



Ontario Energy Board Commission de l'énergie de l'Ontario

DECISION AND RATE ORDER

EB-2015-0141

ROGERS COMMUNICATIONS PARTNERSHIP *ET AL.*

Motion to Review and Vary Decision EB-2013-01416/EB-2014-0247
Approving Distribution Rates and Charges for Hydro One
Networks Inc. for 2015-2017

BEFORE: Ken Quesnelle
Vice Chair and Presiding Member

Emad Elsayed
Member

August 4, 2016

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1 INTRODUCTION AND SUMMARY

1.1 Overview

Rogers Communications Partnership (Rogers) and several other cable and telecommunications providers and associations (collectively, the “Carriers”)¹ brought this motion to review and vary the March 12, 2015 decision of the Ontario Energy Board (OEB) approving distribution rates for Hydro One Networks Inc. (Hydro One) for 2015 to 2017.²

The Carriers only take issue with the decision in so far as it relates to Hydro One’s proposed increase to the charge it collects from cable and telecommunications companies for connecting their overhead wires to its power poles, from \$22.35 per pole to \$37.05 in 2015, \$37.42 in 2016 and \$37.80 in 2017.³

They argue that the proposed pole attachment charge is too high, mainly because it includes Hydro One’s costs for vegetation management. At the Carriers’ request, this motion provided an opportunity for a new hearing on the matter, with the objective being to establish a just and reasonable pole attachment charge.

For the reasons that follow, the OEB has concluded that a just and reasonable pole attachment charge is \$41.28 per pole, per year.

Although the OEB agrees with the Carriers that vegetation management costs should be excluded from the calculation of the charge, any resulting reduction is offset by countervailing factors that were not fully explored in the initial rates hearing. In particular, when the charge is calculated using the actual number of attachers per Hydro One pole, which the evidence shows, is 1.3, instead of using the 2.5 attachers per pole presumed by Hydro One in its initial rate application, the rate goes up. Fewer attachers to contribute to the costs of the pole means each attacher is responsible for a greater share of the costs. The net result is a small increase to the charge initially proposed by Hydro One.

¹ The Carriers comprise: Rogers, Allstream Inc., Shaw Communications Canada 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.

² Decision re Hydro One Distribution Rates, March 12, 2015 (EB-2013-0416/EB-2014-0247).

³ EB-2013-0416/Exhibit G2/Tab 5/Schedule 1/p. 31. This charge was described in Hydro One’s application as the “Specific Charge for Cable and Telecom Companies Access to the Power Poles”, and has often been referred to in this proceeding as the Pole Access Charge. In this Decision and Order, it is referred to as the “pole attachment charge”.

1.2 Background

This is the third pole attachment case to come before the OEB in the last year. Prior to these cases, all licensed distributors charged the same amount: \$22.35 per pole, per year. That rate was established by the OEB in 2005, in a proceeding brought by the Canadian Cable Television Association (CCTA).⁴ The OEB's decision in the CCTA case gave distributors the option of applying for a variance from the province-wide charge if their circumstances warranted it: "Any LDC that believes that the province-wide rate is not appropriate can bring an application to have the rates modified based on its own costing."⁵ But it was not until the three recent cases that any distributor actually applied for a variance.

In Toronto Hydro's most recent custom incentive rate application, it reached a settlement with the intervenors to increase its pole attachment charge from \$22.35 to \$42.00, which was approved by the OEB.⁶ In Hydro Ottawa's most recent custom incentive rate application, it sought to raise the pole attachment charge to \$57.00 in 2016, with annual increases of 2.1% for the rest of the rate period. The OEB approved \$53.00, with no annual inflation adjustments.⁷ That decision has been appealed to the Divisional Court.⁸

In its December 19, 2013 application for 2015 to 2019 rates, Hydro One asked to increase its pole attachment charge to \$37.05 in 2015, \$37.42 in 2016, \$37.80 in 2017, \$38.18 in 2018, and \$38.56 in 2019. None of the Carriers participated in the OEB hearing on Hydro One's rate application, and the pole attachment charge was not a contested issue. In its March 12, 2015 decision, the OEB approved Hydro One's rates for only three years (2015 to 2017) rather than the five years Hydro One had applied for. The decision did not refer expressly to the pole attachment charge at all.

