Canadian Electricity Association | Association canadienne de l'électricité

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Mr. Claude Doucet, Secretary General
Canadian Radio-television and Telecommunications Commission
Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Québec J8X 4B1

19 January, 2021

RE: Telecom Notice of Consultation CRTC 2020-366: Response to intervenors regarding potential regulatory measures to make access to poles owned by Canadian carriers more efficient

Dear Mr. Doucet,

1. Founded in 1891, the Canadian Electricity Association (CEA) is the voice of more than 40 Canadian electrical utilities. CEA members include Generation, Transmission, and Distribution companies from all provinces and territories.

2. CEA members stress the criticality of the current legislative framework regulating utility pole access and rates remaining under the authority of provincial and territorial utility regulators. These bodies are unique in terms of possessing important insights into regional and local circumstances. Moreover, these bodies are the appropriate authorities to oversee the safe, secure, reliable and equitable use of electrical structures.

3. Please find below CEA's responses to the intervenors' initial comments with this consultation.

Support Structure Tariffs

4. If in fact the support structure access rates and make-ready costs are based on cost recovery (as they are in the electric utility industry) and that these two cost components are symbiotic, sub-cost components (such as certain types of maintenance) could be moved between the two but not beyond their joined boundaries. Could one pay for any and all make-ready costs in the access rate? Yes, but the access rate would increase and vise versa.

5. The question then becomes should the applicant pay (e.g. work that exclusively benefits the additional user) or should all costs be socialized to all attachers? The approach taken by the electrical industry strikes the correct balance between these two cost components. Each stakeholder will have a different perspective which would change that balance between these cost components. For both 'make-ready' and access rates to be pushed artificially low to incent a particular activity would mean that funding would be coming from somewhere else. If from a policy perspective these cost components are not recovered from their direct activity, and if they are deemed to be detrimental to improving telecommunication deployment, other policies can be enacted by governmental or other non-utility entities to address the funding gap. This is why CEA recommended to the Commission in the CRTC

TNC 2019-406 consultation that broadband funding opportunities allow make-ready costs as eligible expenses.

6. In CEA's initial comments to the CRTC TNC 2020-366 consultation, we stated that:

"CEA's position is and remains that electrical utility members are enthusiastic partners in the rollout of telecommunications services so long as the integrity of the electrical grid is not adversely affected, and electricity customers do not cross subsidize telecom customers."

Working under these guiding principles, CEA members look forward to continuing our work with Canadian telecommunications companies.

7. From the initial comments for this CRTC consultation, Rogers proposed surprisingly high presumptive penalties for failures to meet "timelines", advanced notice of structure "abandonment" or "illegitimate" denials with access to ILEC support structures. The electrical utilities have experienced many delays from both the ILECs and CLECs (see CEA's initial comments submission for the CRTC TNC 2019-406 consultation) which could deserve high presumptive penalties as its impacts our ability to plan and execute work for our customers, but rather, we are only asking for better cooperation. From our experience cooperation between utilities, telecoms, municipalities etc. is the best and fastest way to deploy telecommunications because penalties ultimately flow to the customer.

8. In response to comments by Rogers pertaining to permit denials, as noted in CEA's initial comments to CRTC TNC 2020-366 consultation,

"CEA members rarely deny permit requests and utilities endeavour to work with Telecoms to find viable solutions (e.g. taller or stronger pole or equipment re-arrangement)...

CEA members do provide timely [and sound] reason(s) for denial therefore, new reporting requirements should not extend to these assets. We note that there appears to be competitive blocking occurring with large telecoms resulting in delayed access for other attachers; therefore, reporting requirements may increase accountability and transparency."

Make-ready work

9. With the initial comments of this CRTC consultation, several telecoms suggested the application of regulatory shot clocks with consequences to improve the timing with permit applications and make-ready work. As the CEA and ILECs noted in the CRTC TNC 2019-406 consultation, there are many touch points, approvals, and conditions required outside the pole owner's control which can vary the timing with permitting and make-ready work. As part of the CEA submission in the CRTC TNC 2019-406 consultation, we acknowledged a potential shot clock approach but with reasonable conditions:

"only as best practise guidelines for turn around times and only if they are reciprocal and reasonable such that both electrical utilities and telecoms see direct operational benefits. CEA in our original submission noted that one of several shot clocks for telecoms would include the timely removal, transfer, consolidation, or relocation of telecommunication equipment. It would also be necessary for each provincial/territorial electrical utility regulatory authority to approve such shot clocks. The notion of shot clocks to complete work can only be used as a guideline because the timeframes associated with

completion of any work requirements will vary with circumstances, as noted above. The onus to complete work within fixed timeframes is good in theory but sometimes difficult to achieve in practice; therefore, any guidelines established must recognize this"

Responsibility is between the support structure owner and the applicants/attachers rather than the one way approach suggested by some telecoms. Open and cooperative dialogue between the parties could produce better results than a finger pointing exercise that may result from a hard shot clock environment which could lead to reliability and safety issues due to rushed timelines.

