



**EB-2017-0049**

**Hydro One Networks Inc.**

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

**DECISION ON POLE ATTACHMENT MATTERS AND  
PROCEDURAL ORDER NO. 8  
July 12, 2018**

Hydro One Networks Inc. (Hydro One) filed a 5-year Custom Incentive Regulation application with the Ontario Energy Board (OEB) on March 31, 2017 under section 78 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its distribution rates, to be effective January 1, 2018 to December 31, 2022 (the distribution rates application).

On March 9, 2018, the OEB issued Procedural Order No. 4 which, among other matters, acknowledged the February 27, 2018 motion by Rogers Communications Inc. (Rogers) in which it advised that it intended to file expert evidence related to Hydro One's proposed pole attachment rate (the Rogers motion). The OEB confirmed that it expected to address matters relating to pole attachments following the outcome of the generic OEB consultation on pole attachment charges<sup>1</sup> and that Rogers would not be required to file expert evidence by the April 6, 2018 deadline applicable to OEB staff and Anwaatin Inc. in this proceeding.

On April 6, 2018, the OEB issued Procedural Order No. 5 in which, among other matters, the OEB confirmed that it was not issuing further directions with regard to pole attachment rates at that time, but may still do so at a later date.

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<sup>1</sup> EB-2015-0304

On May 18, 2018, the OEB issued its Decision on Confidentiality and Procedural Order No. 6. Among other matters, the OEB provided for submissions by Hydro One, Rogers and other parties on how the OEB might move forward on the matter of pole attachments in this proceeding in light of the March 22, 2018 issuance of the *Report of the Ontario Energy Board Wireline Pole Attachment Charges* (the pole attachment report)<sup>2</sup>.

The OEB received submissions with respect to the pole attachment matter in this proceeding from Hydro One, OEB staff, Rogers, and a number of other intervenors. Hydro One's submission<sup>3</sup> (the updated Hydro One evidence) included updated evidence in respect of its proposed Joint Use Telecom Charge (Rate Code 30). Hydro One stated that its updated calculation of the 2018 charge is based on its application of the OEB's methodology set out in the pole attachment report.

This Decision and Procedural Order addresses the Rogers motion and establishes procedural steps related to the updated Hydro One evidence.

### **The Rogers Motion and Hydro One's May 28, 2018 Updated Evidence**

The Rogers motion requested an Order providing for the following three areas of relief. The first area related to the adjournment of the technical conference with respect to pole attachment matters. The OEB addressed this in its letter of February 28, 2018 which informed the parties that, among other matters, the topic of pole attachments would not be the subject of questioning at the technical conference. The second and third areas of the motion are summarized by the OEB as follows:

- that Hydro One be directed to serve and file complete responses to those portions of the Rogers interrogatories set out in the Rogers motion
- that Hydro One be required to produce its agreement or agreements with Bell Canada (Bell) in respect of joint use and pole attachments (the Bell Joint Use Agreement)

Rogers referred to Hydro One's responses to the Rogers interrogatories that are the subject of the Rogers motion. Rogers asserted that Hydro One has declined to respond to questions about the particulars of Hydro One's pole and cost sharing arrangement with Bell, set out in the Bell Joint Use Agreement, on the basis that "the OEB in its EB-

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<sup>2</sup> EB-2015-0304

<sup>3</sup> EB-2017-0049, "Hydro One Networks Inc.'s 2018-2022 Distribution Rates Application Pole Attachment Issues," May 28, 2018

2015-0141 Decision found that ‘HONI’s reciprocal arrangement with Bell [the Bell Joint Use Agreement] has no impact on the pole attachment charge’.”

Rogers further argued that the decision of the OEB on a question of relevance with respect to the EB-2015-0141 proceeding is not binding on the OEB in the current proceeding, and that the OEB is under a duty “to evaluate the relevance of the evidence sought in the interrogatories afresh and without regard to the previous ruling”.

## Findings

The OEB denies the second and third items of requested relief in the Rogers motion.

