



EB-2017-0049

Hydro One Networks Inc.

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

**NOTICE OF MOTION HEARING AND
PROCEDURAL ORDER NO. 9**

**Pole Attachment Matters and the
*Hydro One Accountability Act, 2018***

September 26, 2018

Pole Attachment Matters

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*¹ (OEB Act) , 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 charges² and that Rogers would not be

¹ S.O. 1998, c. 15, (Schedule B)

² EB-2015-0304

required to file expert evidence by the April 6, 2018 deadline applicable to OEB staff and Anwaatin Inc. in this proceeding.

On May 18, 2018, the OEB issued its Decision on Confidentiality and Procedural Order No. 6. 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).³

The OEB received submissions on the pole attachment from Hydro One, OEB staff, Rogers, and a number of other intervenors. Hydro One's submission⁴ included updated evidence (the updated Hydro One evidence) in respect of its proposed Joint Use Telecom Charge (Rate Code 30), referred to below as the pole attachment charge. 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.

On July 12, 2018, the OEB issued its Decision on Pole Attachment Matters and Procedural Order No. 8 (Decision and PO8). The OEB provided for supplemental interrogatories related to the updated Hydro One evidence and for responses to those supplemental interrogatories. In Decision and PO8, the OEB found that its "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."

On August 2, 2018, the deadline for supplemental interrogatories, Rogers and other carriers (the Carriers) filed a letter with the OEB requesting an adjournment of this proceeding as it relates to the setting of a pole attachment charge until the Carriers' Divisional Court appeal from the pole attachment report is heard and decided. In the alternative, the Carriers requested that the OEB rescind its dismissal in Decision and PO8 of the February 27, 2018 Rogers motion for an order requiring Hydro One to file complete responses to certain Rogers interrogatories identified in the Rogers Notice of Motion. Finally, and without prejudice to the Divisional Court proceeding, the Carriers enclosed supplemental interrogatories directed to Hydro One, and asked the OEB to provide for procedural steps that would include an opportunity to address any deficiencies to interrogatory answers by way of motion; a Technical Conference; and a "proper hearing" prior to a decision on the pole attachment charge.

³ EB-2015-0304

⁴ EB-2017-0049, "Hydro One Networks Inc.'s 2018-2022 Distribution Rates Application Pole Attachment Issues," May 28, 2018

On August 21, 2018, the OEB issued a letter responding to the Carriers' correspondence, in which it advised that it would not adjourn the proceeding as it relates to the setting of a pole attachment charge, nor would it rescind its dismissal of the Carriers' February 27, 2018 motion. The OEB confirmed that it would establish further procedural steps on this matter following the filing of Hydro One's responses to the supplementary interrogatories. Those responses were filed on August 23, 2018.

On September 4, 2018, Rogers filed a new motion (the September 4th Rogers motion), in which it requested the following two items of relief:

- An Order that Hydro One serve and file full and complete responses to the interrogatories listed in Rogers' Notice of Motion, which Rogers asserts Hydro One has refused to answer in the August 23, 2018 responses to interrogatories.
- An Order that, following the hearing of and decision on this motion, and the provision of any supplementary responses provided by Hydro One pursuant to that decision, a technical conference be held with respect to any matters arising from the interrogatories and all of Hydro One's responses, on a date to be set by the OEB.

Rogers requested that its September 4th motion be heard orally. In the alternative, Rogers requested that the OEB establish a schedule for written submissions.

On September 7, 2018, Hydro One responded to the September 4th Rogers motion. Hydro One submitted that the Rogers requests for an order compelling Hydro One to respond to certain interrogatories and for an order that a technical conference be held are unreasonable. Hydro One submitted that the OEB should refuse to hear the motion and should proceed directly to a written hearing.

The OEB will hear this motion by way of an oral hearing. This Procedural Order establishes further steps related to the September 4th Rogers motion. It is necessary to address the motion before the OEB can consider further procedural steps related to the proposed Hydro One pole attachment charge itself, including whether or not the OEB will convene a technical conference as requested by Rogers.

Because the OEB is not granting Hydro One's request to reject the September 4th Rogers motion, the OEB will grant Hydro One the opportunity to file material in response to the motion. The timing of that filing is addressed in the Order, below.