10. Several telecoms identified a possible "simple" One Touch Make Ready (a.k.a. simple OTMR or simple make-ready work) approach to help the applicant with access timing to support structures. Bell Canada also noted possible changes to handle risk and liability issues with such an approach. As part of the CEA initial comments submission in this CRTC TNC 2020-366 consultation, we stated that:

"CEA members believe the pole owners must maintain their rights to manage all activities associated with their assets regardless of whether a qualified engineer has been engaged to submit the permit application. As electrical infrastructure has significant safety and reliability considerations, we do not and cannot support any party not authorized by the utility, to perform any preparatory make-ready work on electric utility-owned poles."

11. Once the permit has been approved by the pole owner, the electrical utilities are not adverse to "simple" OTMR work (i.e. minor adjustments / rearrangements of telecom equipment in the communications space) arranged between the telecoms with their duly qualified contractors.

12. Bell Canada noted that in their submission that Hydro Quebec is exploring the possibility of "complex" OTMR work (i.e. work on electrical equipment and/or work in the electrical space) by others. Hydro Quebec has reviewed this option and rejected it to ensure the reliability of its system for its customers and the safety of workers and the public.

13. EORN noted in their initial comments submission that Hydro One had them fund pole replacements as part of make-ready work for EORN's network expansion. EORN felt that they should not have funded the replacement for some of the older poles. Rural poles that are 30 to 40 years old may still meet the standard-of-the-day but do not have the spare capacity required for additional attachments today, so the health condition of the pole is not the sole determinant to trigger its replacement for make-ready work.

14. CFC suggested in their initial comments submission that they are unfairly paying some of the costs with Hydro One restricted insulators as compared to the ILEC. Certain types of insulators require greater care due to potential breakage or failure caused by particular construction activities when additional attachments are affixed to the pole. This work includes attaching new strand and cable as well as over lashing to existing strand. The insulators designated as 'restricted' require replacement or an electrical outage must be arranged before work on the pole can begin to ensure worker and public safety. As identified in our joint use agreement response below, the costing arrangements with Parity agreements are cost neutral, and as such, the ILEC is providing funding through in-kind resources and capacity.

15. As part of the CEA submission in the CRTC TNC 2019-406 consultation, we identified potential gains for improved support structure access with a centralized permitting database, mapping, and an on-going utility coordinating committee (UCC) approach. Working in a utility coordinating committee (UCC) resolves many issues and improves communications between the parties. From time to time within

UCCs, disputes arise and require serious consideration by their members but resolution can often be found.

16. Many telecoms, through their submissions, have advocated for an expedited CRTC dispute resolution process. This may lead to parties not trying to resolve issues per contractual agreement with the utility but rather jumping to a new CRTC quick resolution process. As noted by Rogers (CRTC TNC 2020-306 initial comments – Appendix D), they are recommending the ability to jump directly to a CRTC quick resolution process before giving an honest effort to resolving it themselves.

17. A CRTC dispute resolution process, as the CRTC does not have jurisdiction over electrical utilities, would only apply to telecom owned support structures and would thus be limited in its effectiveness. CEA recommends that a more holistic and valuable solution is for disputing parties to exercise full due diligence and attempt collaborative solutions before moving to any external resolution process.

18. From the initial comments with this CRTC consultation, several telecoms have requested that a detailed cost estimate breakdown be provided from the group developing the workplan for the proposed make-ready work, and in some submissions, even a separate detailed breakdown for each pole. From an electrical industry perspective, we are not sure what is the expectations or definition of a detailed cost breakdown from these submissions. For example, the Ontario Energy Board's (OEB) Distribution System Code (s 3.2.9) requires that the electrical distributor provide the requesting customer a cost estimate breakdown by project into the following summarized categories for certain contributed capital expansion projects as follows:

    i. labour (including design, engineering and construction);
    ii. materials;
    iii. equipment; and
    iv. financial overhead (including administration burden);

    Also, as good practice for time and material estimates, a cost estimate tolerance (e.g. order of magnitude vs. feasibility vs. preliminary …) is typically provided and refined as more project information is realized. This approach has been successfully applied for decades with commercial and residential developers having projects from thousands to millions of dollars. One of the hallmarks of good project management is to routinely update the client as more project information is realized that changes the time, cost, and/or scope estimates.

Spare capacity

19. As pole owners, CEA members reserve capacity for their electrical equipment and their telecommunication type equipment that supports their electrical systems (see CEA's response to the CRTC TNC 2019-406 RFI). Several telecoms have suggested a short 'use-it-or-loose-it' timing horizon for reserved capacity. Electrical utilities plan for many years, sometimes decades, out with their system rebuilds and expansion to ensure stable and robust systems with capacity for their customers. From an electrical industry perspective, we are continually surprised that some telecoms (both ILECs and CLECs) are so guarded about their deployment plans and changes which makes everyone's job more difficult with support structure management and spare capacity planning. It is critical that the electric utilities be engaged early in the planning process to assess viability and informed about any changes to deployment plans to ensure resources are available to support timely delivery of make ready associated to the electrical infrastructure.

20. It was noted by some telecoms that rural poles have less spare capacity than urban and suburban poles. As identified in our make-ready response above, multiple telecom attachments in rural areas is a relatively recent activity with respect to the life span of a pole. Years ago, many rural poles were designed and installed for none, or only one telecom attachment. With rural broadband deployment by other groups, more make-ready work is required to provide the requested spare capacity for these new projects. Here we see a role for federal funding as pole upgrades via make-ready work will allow expanded broadband connectivity.

Joint-use agreements

21. It is interesting to note that several telecoms identified some processes and decisions from the Federal Communications Commission (FCC) approach to costing, make-ready work, and shot clocks. When looking at other examples, we need to be mindful of the give and take with these other systems rather than choosing only their self-serving elements. For example, the FCC approach also allows reverse pre-emptive rights which provides individual states and other groups the legislative authority to regulate pole attachment terms and conditions themselves rather than having the FCC oversight.

22. Shaw and Rogers noted that select electrical utilities in Alberta and New Brunswick, as pole owners, have their telecom applications managed by the local ILECs (i.e. agent). Although the ILEC manages third party applications, all applications requiring electrical make-ready are reviewed by the electrical utility on a first come first served basis. The electrical utility works with their agent to ensure that all applications are processed in a fair and timely manner. Where the agent is an ILEC, the ILEC's applications are not prioritized above others by the electrical utility. The contractual relationship and processes in place with these agents also ensures the integrity of the electrical system and safety to the public. The application timelines with the pole owner are also driven by the quality of the submission from the applicant in addition to size of the application, number of assets affected, and work required on the existing system to accommodate the applicants attachment.

23. Telus and other telecoms still represented that the OEB attachment rates are unfair. This is an issue larger than Ontario as several provincial electrical utilities (BC, SK, & PEI) have recently refreshed their attachment rates using the OEB model as a guide. CEA contends that the OEB process is a credible method to objectively determine attachment costs in the electrical environment. To provide some context to this cost based rate setting process, it should be noted the strong participation by the CLECs over the past two decades was critical to the OEB's decision. To provide further clarity and certainty to the original 2005 OEB methodology and the recent 2015 custom joint use wireline attachment rates in Ontario, the OEB initiated a wireline pole attachment working group (PAWG) in 2016 to further refine the Ontario wireline attachment methodology and the provincial rate. During this two year consultation, the OEB engaged a nationally respected telecommunications policy and economic consultant to assist with research and the intervenors (Ontario electrical utilities, CLECs, CEA, and several public intervenors). Throughout this consultation, the CLECs and the electrical utilities actively participated in this wireline review process which resulted in the OEB report (Wireline Pole Attachment Charges – March 2018) for licensed joint use arrangements (rather than the Parity or Joint Ownership arrangements). PIAC noted that the OEB process and decisions have already been tested multiple times at provincial court and were upheld as fair and in the best interest of the public. CEA also noted in its

CRTC TNC 2019-406 response submission that there are clear and reasonable differences between the CRTC and the OEB rates.

24. In reviewing some of the initial comments for some of the telecoms, it appears that they may not appreciate how the different types of joint use agreements function (see CEA initial comments to this CRTC TNC 2020-366 consultation: Parity vs. Joint Ownership vs. License). For example, the Hydro One joint use agreement with Bell Canada is a parity agreement. Both parties provide joint use funding to the extend that it is cost neutral which was verified by the OEB in its rate review EB-2015-0304. We ask that the Commission recognize these important distinctions in their analysis of the various comments.

25. As part of the CEA submission in the CRTC TNC 2019-406 consultation, we identified two key elements which directly relate to this CRTC consultation:

"We welcome an open and amicable dialogue with the Commission about support structures and ways to improve the many aspects of their use so long as the primary purpose of electrical infrastructure is respected."

"CEA does not agree with the Commission becoming the regulator because the primary purpose of electrical assets is the safe, reliable and affordable delivery of electricity to our customers; moreover, oversight by the Commission would not maintain or improve these electrical requirements."

As such, CEA supports the PIAC's position that the CRTC does not have the authority to regulate electrical utility poles, that the CRTC would have a difficult time winning a constitutional challenge about regulating the electrical support structures, and that the CRTC would best be able to serve Canadians by working with the provincial and territorial regulators to find solutions that maximally serve the public good.

Conclusion

26. To conclude, CEA appreciates the opportunity to participate in this consultative process. CEA members continue to work with our telecommunication partners with a view to assisting the expansion of broadband networks in Canada and thereby better serving both telecommunications and electricity customers in a fair and equitable manner.

Yours sincerely,

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Chair, CEA Joint Use Practice & Policy Committee

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