



Jay Shepherd

Professional Corporation
2300 Yonge Street
Suite 806, Box 2305
Toronto, ON M4P 1E4

BY EMAIL and RESS

January 16, 2015
Our File: EB20140365

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2014-0365 – Wireless Attachment Consultation – SEC Submissions

We are counsel for the School Energy Coalition (“SEC”). Pursuant to the Board’s letter of December 11th 2014, these are SEC’s brief comments.

Wireless Attachments

SEC was an intervenor in the Toronto Hydro proceeding (EB-2013-0234) and was a signatory to the section 74 settlement which was approved by the Board. SEC supports the same amendments to all distributors’ licenses to allow them to charge market rates for the attachments of wireless devices to its poles, on a non-discriminatory basis, while being required to credit all net revenues accumulated to ratepayers.¹

¹ **22 Pole Attachments**

22.1 The Licensee shall provide access to its distribution poles to all Canadian carriers, as defined by the Telecommunications Act, and to all cable companies that operate in the Province of Ontario. For each attachment, with the exception of wireless attachments, the Licensee shall charge the rate approved by the Board and included in the Licensee’s tariff

22.2 The Licensee shall: a) annually report the net revenue, and the calculations used to determine that net revenue, earned from allowing wireless attachments to its poles. Net revenues will be accumulated in a deferral account approved by the Board;

b) credit that net revenue against its revenue requirement subject to Board approval in rate proceedings; and

c) provide access for wireless attachments to its poles on commercial terms normally found in a competitive market.

T. (416) 483-3300 F. (416) 483-3305

mark.rubenstein@canadianenergylawyers.com

www.canadianenergylawyers.com

Evidence in that proceeding demonstrated that Toronto Hydro's actual cost for the attachment of wireless devices was significantly more than the \$22.35 per pole per year approved by the Board in the CCTA proceeding (EB-2003-0049), which was leading to a cross-subsidization between ratepayers and wireless attachers.

It may be helpful for the Board to clarify what occurs in a situation where a distributor and potential wireless attacher cannot agree what the market price (or terms) would be, likely because there may not be a wireless attachment market, at least for a given type of wireless attachment, in a given distributor's service territory (or more likely, a specific area(s) of its service territory). This is likely to occur for distributors whose service territory includes small urban areas where there are few, if any, tall buildings. The Board may wish to provide for a more streamlined process for resolving such a dispute rather than the requirement to bring a formal section 74 application.

Other Issues – Wireline Attachments

While this consultation is about *wireless* attachments only, the Board does mention in its letter that the option remains open to distributors to seek a change to the \$22.35 rate for *wireline* attachments in a cost of service Custom IR application. SEC wishes to flag the following issue for the Board's consideration, either now or in its proposed upcoming Specific Service Charge review.

One issue that arose during the Toronto Hydro proceeding (EB-2013-0234) is that the CCTA order² was never formally incorporated into the text licenses of distributors, as other province-wide license amendments have been.³ The Board, subsequent to its Decision and Order approving the settlement agreement, issued an amended license for Toronto Hydro that incorporated any language regarding pole attachments for the first time.⁴ In addition to the terms of the settlement, the Board included the following:

The Licensee shall provide access to its distribution poles to all Canadian carriers, as defined by the Telecommunications Act, and to all cable companies that operate in the Province of Ontario. For each attachment, with the exception of wireless attachments, the Licensee shall charge the rate approved by the Board and included in the Licensee's tariff.⁵ [emphasis added]

This should be contrasted with the language in the CCTA order which would seem to indicate that the rate for pole attachments is set in the license itself, not the tariff.

The license conditions of the electricity distributors licensed by this Board shall as of the date of this Order be mandated to provide that all Canadian carriers as defined in the Telecommunication Act and all cable companies that operate in the Province of Ontario shall have access to the power poles of the electricity distributors at the rate of 22.35 per pole per year. [emphasis added]

It appears to SEC that the amended Toronto Hydro license is different from the deemed provisions in the CCTA order, which would apply to all other distributors in the province. Toronto

² Decision and Order (RP-2003-0497), dated March 7, 2005 at p.11

³ As an example, on December 18, 2014, the Board issued a Decision and Order (EB-2014-0324) amending licenses of all electricity distributors to implement a Ministerial Directive regarding Conservation and Demand Management. On the same day it issued amended licenses for each distributor incorporating the terms of that order.

⁴ License ED-2002-0497, date of Amendment: June 5, 2014

⁵ *Ibid.* section 22

Hydro has the ability to apply to change the rate for wireline attachments by way of a section 78 order, as it is proposing to do in its current Custom IR application (EB-2014-0116). In contrast, all other distributors could only do so by way of a section 74 order. The importance of this is that the statutory test for setting rates is different than a license amendment (“just and reasonable”⁶ versus “in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*”⁷).

To be clear, SEC agrees with the approach the Board undertook in its issuance of the amended Toronto Hydro license, allowing the specific rate to be charged to be included in distributors Tariff of Rates and Charges. This approach consistent with the Board’s statement in its letter about the application of Section 2.11.7 of the *Filing Requirements* as it relates to the pole attachment rate. There is no reason that the rate for wireline pole attachments should be treated any differently than any other distribution rate, or specific service charge.

All of which is respectfully submitted.

Yours very truly,
Jay Shepherd P.C.

Original signed by

Mark Rubenstein

cc: Wayne McNally, SEC (by email)

⁶ *Ontario Energy Board Act, 1998*, section 78(3)

⁷ *Ibid.*, section 74(1)(2)