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January 27, 2016

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
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Dear Ms. Walli

RE: EB-2015-0141 - Motion for Review and Variance of Decision: EB-2013-0416/EB-2014-0247

We are in receipt of the correspondence of counsel for the Carriers of January 26, 2016. The Carriers are once again objecting to the hearing of any evidence pertaining to the determination of the Pole Access Charge for Hydro One Networks that has not been put forward by them. The grounds for such exclusion are based on their theory developed from the principles of res judicata. The basis for their theory arises from the fact that the intervening parties were also parties to the Board proceedings that set the rate now disputed by the Carriers. We would note that it is somewhat ironic that the Carriers seek relief on the grounds of res judicata while seeking to re-litigate the same issue that was determined by Procedural Order No. 6 of January 11, 2016 herein. That Order determined that supplementary evidence filed by Hydro One may be relevant to the setting of the Pole Access Charge at a rate that is just and reasonable.

In any event, the Carriers have now decided that : (1) In any rate review of pole access charges, it is only their evidence of November 20, 2015 that is relevant to that exercise (2) In this current rate review the parties should be bound by any positions on the rate that were advanced or implicit by the previous evidentiary record.

The Carriers' theories concerning the proper evidentiary motion record going forward are of fairly recent vintage, as their motion of July 20, 2015 sought a setting aside of the portion of Decision EB 2013-0416/EB2014-0247 that set the Pole Attachment Rate and a **full hearing de novo** in respect of

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Hydro One's application to increase the Pole Attachment Rate. It also included a request to allow intervenors to file interrogatories on additional evidence to be submitted by Hydro One, to file new evidence, to ask interrogatories of the carriers, followed by a settlement conference and, if necessary an oral hearing. The motion itself was bereft of any mention of the now supposedly controlling issue of vegetation management, and was based on the lack of notice that the Carriers alleged for the impugned rate change.

The Board in Procedural Order 3 herein reiterated that the purpose of the motion would be a hearing "to fix the final Pole Access Charge" and noted:

> The evidence and submissions in this motion should therefore focus on whether Hydro One's proposed increase to the Pole Access Charge is just and reasonable, rather than on the adequacy of the notice of the proposed increase, which was the principal issue in the Carriers' successful application for leave.

The Board did not limit the review to the question of whether or not a correction to the pole access rate should take place based on the Carriers' objections that were, of course, yet to be advanced. The Carriers, in essence, got their request for hearing de novo on the reasonableness of the Pole Access Rate. As their correspondence of January 7, 2016, and January 26, 2016 indicates, faced with the full evidentiary record that they once sought, the Carriers now seek something less.

The concept that intervening parties representing ratepayers are stopped from advocating for just and reasonable rates based upon new evidence presented in a review of a rate order is incongruent with regulatory law and practice. The importance of the Board's role in setting just and reasonable rates was recently emphasized by the Supreme Court of Canada[1]:

> In order to ensure the balance between utilities' and consumers' interests is struck, just and reasonable rates must be those that ensure consumers are paying what the Board expects it to cost to efficiently provide the services they receive, taking account of both operating and capital costs. In that way, consumers may be assured that, overall, they are paying no more than what is necessary for the service they receive, and utilities may be assured of an opportunity to earn a fair return for providing those services.

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[1] *Ontario Energy Board v. Ontario Power Generation Inc* [2015] S.C.J. No. 44; [2015] A.C.S. no 44; 2015 SCC 44; 2015 CSC 44; 388 D.L.R. (4th) 540

To suggest that the Board's balancing of interests is limited for consumers or their representatives upon any review of rates, or charges that affect rates, advances a premise that cannot be reconciled with the language or purpose of governing legislation. The relief requested by the Carriers sacrifices that required balance, as well as the public interest, in order to obtain an advantage for just one set of stakeholders. We would request that the Carriers' request be once again rejected.

Yours truly,

Michael Janigan
Counsel for VECC

Cc: All Parties

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