Following the March 12, 2015 decision, but before the OEB issued a final rate order, Rogers and several other Carriers wrote to the OEB to request leave to bring a motion to review and vary the decision, but only in so far as it relates to the pole attachment charge. They were later joined by the other Carriers. The Carriers said they did not

⁴ Decision and Order, March 7, 2005 (RP-2003-0249).

⁵ *Ibid.*, p. 8.

⁶ Decision on Settlement Proposal, July 23, 2015 (EB-2014-0116); Settlement Proposal filed June 11, 2015 (EB-2014-0116).

⁷ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004).

⁸ The appellants include three of the Carriers in this proceeding: Rogers, Quebecor Media Inc. and Allstream Inc.

participate in the hearing because they had not been given adequate notice that Hydro One proposed to increase the pole attachment charge.

On April 17, 2015, the OEB issued a decision on Hydro One's draft rate order, in which the OEB determined that the pole attachment charge would remain at \$22.35 on an interim basis until the Carriers' challenge to the March 12, 2015 decision was resolved.⁹ The OEB reiterated this in its final rate order issued on April 23, 2015.¹⁰

On June 30, 2015, the OEB granted leave to the Carriers to bring this motion to review and vary.

1.3 The Parties' Positions on the Appropriate Pole Attachment Charge

Hydro One, in its argument in chief in this proceeding, proposed that the pole attachment charge be set at \$70.04, nearly twice the level that it had proposed in its initial rate application. The \$70.04 was based on the inclusion of vegetation management costs, the use of 1.3 attachers per pole, and 2014 actual cost information. Some intervenors suggested a slightly higher rate. The School Energy Coalition and Canadian Manufacturers & Exporters used the same cost inputs and number of attachers as Hydro One but calculated the "allocation factor" (discussed below) a little differently, resulting in a pole attachment charge of \$72.16. The Vulnerable Energy Consumers Coalition came up with \$71.95, using the same number of attachers as Hydro One but a different allocation factor and a minor reduction to administration costs.

The Carriers proposed \$28.51. Their calculation excluded vegetation management costs and relied on 2012 data. The Carriers also assumed 2.5 attachers per pole.

OEB staff suggested \$41.56. OEB staff's calculation was the same as Hydro One's, except vegetation management costs were excluded.

⁹ Decision on Draft Rate Order, April 17, 2015 (EB-2013-0416), p. 3.

¹⁰ Rate Order, April 23, 2015 (EB-2013-0416), p. 2.

2 THE PROCESS

Because none of the Carriers participated as parties in the hearing on Hydro One's rate application, leave to bring this motion to review and vary was required under Rule 40.02 of the OEB's *Rules of Practice and Procedure*. The OEB granted leave on June 30, 2015, holding that the reason the Carriers had not participated in the hearing was that they had not been given adequate notice that Hydro One's application included a significant increase to the pole attachment charge.¹¹ The OEB explained that it would fix the final pole attachment charge through the hearing of the Carriers' motion to review and vary.

On July 20, 2015, the Carriers jointly filed a notice of motion to review and vary the March 12, 2015 decision. The Carriers asked that the OEB's approval of the increase to the pole attachment charge be set aside (even though, as noted earlier, the proposed increase was not reflected in the final distribution rate order, and therefore the increase was never actually "approved"), and that "a hearing *de novo*" be held on the charge.

In Procedural Order No. 3, issued July 29, 2015, the OEB reiterated what it said in its decision granting leave to bring the motion: "the purpose of this motion to review and vary will be to fix the final Pole Access Charge, which until the disposition of the motion will remain at the interim level of \$22.35 per pole per year. That is, the motion will be a hearing on Hydro One's proposed increase to the Pole Access Charge." In the same Procedural Order, the OEB granted party status, for the purpose of the motion to review and vary, to everyone who had been a party in the Hydro One rate application, as well as to the Carriers.

In the event, the following intervenors participated actively and made submissions in this proceeding: the Power Workers' Union, the School Energy Coalition, Canadian Manufacturers & Exporters, the Vulnerable Energy Consumers Coalition, and the Sustainable Infrastructure Alliance of Ontario. Hydro One and OEB staff were also active participants. To their credit, the various Carriers worked together and made joint submissions.

In Procedural Order No. 4, issued October 26, 2015, the OEB explained that its "review of the Pole Access Charge in this proceeding will be within the context of the current approved OEB methodology as described in Decision and Order RP-2003-0249, issued March 7, 2005." The OEB added that "the OEB plans to undertake a policy review of

¹¹ Decision and Order, June 30, 2015 (EB-2015-0141).

miscellaneous rates and charges commencing this year which will include a review of pole attachment rate methodology.” This was the same approach the OEB took in the Hydro Ottawa case.

Both Hydro One and the Carriers filed evidence in this proceeding and responded to interrogatories. A technical conference was held on January 12, 2016. Immediately after the technical conference ended, there was a settlement conference, but the parties were unable to reach a settlement.

The Carriers brought a procedural motion on March 8, 2016 requesting: (a) that the motion to review and vary be heard orally, rather than in writing as required by Procedural Order No. 7; (b) an order that Hydro One produce any pole attachment agreements with Bell Canada (Bell); and (c) an order allowing for further interrogatories to Hydro One by the Carriers. The OEB granted the request for further interrogatories but denied the request for the Bell agreements. It deferred its decision on the request for an oral hearing until the completion of the next round of interrogatories.¹²

The Carriers brought another procedural motion on April 22, 2016 seeking an order requiring Hydro One to provide supplementary responses to the second round of interrogatories. In Decision and Procedural Order No. 9, issued May 4, 2016, the OEB said it would hear the procedural motion orally on May 19, 2016, and ordered Hydro One to have a witness or panel of witnesses on standby that day who would be prepared to provide supplementary responses should the OEB determine they were necessary. At the oral hearing, Hydro One agreed to provide clarification on the issues raised by the Carriers, which it did by way of affirmed oral testimony by John Boldt, Hydro One’s manager of program integration.

At the conclusion of Mr. Boldt’s testimony, the OEB established a schedule for written submissions. In addition to Hydro One and the Carriers, the OEB received submissions from the five intervenors mentioned above, as well as OEB staff. The OEB also received letters of comment from 12 individuals, all of whom opposed Hydro One’s proposed increase to the pole attachment charge.

¹² Decision and Procedural Order No. 8, March 31, 2016 (EB-2015-0141).

3 SETTING A JUST AND REASONABLE POLE ATTACHMENT CHARGE

3.1 Scope of the Proceeding

Before addressing the substantive issues at the core of this motion to review and vary, the OEB wishes to address certain concerns about procedural fairness raised by the Carriers.

In their submission dated June 10, 2016, the Carriers argue that the only relevant issue in this proceeding is whether the pole attachment charge should include vegetation management costs. They say that vegetation management was “the singular basis” for their motion, and that it is unfair for Hydro One and the intervenors to raise other issues, namely, whether the pole attachment charge should be calculated on the basis of 2014 or 2015 costs instead of (the lower) 2012 costs that were used in Hydro One’s initial rate application, and whether the charge should be calculated using 1.3 attachers per pole instead of the 2.5 that was used in the initial rate application. By the same token, they say it is unfair for Hydro One to ask, in its argument in chief, to increase the pole attachment charge even higher than the \$37.05 initially sought for 2015.

Findings

As the OEB has emphasized repeatedly throughout this proceeding, the purpose of the proceeding is to establish a final pole attachment charge that is just and reasonable, within the context of the approved methodology. It is not only about vegetation management.

Indeed, as noted in Chapter 2, the Carriers’ July 20, 2015 notice of motion asked the OEB to hold a hearing *de novo* on the pole attachment charge. The notice of motion did not refer to vegetation management – it was not until four months later that the vegetation management issue first came up, when the Carriers filed evidence provided by Michael Piaskoski of Rogers. Rather, the main thrust of the Carriers’ notice of motion was that a do-over of the pole attachment charge aspect of Hydro One’s rate application was required because the Carriers did not have an opportunity to participate:

The request for the increase in the Pole Attachment Rate proceeded completely unopposed and unchecked as a consequence of the failure to provide any kind of notice. The public interest requires

that a full hearing *de novo* be given in these circumstances to allow a considered decision be made with respect to the increase sought on a proper record.¹³

The Carriers got their wish for a new hearing on the pole attachment charge when the OEB granted leave to bring this motion. The OEB agreed with the Carriers that the appropriate approach would be, in essence, to restart the hearing on the single issue of the pole attachment charge, this time with the Carriers as participants.

For the same reasons, the OEB cannot accept the Carriers' argument that this proceeding offended the principle of *res judicata* (i.e., the principle that a matter that has already been decided should not be relitigated), or that allowing Hydro One and the intervenors to "revisit the Pole Access Charge afresh" amounted to an abuse of process.¹⁴ This was a whole new hearing on the charge. Just because the Carriers initiated the proceeding does not mean they alone can determine its scope. It would have defeated the purpose of setting a just and reasonable rate to exclude any evidence and arguments that Hydro One or the intervenors had not presented the first time around, when the pole attachment charge was not even a contested issue.

The OEB also wishes to respond to the Carriers' argument that the OEB improperly fettered its discretion by directing the parties to take note of its decision in the Hydro Ottawa case. What the OEB said in Procedural Order No. 7 was, "Parties making submissions in this case should take note of the findings of the OEB in the Decision and Rate Order on Pole Attachment Charge in the Hydro Ottawa Limited proceeding EB-2015-0004, issued February 25, 2016. While not bound by that decision, the OEB will have regard to those findings in making its decision in this case." It is common practice for adjudicative tribunals to look at other similar cases for guidance. The OEB's express statement that the Hydro Ottawa decision is not binding refutes the Carriers' argument that there was a fettering of discretion.

3.2 Vegetation Management Costs

Hydro One, supported by several intervenors, submits that the pole attachment charge should include its vegetation management costs.

¹³ Carrier notice of motion, July 20, 2015, para. 26.

¹⁴ Carrier submission, June 10, 2016, pp. 12-16.

The Carriers argue that those costs should be excluded, to be consistent with the OEB's approved methodology. OEB staff agrees that the approved methodology does not take into account vegetation management costs.

Hydro One acknowledges that the OEB's 2005 decision, which established the methodology, did not explicitly include vegetation management costs. Nevertheless, Hydro One points out that following that decision, it entered into pole attachment agreements with various Carriers, which specified that vegetation management costs were factored into the \$22.35 pole attachment charge. It asks the OEB to respect those contracts. It also raises practical concerns about how it could recover its vegetation management costs from the Carriers if those costs were not included in the pole attachment charge, including its historical costs going back to January 1, 2015, the beginning of the rate period at issue.

Findings

The OEB finds that vegetation management costs were not included in the OEB-approved methodology, and should therefore not be included in the calculation of Hydro One's pole attachment charge.

As OEB staff has noted, although the OEB's 2005 CCTA decision did not refer expressly to vegetation management costs, it can be inferred that vegetation management costs were excluded. One of the inputs used to calculate the \$22.35 pole attachment charge was a pole maintenance cost of \$7.61 per year. That \$7.61 was plucked from an earlier decision of the Canadian Radio-television and Telecommunications Commission (CRTC), in which the CRTC ordered certain Ontario distributors to provide access to their poles to CCTA members at an annual rate of \$15.89 per pole. (The CRTC was later found by the Supreme Court of Canada to have lacked jurisdiction to regulate access to power poles, which is why the OEB was called upon to resolve the dispute between the CCTA and the distributors.¹⁵) The CRTC used a pole maintenance cost of \$6.47, and the OEB simply adjusted that for inflation up to \$7.61. The CRTC made it clear that the \$6.47 excluded vegetation management: "The Commission considers that maintenance costs should exclude tree trimming. Rather, the power utilities should be permitted to levy a separate charge on cable companies to reflect tree trimming activities."¹⁶ It follows from all this that the methodology approved

¹⁵ *Barrie Public Utilities v. Canadian Cable Television Assn.*, [2003] 1 S.C.R. 476.

¹⁶ Telecom Decision CRTC 99-13, September 28, 1999 (included in Appendix C to the Evidence of Michael Piaskoski, filed by the Carriers in this proceeding), para. 212.

by the OEB in the CCTA decision accounts for pole maintenance costs, but those pole maintenance costs do not include vegetation management.

The OEB agrees with OEB staff that whatever Hydro One's agreements with various Carriers may say about vegetation management is not relevant to the question of whether vegetation management costs are included in the OEB-approved methodology or not. For the reasons above, the OEB finds they are not included in the methodology. Whether, as a matter of policy, they should be included in the calculation of the charge is a question that will no doubt be raised in the OEB's policy review that is now underway. But that this not the question before us today.

Excluding vegetation management costs would be consistent with the OEB's decision in the Hydro Ottawa case. Hydro Ottawa did not include vegetation management costs in its proposed pole attachment charge, therefore this was not an issue in that proceeding.

3.3 Hydro One's Reciprocal Agreement with Bell

Hydro One has a contractual arrangement with Bell for reciprocal access to each other's poles. Through this arrangement, Bell can attach to Hydro One's poles at no cost, and vice versa.¹⁷

In Decision and Procedural Order No. 8, the OEB denied the Carriers' request for an order compelling Hydro One to produce the Bell agreement or agreements. Citing its procedural ruling in the Hydro Ottawa matter, the OEB found that the details of the agreement were not relevant to establishing a just and reasonable pole attachment charge. Nevertheless, the OEB instructed OEB staff to ask Hydro One, by way of interrogatory, whether any of the costs being claimed by Hydro One in this proceeding are being recovered through the reciprocal arrangements with Bell or other parties, and how the Bell attachments and any other attachments associated with reciprocal arrangements factor into the determination of the number of attachers per pole. Hydro One answered both questions on April 15, 2016. It explained that no costs being claimed in this proceeding are being recovered elsewhere, and that the numerator in its calculation of the number of attachers per pole includes Bell and other reciprocal

¹⁷ Motion Hearing Transcript, May 19, 2016, pp. 30 and 42.

arrangement attachments.¹⁸ Hydro One provided further explanation of its arrangement with Bell at the oral hearing of the Carriers' procedural motion on May 19, 2016.

In their written submission dated June 10, 2016, the Carriers assert that Bell contributes 40% of the cost of Hydro One's poles and, therefore, Hydro One should only use the remaining 60% of its costs as the basis for the pole attachment charge. The Carriers repeat the argument in their June 15, 2016 reply submission and their June 23, 2016 response to the Vulnerable Energy Consumers Coalition's submission.

In its reply argument, Hydro One claims that the reciprocal agreement it has with Bell is "completely irrelevant to the establishment of the pole attachment rate".¹⁹ It explains that, at any given time, approximately 60% of the Bell/Hydro One poles are owned by Hydro One and 40% are owned by Bell. It clarifies that there is no "joint use pool", as argued by the Carriers, and that Bell is in no way paying for 40% of Hydro One's pole costs. Hydro One adds that if it were to remove the Bell attachments from the calculation of the number of attachers per pole, the number of attachers would go down, which would result in a higher pole attachment charge.

Findings

The OEB finds that Hydro One's reciprocal arrangement with Bell has no impact on the pole attachment charge. Bell "pays" for its attachments to Hydro One's poles by allowing free access for Hydro One to Bell's poles. No money changes hands. Contrary to the Carriers' repeated statements, Bell does not pay for 40% of Hydro One's pole costs.

If money were changing hands and the pole attachment charge went up, Bell would presumably have to raise the (unregulated) rate it would collect from Hydro One. Assume a hypothetical scenario where there are 1,000 poles with Hydro One and Bell attachments, 600 owned by Hydro One and 400 owned by Bell. If Bell were paying the pole attachment charge of \$22.35 per pole, then Hydro One would be paying about \$33.53 for it to be a wash. If Hydro One's rate increased to, say, \$42.00, and were applied to Bell, then Bell would have to raise its rate for Hydro One to \$63.00 to stay even. This process would not affect the Carriers or any other attacher in any way.

¹⁸ Hydro One response to OEB Staff Interrogatory 2.1, filed April 15, 2016.

¹⁹ Hydro One reply, June 17, 2016, para. 32.

3.4 Reduction for Power-Specific Assets

One of the cost inputs in the OEB-approved methodology is the distributor's net embedded cost per pole. Hydro One proposed reducing its actual net embedded cost by 15% to account for the fact that some of its pole costs relate to "power-specific assets", which were described in the Hydro Ottawa decision as assets "used for supporting overhead distribution conductors and service wires, which are not needed for telecommunications cable attachments."²⁰ Every party that made a submission, including the Carriers, agreed that 15% was a reasonable reduction.

Findings

The OEB accepts 15% as a reasonable reduction to the net embedded cost per pole to account for the power-specific assets. The OEB notes that in the Hydro Ottawa case, Hydro Ottawa proposed – and the OEB accepted – a reduction of only 5% for the power-specific assets, based on the actual configuration of its poles. In the case at hand, however, there was no evidence justifying a departure from the 15% proposed by Hydro One and unchallenged by any party.

In the Hydro Ottawa case, the OEB determined that depreciation and pole maintenance expenses should also be reduced to account for power-specific assets, in the same way that the net embedded cost is reduced.²¹ In Hydro One's calculation of the pole attachment charge, it reduced the depreciation expenses by 15% but not the maintenance expenses. It argued in its reply that a 15% reduction to the maintenance expenses was not warranted because it had already deducted certain power-specific maintenance expenses from the total pole maintenance expenses it used in its calculation. The OEB finds that, to be consistent with the Hydro Ottawa decision, a 15% reduction for power-specific assets will be applied to Hydro One's pole maintenance expenses. Hydro One has not persuaded the OEB that its selective removal of certain power-specific costs adequately accounts for the power-specific assets.²²

²⁰ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), pp. 11-12.

²¹ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 14.

²² Hydro One's 2014 pole maintenance costs (without vegetation management costs) for 2014 were \$5.52 per pole. Multiplying that amount by the 34.3 allocation factor results in \$1.89. Reducing \$5.52 by 15% (\$4.69) and then applying the same allocation factor results in \$1.61. See Table 1 for the final calculation of the charge.

3.5 Average Number of Attachers per Pole

The number of attachers using a distributor's poles is an important factor in the calculation of the pole attachment charge. The more attachers there are to split the pole costs, the lower the rate.

In the OEB's 2005 decision in the CCTA case, the province-wide pole attachment charge of \$22.35 was calculated on the basis of an average of 2.5 attachers per pole. In the Hydro Ottawa case, the evidence was that Hydro Ottawa actually had on average fewer than 2.5 attachers on its poles. One of the issues in that case was whether Hydro Ottawa could use the actual number of attachers instead of 2.5. The OEB held that it could: the number of attachers is "an input to the methodology" rather than part of the methodology itself.²³ The OEB explained that it was "of the view that information specific to the utility is the most useful and as a result will rely on the number of attachers per pole information filed by Hydro Ottawa that reflects its specific circumstances."²⁴ Based on Hydro Ottawa's most recent year-end data, the OEB found there were 1.74 attachers per pole.

The same issue came up in this proceeding. Hydro One proposed using its actual number of attachers per pole, which it determined to be 1.3. All parties except the Carriers accepted that. The Carriers argue that the use of 2.5 attachers per pole is "an integral part" of the OEB-approved methodology, and that it would therefore be beyond the scope of the proceeding for the OEB to consider any number other than 2.5.²⁵ The Carriers also point out that in its initial rate application, Hydro One used 2.5, and suggest that it is unfair for it to resile from that in this proceeding.

Findings

As in the Hydro Ottawa decision, the OEB panel in this case also concludes that the number of attachers per pole is an input to the methodology rather than part of the methodology itself. The methodology that was approved in the 2005 CCTA decision does not require 2.5 attachers per pole to be used in all cases. As the OEB noted in the Hydro Ottawa decision, the CCTA decision "provided that individual utilities could bring an application to the OEB to vary the provincial pole attachment rate if they choose to

²³ Oral Hearing Transcript Vol. 2 (EB-2015-0004), p. 17; Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 6.

²⁴ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 7.

²⁵ Carrier submission, June 10, 2016, para. 13.

do so and could support an alternative rate.”²⁶ Hydro Ottawa chose to do so, with evidence that it actually had only 1.74 attachers per pole, and now Hydro One has done so too, with evidence that it has only 1.3 attachers per pole.

The OEB does not agree with the Carriers’ argument that Hydro One is bound by 2.5 because its initial calculation of the pole attachment charge, in its rate application, used that number. As explained earlier, this proceeding has been a hearing *de novo* on Hydro One’s pole attachment charge, with the objective of setting a just and reasonable rate within the context of the approved methodology. It was therefore open to Hydro One and the other parties to introduce new evidence and raise new issues. The OEB accepts Hydro One’s evidence that it has 1.3 attachers per pole. It is that actual number, rather than 2.5, which should be used in calculating the charge.

3.6 Allocation Factor for Indirect Costs

Under the approved methodology, the “indirect” costs associated with a pole, comprising depreciation, maintenance and capital carrying costs, are shared between the distributor and the third party attachers according to an “allocation factor”. The allocation factor is a function of the average number of attachers per pole. In the CCTA decision, the allocation factor was calculated to be 21.9%, based on 2.5 attachers per pole, which meant that each attacher was responsible for 21.9% of the indirect costs.