The parties are reminded once again that the focus in the current proceeding is on whether Hydro One's May 28, 2018 updated evidence for the pole attachment charge is consistent with the methodology adopted by the OEB in the pole attachment report. The September 4th Rogers motion asserted in paragraph 10 that "the Rogers Interrogatories

are intended to address the OEB's focus in this proceeding, as stated by the OEB in its Decision and Procedural Order No. 8 dated July 12, 2018 ('PO8'), whether HONI's May 28, 2018 updated evidence for the Pole Attachment Charge is consistent with the Final Report." During the hearing of the motion, Rogers will be expected to explain to the OEB how the subject interrogatories fall within the scope established by the OEB and acknowledged by Rogers. The pole attachment report established the types of costs the OEB requires for the calculation of a pole attachment charge. Hydro One is not required to respond to interrogatories related to different kinds of costs that were not part of the calculation of the new generic charge. For example, in the pole attachment report, the OEB stated that:

The OEB will not consider the Bell and LDC reciprocal agreements as part of the new pole attachment rate methodology.

Therefore, the OEB does not require Hydro One to respond to questions related to its reciprocal agreement with Bell.

One item that the OEB will expect Rogers to clarify is its reference in the Notice of Motion to Rogers' Interrogatory #S08-4. In reviewing the Rogers supplemental interrogatories appended to the Notice of Motion, there appears to be no Question 4 in Rogers Interrogatory #S08.

***The Hydro One Accountability Act, 2018*⁵**

The *Hydro One Accountability Act, 2018* (Hydro One Accountability Act) among other things amends section 78 of the OEB Act by adding the following new subsection (5.0.2) effective August 15, 2018:

In approving or fixing just and reasonable rates for Hydro One Limited or any of its subsidiaries, the Board shall not include any amount in respect of compensation paid to the Chief Executive Officer and executives, within the meaning of the *Hydro One Accountability Act, 2018*, of Hydro One Limited.

On August 3, 2018, the OEB issued a letter advising that it would be issuing direction to the parties in relation to addressing this new provision, and that the OEB did not expect OEB staff, intervenors or Hydro One to make submissions on any issue pertaining to executive compensation as part of their closing submissions being filed in August.

Accordingly, the OEB is now establishing a process for addressing the requirements of section 78(5.0.2) in the current proceeding. To begin that process, the OEB will require

⁵ S.O. 2018, c.10, Sched. 1 (being Schedule 1 to the *Urgent Priorities Act, 2018*).

a submission from Hydro One setting out its proposal for adjusting its requested revenue requirement such that rates will be set in conformity with section 78(5.0.2). The OEB expects the Hydro One submission to include, at a minimum:

- An explanation of the impact of section 78(5.0.2) on Hydro One's distribution revenue requirement, having regard to the definitions of "compensation" and "executive" in the Hydro One Accountability Act, including all relevant calculations. The OEB expects Hydro One to reconcile this impact with the amounts excluded from executive compensation in Exhibit Q, filed by Hydro One on December 21, 2017, in response to the OEB's Decision in Hydro One's 2017-2018 Transmission revenue requirement proceeding.⁶
- Evidence that identifies the executive positions captured by the section and the total compensation for this group.

The OEB is also providing for interrogatories and responses on the Hydro One evidence, and for written submissions.

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

⁶ EB-2016-0160

THE ONTARIO ENERGY BOARD ORDERS THAT:**With respect to the proposed pole attachment charge:**

1. If any party wishes to file any responding materials to the September 4th Rogers motion, it shall do so by October 5, 2018.
2. Rogers may serve and file any reply materials by October 15, 2018.
3. An oral hearing will be held on October 18, 2018 at 9:30 a.m. in the OEB's North Hearing Room on the 25th floor at 2300 Yonge Street, Toronto. The OEB reminds all parties that they must be prepared to address all the issues identified in the Motion and any additional evidence that may be filed.

With respect to section 78(5.0.2) of the OEB Act:

4. Hydro One shall file its evidence with the OEB related to subsection 78(5.0.2) of the OEB Act, and provide a copy to intervenors, by October 12, 2018.
5. OEB staff and intervenors shall request any relevant information and documentation regarding the evidence filed by Hydro One pertaining to subsection 78(5.0.2) of the OEB Act by written supplemental interrogatories to be filed with the OEB and served on all parties by October 26, 2018.
6. Hydro One shall file with the OEB complete written responses to the supplemental interrogatories, and serve them on all intervenors and OEB staff by November 9, 2018.
7. OEB staff and intervenors shall file any submissions with the OEB and forward them to all parties on or before November 21, 2018.
8. Hydro One shall file its reply submission, if any, with the OEB and forward it to all parties on or before November 30, 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 flash drive 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 and OEB Counsel, James Sidlofsky, at james.sidlofsky@oeb.ca.

ADDRESS

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto ON M4P 1E4
Attention: Registrar
E-mail: boardsec@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, September 26, 2018

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary