



100 WELLINGTON STREET WEST, SUITE 500
P.O. BOX 255, TORONTO, ON M5K 1J5
T. 416.594.4500 | F. 416.594.9100
WWW.ROGERSPARTNERS.COM

Anita M. Varjacic
Direct Dial: 416.594.4522
E-mail: anita.varjacic@rogerspartners.com
Assistant: Nancy Buronyi
Dial: 416.594.4515
Assistant: nancy.buronyi@rogerspartners.com

June 17, 2016

Our File Number: 72738

Ms. Kirsten Walli
Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Hydro One Networks Inc.
Motion for Review and Variance of Decision by Carriers EB-2015-0141

Further to the Board's direction made orally at the motion in the above matter returnable on May 20, 2016, enclosed, please find Hydro One Networks' Reply Submissions in the Carriers' motion to vary the pole attachment rate.

We trust this is satisfactory.

Yours very truly,



Anita M. Varjacic

/nb
Encl.

c: Hydro One
Intervenors

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.**

**REPLY ARGUMENT
OF HYDRO ONE NETWORKS INC.**

Introduction

1. The within motion is brought by a number of cable and telecommunications companies and associations (the Carriers) to review and vary the Ontario Energy Board's (OEB or Board) decision issued on March 12, 2015 approving distribution rates and charges for Hydro One Networks Inc. (Hydro One) from 2015 through to 2017. In particular, the motion is to review and vary the joint use charges paid by the Carriers to use Hydro One's poles.
2. The Board approved Hydro One's proposed pole access charges for 2015, 2016 and 2017 as filed in the underlying application. The approved joint use charges were \$37.05 in 2015, \$37.42 in 2016 and \$37.80 in 2017. These charges were an increase over the previously approved \$22.35 pole access charge which had been in place, without change, since 2005.
3. The current charge remains at \$22.35 on an interim basis per order of the Board, pending the outcome of this motion to review and vary.
4. Hydro One filed its Argument in Chief on May 27, 2016. It submitted that a just and reasonable rate for the pole access charge was \$70.04 using the approved 2005 methodology, reflecting key findings made in the Hydro Ottawa decision and using corrected information.
5. Hydro One has received and considered the responding submissions of Board staff, and all intervenors, including the School Energy Coalition (SEC), the Vulnerable Energy Consumers Coalition (VECC), the Sustainable Infrastructure Alliance (SIA), the Power Workers' Union (PWU) and the Canadian Manufacturers & Exporters (CME) as well as the closing submissions of the Carriers. Hydro One also received further submissions from the Carriers in response to Board staff and intervenor arguments.
6. Outlined below is Hydro One's final reply submission.

Scope of this Proceeding

7. The sole issue for the Board in this proceeding is the determination of a just and reasonable pole access charge rate for Hydro One from 2015 to 2017. This limited proceeding was commenced at the request of the Carriers' motion seeking to review and vary the Board's initial decision in this matter in which the Board set a pole access charge rate of \$37.05 per pole in 2015.
8. The Carriers complained that they had not received adequate notice of Hydro One's underlying distribution rate proceeding (EB-2013-0416/EB-2014-0427), and thus, had no opportunity to adequately participate in that proceeding and challenge the proposed pole access rate being put forward by Hydro One.
9. It is true that in the underlying application Hydro One proposed, and the Board accepted, a pole access charge of \$37.05 per pole in 2015, \$37.42 in 2016 and \$37.80 in 2017.

10. It is also true that this discrete issue received little, if any, attention from intervenors and Board staff in the distribution rate proceeding.
11. The Carriers now argue that the Board and parties are restricted in the manner in which this specific rate can be reviewed. The Carriers submit that the Board adopt and take an extremely narrow approach to this task and only consider the arguments/issues raised by the Carriers.
12. To do so, however, ignores the usual Board process. The purpose of this motion to review and vary is to allow the Carriers to participate, as they presumably would have, had they been participating in the underlying proceeding.
13. Had they done so, the carriers presumably would have raised issues, made interrogatories, led evidence, and taken certain positions on issues. Had they done so, one can reasonably expect that the other parties would have participated, explored those issues as well, raised new issues perhaps, discovered errors in evidence, and put forward their own positions, as is usually the case.
14. Having now opened the proverbial Pandora's box, the Carriers complain and seek to limit the review of the pole access charge.
15. The only way the Board can establish a just and reasonable rate, in Hydro One's respectful submission, is to evaluate all of the evidence, including any new information and evidence, including any positions raised by any of the parties, and any corrections to the underlying evidence. The Board cannot do so if it accepts the limited view being urged upon it by the Carriers.
16. Hydro One's position, akin to Board staff's, is that the Board is assessing this issue as a hearing *de novo*. In other words, the Board is free to hear the matter in full, and consider any evidence, position and argument put before it.
17. Hydro One submits that the Carriers' narrow view of the scope of this proceeding should be rejected.

Vegetation Management Costs

18. As identified in its Argument in Chief, the issue of whether Hydro One's vegetation management costs should be included in its pole access rate, is the key issue in this proceeding.
19. The Board has already confirmed that it will be following the methodology to establish the pole access rate established in 2005. It has further indicated that guidance should be taken from its decision on a very similar issue in the Hydro Ottawa Limited rates decision.
20. Hydro One proposes to include vegetation management costs in its pole access charge.
21. In doing so, Hydro One acknowledges that when the pole access rate of \$22.35 per pole was established in 2005, vegetation management costs were not explicitly included in the methodology.

22. Following the 2005 decision, Hydro One entered into contractual agreements with various Carriers. In doing so, it reviewed its own costs and determined that the rate of \$22.35 set at the time was sufficient to recover its vegetation management costs at the time. Thus, the contracts entered into with various Carriers specifically indicated that the vegetation management costs were included in the \$22.35 pole access rate. This meant that Hydro One did not have to levy separate accounts (Schedule A, Pg. 27, Section 14, Appendix D to the evidence of Michael Piaskoski, Rogers Communications Partnership, November 20,2015).
23. The agreements have been renewed from time to time. More than ten years has passed since the pole access charge was initially set by the Board. Over that decade, Hydro One has increased its vegetation management program in an effort to shorten Hydro One's line clearing cycle. At the same time, its asset base has grown. Vegetation management costs have thus increased quite substantially since 2005.
24. Hydro One determined it was appropriate to apply for an increased rate in its last distribution rates proceeding. It did so precisely because the \$22.35 rate was no longer sufficient to capture vegetation management and other costs that had increased over time.
25. Having executed agreements which include vegetation management costs in the pole access rate meant that Hydro One's only recourse to recover the increase in these costs from Carriers was to seek approval of an increased rate from the Board.
26. The intervenors, including PWU, SEC and CME support Hydro One's position that vegetation management costs should be included in the pole attachment rate for Hydro One. Board staff disagrees, and SIA is prepared to defer to the Board and accept the decision either way. The Carriers are opposed to including vegetation management costs in the pole access rate.
27. Hydro One's case must be judged on its own facts (a proposition the Carriers repeatedly cite when arguing that the recent Hydro Ottawa decision has no bearing on this case), which includes the fact that it has entered into contracts which provide for inclusion of vegetation management into the pole access charge. These contracts were arm's length agreements reached between commercially sophisticated parties.
28. Hydro One submits that there are many reasons why the agreements should be followed. The principle that there is a freedom of contract is an important consideration. Administrative efficiency (which reduces costs) is another. Moreover, no party has proposed a practical solution as to how Hydro One would recover the vegetation management costs from Carriers if separate accounts were to be levied, as suggested by the carriers, nor how it would recoup historical costs from January 1, 2015 in the face of a contract that provides to the contrary.
29. Hydro One submits that in these circumstances, the pole access rate approved for Hydro One should include vegetation management costs.
30. Hydro One is in not in any way suggesting that this should be a universal approach for all LDCs. It simply urges the Board to accept and implement the agreements that the parties in this case have already reached as between themselves. To do so respects the contract, establishes a just and

reasonable rate, and ensures that the costs the Carriers have contracted to pay do not become the responsibility of Hydro One's other ratepayers.

Bell/Hydro One Agreement

31. The Carriers urge various scenarios and methodologies upon the Board which in their submissions would account for Hydro One's reciprocal agreement with Bell in the pole attachment rate. Hydro One submits that the Board should reject these submissions.
32. Hydro One submits that the reciprocal agreement that it has with Bell or any other carrier is completely irrelevant to the establishment of pole attachment rate.
33. The reciprocal agreements do not in any way impact the pole access charge, nor do they at all impact what the Carriers in this proceeding are obligated to pay.
34. The reciprocal agreement in no way alters Hydro One's cost inputs that impact the pole attachment rate because only Hydro One owned poles and acquisition values are used to determine the rate. Bell owned pole values and numbers are never used so costs are not impacted.
35. The reciprocal agreement was described as a contract of convenience which Hydro One believes is beneficial to both it and its ratepayers. Hydro One connects to Bell poles at no cost and vice versa. At any given time, of the total of all of the Bell/Hydro One poles, approximately 60% are owned by Hydro and 40% are owned by Bell.
36. The Carriers continue to fundamentally misunderstand the nature of the reciprocal agreement. There is no "joint use pool" of poles as between Hydro One and Bell. Bell is not in any way paying for 40% of Hydro One's pole costs. The Carriers are simply incorrect.
37. Hydro One has explained how the Bell agreement factors into the calculation of the average number of attachers. Hydro One uses all third party permitted attachments, divided by the number of Hydro One owned poles that contain attachments, to arrive at its number of attachers per joint use pole. Removing Bell attachments from the calculation will decrease the number of attachers per pole, thereby increasing the pole attachment rate.
38. Hydro One's view is that the Bell attachments should remain in its calculation of 1.3 attachers per pole. Board staff and intervenors agree that Hydro One's calculation is appropriate. Hydro One submits that the Board should adopt the figure of 1.3 attachers per pole when determine a just and reasonable pole attachment reate.with the appropriateness of the calculation.
39. Hydro One has repeatedly confirmed that it is not going to recover any costs claimed in this proceeding that it recovers pursuant to the agreement with Bell. The two are completely separate.
40. Hydro One requests that the Board reject the Carriers' submissions in this regard.

Procedural Issues

41. The Carriers again have raised numerous procedural issues. Throughout this proceeding the Carriers have made numerous arguments that the Board is without jurisdiction, that the Carriers have been denied procedural fairness, that considering all of the evidence in this case is somehow tantamount to issue estoppel or *res judicata*, etc.
42. Hydro One submits that all of these arguments should be rejected.
43. The Carriers' motion allowing them first leave to bring the motion, and then granting a full hearing on the review and vary motion, has ensured complete procedural fairness to the Carriers. The Carriers now complain because the just and reasonable pole attachment rate may ultimately be higher than initially contemplated because other parties have taken an interest in this issue, have considered the issues and evidence, including the new and corrected evidence that has been submitted. This is all because the Carriers reopened the matter in this motion
44. Given that the matter has proceeded as a hearing *de novo*, the principles of *res judicata* and issue estoppel have no application in Hydro One's submission.
45. Hydro One submits that the Board's task in this case is to consider all of the information and evidence available to it, having consideration for the facts of this particular case, and the previously approved Board methodology, in order to fix a final just and reasonable pole access charge rate for Hydro One Networks for 2015, 2016, and 2017.
46. Hydro One further submits that the generic proceeding to review the 2005 methodology and the appeal of the Hydro Ottawa Limited decision have no bearing whatsoever on this case, contrary to the submissions of the Carriers.
47. The Carriers have also argued that the Board has fettered its own discretion by referring the parties to the Hydro Ottawa decision. Hydro One disagrees. The Board was well within its purview to ensure the parties were familiar with and took into consideration the Board's ruling on similar methodological issues recently decided. Such an approach is taken all the time by administrative tribunals and courts. There is nothing inappropriate about it.
48. Hydro One does not believe there is any merit to the procedural issues raised by the Carriers.

Clarification of matters as requested by Board staff

49. Board staff, in its final argument, asked Hydro One to clarify two matters. Staff asked that Hydro One clarify why it was not reducing maintenance costs by 15% as it was with other indirect costs. It was also asked to clarify how it calculated the 34.3% as its allocation factor.
50. With respect to maintenance cost reductions, Hydro One believes it has already sufficiently reduced line maintenance costs as explained by Mr. Boldt at the technical conference. Mr. Boldt testified that maintenance costs were reduced for power specific costs related to regulator and

reclosure maintenance of \$3.5 million and ABS and LBS switch maintenance of \$0.6 million (TR. 43-44). Hydro One thus does not feel a further 15% reduction on the balance of maintenance costs is appropriate.

51. SEC, CME and VECC questioned the manner in which Hydro One had calculation the allocation factor, arguing that the allocation factor should be 35.4%, not 34.3% as proposed by Hydro One. Board staff asked that this be clarified.

52. The tables below provide the derivation of the allocation factors requested by Board staff.

2005 OEB calculation made by Hydro One				
	Pole Length (Feet)	2.5 Attachers	Length per Attacher (feet)	
a	Power Space	10	1	
b	Communications Space	2	2.5	0.8 2'/2.5
c	Separation Space	3.25	3.5	0.93 3.25'/3.5
d	Total Useable Space	15.25		1.73 =a+b+c
e	Clearance	18.75	3.5	5.35 18.75'/3.5
f	Buried	6	3.5	1.71 6'/3.5
g	Total Common Space	24.75		7.06 =e+f
h	Total Pole Length	40		8.79 =d+g
i	Allocation Rate			0.2198 8.79'/40'(OEB stated 21.9%)
j	Common Costs	\$93.31		\$20.43 \$93.31 x 21.9%
k	Direct Cost			\$1.92
l	Total Rate			\$22.35 =j+k

2016 Hydro One Calculation for 1.3 Attachers				
	Pole Length Feet	1.3 Attachers	Length per Attacher (feet)	
a	Power Space	10	1	
b	Communications Space	2	1.3	1.54 2'/1.3
c	Separation Space	3.25	2.3	1.41 3.25'/2.3
d	Total Useable Space	15.25		2.95 =a+b+c
e	Clearance	18.75	2.3	8.15 18.75'/2.3
f	Buried	6	2.3	2.61 6'/2.3
g	Total Common Space	24.75		10.76 =e+f
h	Total Pole Length	40		13.71 =d+g
i	Allocation Rate			0.3428 13.71'/40'(Rounded to 34.3%)
j	Common Costs	\$192.58		\$66.05 (\$192.58 x 34.3%)
k	Direct Cost			\$3.99
l	Total Rate			\$70.04 =j+k

Hydro One agrees with Board staff in their argument that the calculation of the 21.9% allocation factor used in 2005 was not clearly set out in the CCTA decision. Hydro One calculated the 34.3% allocation factor using 10 feet of power space on a 40 foot pole and has assumed that the separation space is to be shared equally. Hydro One feels the 50/50 sharing is appropriate for assets on its system.

Conclusion

53. Hydro One believes that having regard for all of the evidence and circumstances, the just and reasonable rate for the pole attachment charge for 2015 is \$70.04. Given the Board's direction that there should be no inflation adjustment to that figure, Hydro One accepts that that would be the rate for 2016 and 2017 as well.
54. Hydro One submits that vegetation management costs should be included in its particular circumstances. Failure to do so would mean that the Carriers would not pay vegetation management costs as part of the pole attachment rate. It is plausible that the Carriers might then refuse to pay the vegetation management costs outside of the pole attachment rate, claiming that contractually, those costs are included in the rate. Hydro One would be left without any means by which to collect vegetation management costs from the Carriers. That would be an unjust result. That would not result in a just and reasonable rate as other Hydro One ratepayers would be paying the Carriers fair' share of vegetation management costs.
55. Hydro One submits that the rate should be fixed by the Board on a final basis with an effective date of January 1, 2015.
56. Hydro One will file an Accounting Order, as suggested by Board staff, to establish a deferral account to record the revenue difference between the interim pole attachment rate and the rate approved in this proceeding as part of the draft rate order. Hydro One will also establish a deferral account to track the difference in revenues generated by the pole access charge as originally proposed and approved in Hydro One's application (i.e. \$37.05) and the final pole access charge as approved since the impact of the originally approved rate is what is reflected in approved distribution rates today. Both accounts will be tracked for eventual disposition to applicable Hydro One customers.
57. Hydro One also asks for the opportunity to make submissions on costs, including cost accountability, following receipt and review of the Board's final disposition on this motion to review and vary.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



A. Varjadic, Counsel for Hydro One Networks