Based on 1.3 attachers per pole, Hydro One calculates the allocation factor as 34.3%. In their submissions, the School Energy Coalition, Canadian Manufacturers & Exporters and the Vulnerable Energy Consumers Coalition suggest that the allocation factor should be slightly higher (35.4%), and OEB staff invited Hydro One to clarify in its reply how it had arrived at 34.3%. Hydro One did explain how it derived the allocation factor in its reply, and confirmed that it should be 34.3%.

Findings

The OEB accepts Hydro One’s calculation of the 34.3% allocation factor, as explained in Hydro One’s reply.

²⁶ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 7.

3.7 Use of Actual vs. Forecast Costs

In the Hydro Ottawa decision, the OEB determined that the pole attachment charge should be calculated based on historical rather than forecast costs, as historical costs were used in the 2005 CCTA decision. The OEB added that “it is contrary to OEB practice to use forecast or projected costs to determine specific service charges.”²⁷

In this case, the parties seem to have agreed that historical costs should be used, but disagreed about which ones. Every party that made a submission, except the Carriers, urged the OEB to use 2014 costs, 2014 being the most recent year for which information is available prior to the rate period at issue. The Carriers argued that 2012 costs should be used, because Hydro One used 2012 costs in its initial rate application.

Findings

Hydro One’s pole attachment charge should reflect 2014 costs. Not only is 2014 the most recent year for which data is available prior to the rate period, but the 2014 data was tested through the interrogatory process and the technical conference. This being a hearing *de novo* on the pole attachment charge, Hydro One was not bound to use 2012 costs simply because those were the costs used in its initial rate application.

3.8 Interim vs. Final Rate

The Carriers argue that the OEB should wait until the Divisional Court has decided the appeal of the Hydro Ottawa decision and the OEB’s policy review has been completed before approving a final pole attachment charge for Hydro One.

Hydro One and OEB staff submit that the pole attachment charge should be made final as of January 1, 2015. OEB staff referred to the Hydro Ottawa case, where the OEB decided to make the pole attachment charge final even though the policy review had not yet begun. The OEB said in that decision that “new policies should be applied on a prospective basis”, consistent with prior decisions involving new policies.²⁸

Findings

The OEB clearly stated at the outset of this proceeding, when it granted leave to the Carriers to bring a motion to review and vary, that the OEB would “fix the final charge

²⁷ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 9.

²⁸ Decision and Rate Order on Pole Attachment Charge, February 25, 2016 (EB-2015-0004), p. 15.

through the hearing of this motion” (emphasis added).²⁹ Subsequent procedural orders have affirmed that the purpose of this proceeding is to fix the final charge at a level that is just and reasonable. Accordingly, the pole attachment charge of \$41.28 will be a final rate, effective January 1, 2015. That is the same day the other rates and charges approved in the OEB’s March 12, 2015 decision came into effect. It will remain at \$41.28, with no annual inflation adjustment, pending the outcome of the OEB’s policy review that is now underway. This approach is consistent with the OEB’s decision in the Hydro Ottawa matter.

In its reply, Hydro One agreed to establish two deferral accounts, for eventual disposition to Hydro One’s distribution customers. The first will record the revenue difference between the interim pole attachment charge (\$22.35) and the rate approved in this proceeding (\$41.28) over the term that interim rates were in place. The second will record the revenue difference between the pole attachment charge initially proposed in Hydro One’s rate application (\$37.05 for 2015) and the final approved rate (\$41.28) because, as noted by Hydro One in its reply, the impact of the initially proposed rate is what is reflected in Hydro One’s current distribution rates. The OEB finds that both deferral accounts are reasonable, and directs Hydro One to file a draft accounting order in respect of the accounts.

²⁹ Decision and Order, June 30, 2015 (EB-2015-0141), p. 1.

4 CONCLUSION

Based on all the components described in Chapter 3, the OEB has calculated the pole attachment charge for Hydro One to be \$41.28.

A table summarizing the OEB's calculation is attached as Schedule A. The only input that is different than Hydro One's calculation, in its argument in chief, is the pole maintenance expenses: vegetation management costs have been excluded, and a 15% reduction for power-specific assets has been applied.

This pole attachment charge is established on a final rather than interim basis, effective January 1, 2015, pending the outcome of the OEB's policy review. Consistent with the Hydro Ottawa decision, there will be no annual inflation adjustment.

5 COST AWARDS

The OEB may grant cost awards to eligible parties pursuant to its power under section 30 of the *Ontario Energy Board Act, 1998*. In Procedural Order No. 3, the OEB determined that any party that had been found to be eligible for costs in the initial Hydro One rate case (EB-2013-0416), including four of the five active intervenors in this motion to review and vary,³⁰ was also eligible for costs of the motion. Procedural Order No. 3 further established that these costs will be payable by Hydro One.

When determining the amount of the cost awards, the OEB will apply the principles set out in section 5 of the OEB's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the OEB's Cost Awards Tariff will also be applied. Filings related to cost awards shall be made in accordance with the schedule set out in the Order section of this Decision and Rate Order.

³⁰ The Power Workers' Union did not request cost eligibility in EB-2013-0416.

6 ORDER

THE ONTARIO ENERGY BOARD ORDERS THAT:

1. Effective January 1, 2015, the “Specific Charge for Cable and Telecom Companies Access to the Power Poles” on Hydro One’s tariff of rates and charges shall be \$41.28 per pole, per year.
2. Hydro One shall establish two deferral accounts, as described in section 3.8 of this Decision and Rate Order.
3. Hydro One shall file a draft accounting order in respect of the deferral accounts with the OEB and deliver it to all other parties by August 11, 2016.
4. OEB staff and any other party may file written comments on Hydro One’s draft accounting order by August 18, 2016.
5. Hydro One may file any reply comments on the draft accounting order by August 25, 2016.
6. The School Energy Coalition, Canadian Manufacturers & Exporters, the Vulnerable Energy Consumers Coalition, and the Sustainable Infrastructure Alliance of Ontario shall file with the OEB, and deliver to Hydro One, their respective cost claims by August 25, 2016.
7. Hydro One shall file with the OEB, and deliver to the intervenors, any objections to the claimed costs by September 1, 2016.
8. Intervenors shall file with the OEB, and deliver to Hydro One, any responses to any objections to the claimed costs by September 8, 2016.
9. Hydro One shall pay the OEB’s costs incidental to this proceeding upon receipt of the OEB’s invoice.

DATED at Toronto August 4, 2016

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

SCHEDULE A
DECISION AND ORDER
ROGERS COMMUNICATIONS PARTNERSHIP *ET AL.*
EB-2015-0141
AUGUST 4, 2016

HYDRO ONE POLE ATTACHMENT CHARGE (EB-2015-0141)							
		RP-2003-0249 (CCTA)		Hydro One Argument In Chief		EB-2015-0141 Decision	
	DIRECT COST						
A	Administration	\$0.69	CRTC estimate of 0.62 plus inflation	\$0.90	Escalated 3% per year from 2005.	\$0.90	Escalated 3% per year from 2005.
B	Loss in Productivity	\$1.23	Cost/attacher (2.5)	\$3.09	Escalated 3% per year from 2005, and adjusted for 1.3 attachers.	\$3.09	Escalated 3% per year from 2005, and adjusted for 1.3 attachers.
C	TOTAL DIRECT COST (B+C)	\$1.92		\$3.99		\$3.99	
	INDIRECT COST				2014 Actual Costs		2014 Actual Costs
D	Net Embedded Cost per pole	\$478.00		\$944.49	NBV of 1,575,195 poles in service; reduced by 15% for power-specific assets	\$944.49	NBV of 1,575,195 poles in service; reduced by 15% for power-specific assets
E	Depreciation Expense	\$31.11		\$23.83	Hydro One depreciation of 1.7%; reduced by 15% for power-specific assets.	\$23.83	Hydro One depreciation of 1.7%; reduced by 15% for power-specific assets.
F	Pole Maintenance Expense	\$7.61		\$88.56	Vegetation Management included	\$4.69	Vegetation Management excluded (result is \$5.52); reduced by 15% for power-specific assets
G	Capital Carrying Cost	\$54.59	11.42% cost of capital	\$80.19	Pre-Tax weighted cost of capital (8.49%)	\$80.19	Pre-Tax weighted cost of capital (8.49%)
H	TOTAL INDIRECT COST (E+F+G)	\$93.31		\$192.58		\$108.71	
I	Allocation Factor	21.9%	2.5 attachers per pole	34.3%	1.3 attachers per pole	34.3%	1.3 attachers per pole
J	Indirect Costs Allocated (H x I)	\$20.43		\$66.05		\$37.29	
K	ANNUAL POLE RENTAL CHARGE (C+J)	\$22.35		\$70.04		\$41.28	