The reasons for these findings are set out below, although with respect to the second item, the OEB is establishing a process for written interrogatories pertaining to Hydro One’s May 28, 2018 updated evidence related to its proposed Joint Use Telecom Charge (Rate Code 30).

In its February 28, 2018 letter, the OEB confirmed that it did not intend to address the Rogers motion at that time, as it expected to address matters relating to pole attachments following the outcome of the pole attachment consultation. The outcome of that consultation was the pole attachment report issued on March 22, 2018.

- **The Rogers request to compel Hydro One to respond to interrogatories**

With respect to the second item of relief, the OEB considers Hydro One’s May 28, 2018 updated evidence related to its proposed Joint Use Telecom Charge (Rate Code 30) to have superseded its pre-filed evidence in this regard. Accordingly, the OEB denies Rogers’ request for an Order requiring Hydro One to respond to interrogatories on evidence on which Hydro One no longer relies. This Decision and Procedural Order provides for interrogatories in respect of Hydro One’s updated evidence on its proposed Joint Use Telecom Charge.

- **The Rogers request regarding the Bell Joint Use Agreement**

Finally, with respect to the third item of relief, the OEB will not require Hydro One to produce the Bell Joint Use Agreement.

This panel is not bound by the OEB’s August 4, 2016 decision in EB-2015-0141 – a motion by Rogers and other cable and other telecommunications providers and associations to review and vary Decision EB-2013-0416/EB-2014-0247 in which the

OEB approved distribution rates and charges for Hydro One for 2015-2017. The OEB panel hearing that motion found that the Bell Joint Use Agreement has no impact on the pole attachment charge. While the OEB is not bound by past decisions, consistency of regulatory decisions is an important consideration. Past decisions are therefore relevant and can be persuasive when the same matter is being considered by the OEB.

Furthermore, the OEB notes that the pole attachment report issued in March, 2018 represented the culmination of a policy review on pole attachment charges<sup>4</sup> that began in November, 2015. In that report, the OEB determined that it “will not consider the Bell and LDC reciprocal agreements as part of the new pole attachment rate methodology”<sup>5</sup> for the reasons set out in the report. This is therefore the established policy of the OEB.

The pole attachment report is currently the subject of a Divisional Court proceeding initiated by Rogers and other carriers. The OEB’s focus in this proceeding is on whether Hydro One’s updated evidence with respect to its proposed Joint Use Telecom Charge (Rate Code 30), is consistent with the methodology adopted by the OEB in the pole attachment report. The OEB has established a process for written interrogatories and submissions on this matter below.

The OEB intends to establish an interim pole attachment charge and to authorize Hydro One to establish a variance account to track the difference, if any, between the interim charge and the charge that is ultimately approved on a final basis, in the event that the OEB’s decision on the other issues in this proceeding is issued prior to the determination of the pole attachment matter.

The OEB considers it necessary to make provision for the following matters related to this proceeding.

#### **THE ONTARIO ENERGY BOARD ORDERS THAT:**

1. The Rogers motion of February 27, 2018 is allowed in part, in that consideration of pole attachment-related matters in the Technical Conference was adjourned. The remainder of the Rogers motion is denied.
2. OEB staff and intervenors shall request any relevant information and documentation regarding the updated evidence on the proposed Joint Use Telecom Charge (Rate Code 30) filed by Hydro One on May 28, 2018 by written

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<sup>4</sup> Part of EB-2015-0304

<sup>5</sup> Pole attachment report, EB-2015-0304, at p.49.

supplemental interrogatories to be filed with the OEB and served on all parties on or before August 2, 2018.

3. Hydro One shall file with the OEB complete written responses to the supplemental interrogatories, and serve them on all intervenors and OEB staff on or before August 23, 2018.

All filings to the OEB must quote the file number, **EB-2017-0049**, be made in searchable /unrestricted PDF format electronically through the OEB's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at <http://www.oeb.ca/Industry>. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at [martin.davies@oeb.ca](mailto:martin.davies@oeb.ca) and OEB Counsel, James Sidlofsky at [james.sidlofsky@oeb.ca](mailto:james.sidlofsky@oeb.ca).

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**DATED** at Toronto, July 12, 2018

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary