

**Hydro One Networks Inc.**

**Application for electricity distribution rates beginning  
January 1, 2018 until December 31, 2022**

**SUBMISSION OF THE CARRIERS**

May 28, 2018

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TO: **THE ONTARIO ENERGY BOARD**  
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**(A) INTRODUCTION**

1. These submissions are provided in response to the Board's *Decision on Confidentiality and Procedural Order No. 6* (dated May 18, 2018) in respect of the application by Hydro One Networks Inc. ("**Hydro One**") for distribution rates for the years 2018 to 2022 (this "**Rate Application**"). In that Procedural Order, the Board requested submissions in respect of "how to move forward on this matter in this proceeding in light of the issuance of the pole attachment report".

2. These submissions are provided on behalf Rogers Communications Canada Inc. ("**Rogers**"), Bragg Communications Inc., Canadian Cable Systems Alliance, Cogeco Connexion Inc., Independent Telecommunications Providers Association, Zayo Canada Inc. (formerly Allstream Inc.), Niagara Regional Broadband Network, Packet-tel Corp. (o/a Packetworks), Quebecor Media Inc., Shaw Communications Inc., Tbaytel, Telus Communications Inc., and BH Telecom (collectively, the "**Carriers**").

**(B) ROGERS MOTION TO COMPEL ANSWERS**

3. During the course of the Rate Application, Hydro One refused to answer numerous interrogatories that had been put forth by the Carriers; in particular, those relating to Hydro One's pole-sharing arrangement and agreement with Bell Canada ("**Bell**").

4. In response, the Carriers made submissions on February 26, 2018 in which they advised that Rogers intended to bring a motion to the Board seeking an order compelling those answers (the "**Rogers' Motion**"), failing which, Rogers would, at the Technical Conference scheduled for March 1, 2018, seek to question Hydro One extensively about its answers and the questions refused.

5. Rogers' Notice of Motion was served on February 27, 2018. The Rogers Motion sought information respecting Hydro One's joint use poles and the attachments to those poles, as well as detailed information on the associated costs , including any cost recovery or cost-sharing arrangements with Bell and other utilities, which Hydro One had refused to answer in its responses to the Carriers' interrogatories.

6. In support of its motion, Rogers submitted evidence by way of the expert report of Andrew Briggs, who explained why a reciprocal pole sharing agreement (such as Hydro One's agreement with Bell) is relevant to the determination of the costs and revenues associated with Hydro One's poles and, hence, the pole attachment charge.

7. Following service of the Notice of Motion the Board advised, by letter dated February 28, 2018, that it,

*“does not intend to address the Rogers motion at this time, as it expects to address matters relating to pole attachments following the outcome of the pole attachment consultation. Consideration of pole attachment-related matters in the upcoming technical conference is therefore adjourned.”*

## **(C) THE POLICY REVIEW AND THE PAWG**

8. On November 5, 2015, the Board announced what it described as a “comprehensive policy review of miscellaneous rates and charges applied by electricity distributors for specific activities or services they provide to their customers” (the “**Policy Review**”), stating that the Policy Review:

*“...will consider the methodology used for determining charges, including the appropriate treatment of any revenues that carriers may receive from third parties” [emphasis added.]*

...

*“...will review the other aspects of specific service charges including the methodology for setting the charges, the appropriate level of standardization across the province and mechanisms for keeping the charges up to date...”*

9. The OEB announced that the first service charge to be considered in the Policy Review would be the pole attachment charge, and that it would establish a Pole Attachments Working Group (“**PAWG**”) comprised of representatives from the LDCs, the telecom industry and consumer groups. The PAWG was therefore established to meet and provide advice on the technical aspects and related details in respect of pole attachments.

10. The Board made it clear that participation in the Policy Review and the PAWG was not open to all; rather, OEB staff selected what was described as a “representative group of people”, based on nominations or expressions of interest.

11. The PAWG proceeded privately in four separate meetings that took place over 2016 and early 2017. These meetings were attended by OEB staff, the Board’s economic consultant Nordicity Group Limited (“**Nordicity**”), and the representatives from the LDCs, the telecom industry and consumer groups.

12. As it turns out, the Policy Review actually turned into a rate-setting exercise, evidenced by the release of the Board’s draft report (the “**Draft Report**”) on December 18, 2017 (more than two years after the Policy Review was announced). In the Draft Report, the Board proposed, without prior notice, a fixed province-wide pole attachment charge of \$52.00 per pole per year. At the same time, the OEB released a supporting report prepared by Nordicity (the “**Nordicity Report**”), which contained its own evidence, argument and conclusions, much of which had not been the subject of full or any consideration at the PAWG meetings.

#### **(D) FINAL REPORT AND CARRIERS’ APPEAL**

13. On March 22, 2018, without any notice, evidence, interrogatories or a hearing on a proposed new pole attachment charge, the OEB issued the Final Report, concluding that *“it is in the public interest to set a province-wide wireline pole attachment charge of \$43.63”*. In the Final Report, the OEB failed to mention, address or consider almost all of the legal, factual and process objections and arguments advanced by the Carriers in their submission on the Draft Report (the “**Carriers’ Submission**”, dated February 9, 2018).

14. The Carriers' Submission asserted, among other things, that the,

*"...PAWG process, the Nordicity Report, and the Draft Report contain an overwhelming number of material errors, dealing with procedural fairness, data integrity, assumptions used and theories and calculations applied. These errors contribute towards a pole attachment rate and policy that are punitive towards the telecoms, and cannot be viewed as "just and reasonable".*

15. The Final Report also made no reference to the panel of OEB members that considered and approved the Final Report, nor the documents and evidence that were before that panel.

16. Accordingly, on April 23, 2018, the Carriers appealed the Final Report to the Ontario Divisional Court. In the Notice of Appeal, the Carriers sought an order:

- (a) Quashing and setting aside the 2018 Report, in whole or in part, and including the increase in the pole attachment charge, in its entirety;
- (b) Remitting the matter back to the OEB for a full hearing in accordance with the Court's reasons or direction; and
- (c) Such further and other Orders that may be necessary to remedy the errors of law and jurisdiction and breaches of procedural fairness that took place in the process leading up the Final Report.

17. The Carriers' Notice of Appeal specifies four grounds of appeal with respect to the Policy Review and the Final Report (as set out in detail therein):

- (a) The Board failed to adhere to the process it specified;

- (b) The Board failed to hold a hearing;
- (c) The Board failed to hear parties affected; and
- (d) The Board failed to consider and decide significant issues raised and argued before it.

**(E) STATUS OF FINAL REPORT AND POLE CHARGE**

18. The Final Report states that the new pole attachment charge only applies to LDCs that have not received OEB approval for a distributor-specific pole attachment charge.

19. In Procedural Order No. 2 in this proceeding, the Board took the step of making Hydro One's then current rates (including, presumably, the pole attachment charge) interim commencing January 1, 2018. As the Carriers understand it, as a result of the Board's determination to make all Hydro One's rates interim, Hydro One has been deemed to have received OEB approval for a distributor-specific pole attachment charge and is therefore the charge set out in the Final Report will not apply to Hydro One.

20. In its Rate Application, Hydro One took the following position respecting the pole attachment rate applicable to telecommunications companies (referred to by Hydro One as "Joint Use Telecom charges"):

*"Hydro One has calculated Joint Use Telecom charges from 2018 to 2022, using the methodology approved in EB-2015-0141. Hydro One proposes adopting these charges until the OEB issues its decision in EB-2015-0304. Once the Decision is issued, Hydro One will revise its charges to comply with it prospectively."*

**(F) THE CARRIERS' REQUESTED NEXT STEPS**

21. Irrespective of whether Hydro One elects to revise its charges to comply with EB-2015-0304 or pursue an LDC-specific rate, the Carriers request that this Rate Application proceed as a full hearing with respect to the setting of the Hydro One pole attachment charge, separate and apart from Hydro One's general Rate Application, as follows:

- (a) a date for Hydro One to file any further evidence;
- (b) a date for the submission of interrogatories respecting that further evidence;
- (c) a date for the return of the Rogers Motion should be established, with a schedule for delivery of responding materials, and any cross-examinations in advance;
- (d) following a decision by the Board in respect of the Rogers Motion and the delivery of any further answers to interrogatories by Hydro One, a date for the technical conference in this Rate Application, as it pertains to the pole attachment charge, should be set;
- (e) to the extent that Board Staff intend to rely upon the Nordicity Report in support of its position in the Rate Application, Board Staff shall call Nordicity as a witness in this proceeding, which may be cross-examined on its evidence on which Board Staff intends to rely;
- (f) to the extent that Board Staff intend to rely on the contents of its Final Report, in whole or in part, in support of its submissions to the panel in the

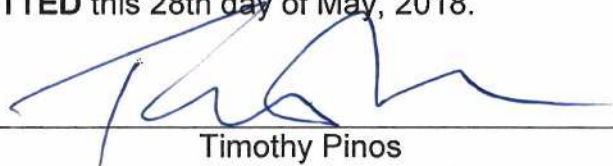


Rate Application, that the Rate Application process shall provide an opportunity for participants to present or test that evidence by way of interrogatories and cross-examinations; and

- (g) that the Rate Application process shall provide an opportunity for participants to present or test all expert or lay evidence on critical issues in respect of the pole attachment charge relevant to the Rate Application, including:
  - (i) how to allocate the common costs of a pole;
  - (ii) the relative weight and stress placed on a pole by different types of attachers; the disparities between the rights and obligations of telecom attachers as opposed to pole owners;
  - (iii) the methodology for excluding power-specific assets from pole costs;
  - (iv) the appropriate treatment of vegetation management;
  - (v) the inputs to and methodologies for determining administrative costs and loss in productivity costs; and
  - (vi) the impact of any pole-sharing arrangements, including but not limited to the Hydro One pole-sharing arrangement with Bell.

22. These issues all have a significant effect on the pole attachment charge.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 28th day of May, 2018.

  
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