, Board Staff’s suggestion that a Pole Access Charge of \$41.56 is just and reasonable when compared to the \$42.00 rate from the Toronto Hydro case or the \$53.00 rate from the Hydro Ottawa case is untenable. The Pole Access Charge in the Toronto Hydro case was an amount that was reached only by way of settlement and eventual agreement among the various parties. There was no acceptance on behalf of the parties (or even the Board in lending its approval to the settled rate), of any particular evidence, methodology or arguments raised in the hearing. In its decision, the Board simply stated that the proposed rate of \$42.00 per pole/per year was “appropriate and reasonable in the specific circumstances of this proceeding”. Therefore, no reasonable link can be made between the Pole Access Charge in this proceeding and the settled amount in the Toronto Hydro case.
20. There is also no correlation between the Hydro Ottawa rate and the Pole Access Charge here. The quantum of the Pole Access Charge in Hydro Ottawa was determined based on facts and cost inputs unique to Hydro Ottawa. Further,

---

1 Submission of OEB Staff dated June 10, 2016, EB-2015-0141, p. 17.

2 Submission of the Carriers dated June 10, 2016, EB-2015-0141 (“**Carriers’ Submission**”), para. 62.

3 Carriers’ Submission, PART III(d).

many aspects of the Hydro Ottawa Decision are now being challenged as part of an appeal before the Divisional Court and, in the view of the Carriers, it would not be prudent to use the \$53.00 as any kind of “marker”.

21. More generally, despite having ample opportunity to argue that the Pole Access Charge sought by Hydro One in the General Rate Application was not just and reasonable, the intervenors chose not to do so. In the Carriers’ view, it is logically inconsistent that a Pole Access Charge of \$37.05, which Hydro One put forth as just and reasonable, the intervenors accepted as just and reasonable, and the Board approved as just and reasonable, has now, with the passage of approximately one year, become so unjust and so unreasonable, that all parties assert that it must be doubled to ensure that electricity ratepayers do not end up subsidizing the telecom attachers.

**F. 2012 historical costs must be used to calculate the Pole Access Charge**

22. The suggested use of 2014 actual cost inputs by Hydro One, OEB Staff and certain of the intervenors for the purpose of calculating the Pole Access Charge is entirely inappropriate in the context of the Carriers’ R&V Motion.



23. The General Rate Application proceeded on the basis of Hydro One's 2010-2013 historical costs for all aspects of that rate application. There are numerous references in Hydro One's evidence that demonstrate the use of 2012 historical costs.<sup>4</sup> It would therefore be entirely inconsistent to use a different period for the cost inputs to the Pole Access Charge.
24. The Pole Access Charge is part of subset of rates referred to as "Miscellaneous Charges"<sup>5</sup>. Like the Pole Access Charge, where these charges are based on costs, they use 2012 costs. For example, the Joint Use Charges for LDCs and Generators are based on a net embedded cost of \$745.86. This is the same 2012 cost that was used for the Pole Access Charge in Hydro One's General Rate Application and approved by the Board. It would be inconsistent to now use 2014 costs for the Pole Access Charge.<sup>6</sup>

**G. *De minimis* impact on ratepayers; massive impact on Carriers**

25. As demonstrated in the following table, the actual impact of Hydro One's proposed increase to the Pole Access Charge on the electricity rates for the various consumer classes is *de minimis*,. (In preparing these calculations, the Carriers simply applied the increase in pole attachment revenues (using the current rate of \$22.35 as the starting point) the total revenue requirement for the electricity ratepayers. This resulted in an overall percentage reduction, which was then applied equally across all rate classes.)
26. The Carriers acknowledge that this may not be how Hydro One would choose to apply the extra revenues it would receive from the rate-paying Attachers to the

---

4 USoAs 1830 (Poles, Towers and Fixtures), 1835 (Overhead Conductors and Devices), 1840 (Underground Conduit), and 1845 (Underground Conductors and Devices), are split between bulk, primary and secondary assets using 2012 year-end gross book values of Hydro One's fixed assets. Sub-accounts have been created for USoA 1860 (Meters) to provide a split between single-phase, poly-phase, ST, and smart meters. The split has been calculated using 2012 year-end gross book values of these various types of meters.

EB-2013-0416, Exhibit G2, Tab 1, Schedule 1, Pages 4-5 of 17.

5 EB-2013-0416, Exhibit G2, Tab 5, Schedule 1, Pages 1-40.

6 EB-2013-0416, Exhibit G2, Tab 5, Schedule 1, Pages 1-40.

rates it charges its customers, but have nonetheless provided the table below to demonstrate the relative effect of the Pole Access Charge.

**Effect of Pole Access Charge on Monthly Electricity Rate**

Rate Class	Number of Customers	Avg mo. Rate	Approved Rate	Carriers R&V Motion	Hydro One
			<b>\$37.05</b>	<b>\$24.65</b>	<b>\$70.04</b>
UR	209,540	\$34.50	- \$0.11	- \$0.02	- \$0.36
R1	438,279	\$58.08	- \$0.19	- \$0.03	- \$0.60
R2	335,043	\$124.04	- \$0.40	- \$0.06	- \$1.29
Seasonal	143,666	\$51.46	- \$0.16	- \$0.03	- \$0.53
GSe	93,508	\$135.25	- \$0.43	- \$0.07	- \$1.40
GSd	6,113	\$1,670.96	- \$5.35	- \$0.84	- \$17.34
UGe	17,768	\$91.23	- \$0.29	- \$0.05	- \$0.95
UGd	1,901	\$1,138.61	- \$3.64	- \$0.57	- \$11.82
St Lgt	4,883	\$195.22	- \$0.62	- \$0.10	- \$2.03
Sen Lgt	30,009	\$9.38	- \$0.03	- \$0.00	- \$0.10
USL	5,642	\$50.30	- \$0.16	- \$0.03	- \$0.52
DGen	1,010	\$226.23	- \$0.72	- \$0.11	- \$2.35
ST	810	\$4,807.55	- \$15.38	- \$2.41	- \$49.90
<b>Effect of Pole Access Charge on Annual Pole Revenues</b>					
			<b>+ \$4.4M</b>	<b>+ \$0.7M</b>	<b>+ \$14.2M</b>

27. By contrast, a 313% increase in the Pole Access Charge is very significant to the Carriers' business. Many of the Carriers, such as the members of the ITPA and CCSA, operate networks in rural communities, where local access to telecommunications services presents unique challenges which would be exacerbated by extremely high pole rates. The financial feasibility of providing telecommunications services is inevitably impacted by any Pole Access Charge increase and, in particular, an increase of the scale sought by Hydro One.

28. It is submitted that the quantum of increase reflected in the Approved Rate or the rate now sought by Hydro One is not just and reasonable. In fact, rather than any kind of subsidy from the ratepayers to the Wireline Attachers, the Carriers are of the view that, the Pole Access Charge now proposed by Hydro One, OEB Staff and the intervenors would allow Hydro One to over-recover its costs and result in a subsidy from the Carriers to Hydro One, its customers or even Bell.
29. Although the Carriers are opposed to the consideration by the Board of the New Issues which are outside the proper scope of the Carriers' R&V Motion, without prejudice to that position the Carriers submit that:
- a. The OEB should reject the inclusion of vegetation management as part of the Pole Access Charge. Its inclusion is inconsistent with the Approved Methodology and Hydro One willingly accepted that the Pole Access Charge does not include these costs.
  - b. The costs used to determine the Pole Access Charge should be based on 2012 actuals as used in the General Rate Application and not 2014 actuals as now proposed by Hydro One.
  - c. It is appropriate to use an average of 2.5 Wireline Attachers per pole. The assumption is an integral part of the Approved Methodology. It was also used by Hydro One in the General Rate Application and incorporated into the Approved Rate. A consideration of any value other than this number is outside the scope of the Carriers' R&V Motion.
  - d. If, on the other hand, the OEB determines that, rather than the assumed number of 2.5, it should consider a number based on the "actual" number of Wireline Attachers on Hydro One's poles, then the resultant Pole Access Charge must take into account Hydro One's pole and cost-sharing arrangement with Bell Canada. Put simply, Bell contributes to 40% of the costs of Hydro One's poles. It does not pay the Pole Access Charge or any other occupancy fee. Therefore, Hydro One can use only the

remaining 60% of its costs as the basis for the Pole Access Charge and allocation among the Wireline Attachers who pay it.

- e. If Bell does not pay the Pole Access Charge, then it should not be included in the average number of Wireline Attachers. That means the average number of Wireline Attachers must be at least 1.0. (If it is less than 1.0, then the Attachers would be paying for poles that they are not on.) Given that there are more than one Wireline Attachers operating within Hydro One's territory, it is not unreasonable to assume an average of 1.1 Wireline Attachers per pole.
- f. All applicable costs must be adjusted in order to remove power-specific assets – this has been assumed to equal 15% of the total cost, which is consistent with the Approved Methodology and is supported by Hydro One.

30. Based on the foregoing, the Carriers submit that the resulting Pole Access Charge is just and reasonable **\$28.51**.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

June 15, 2016

**CASSELS BROCK & BLACKWELL LLP**  
2100 Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3C2

Timothy Pinos LSUC #: 20027U  
Tel: 416.869.5784  
Fax: 416.350.6903  
tpinos@casselsbrock.com

Christopher Selby LSUC #: 65702T  
Tel: 416.860.6737  
Fax: 416.642.7127  
cselby@casselsbrock.com

Lawyers for the Carriers

TO: **SERVICE LIST**