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

18 December, 2020

RE: Telecom Notice of Consultation CRTC 2020-366, Call for comments 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 electrical Generation, Transmission, and Distribution companies from all provinces and territories.

2. Please find below CEA's responses to the CRTC's (the Commission) call for comments dated October 30, 2020.

3. CEA agrees with the Commission that discriminatory practices for access to telecommunication-owned poles should be eliminated and access timing improved.

4. Although not regulated by CRTC support structure tariffs, CEA members understand the complexities telecommunications carriers (Telecoms) are facing regarding the delivery of the universal service objective for Canadians in urban, rural, and remote areas to have access to voice and broadband Internet services on both fixed and mobile wireless networks.

5. CEA members are well positioned to be part of this solution and are enthusiastic partners in the rollout of telecommunications services so long as the integrity of the electrical grid is not negatively affected; worker and public safety are not compromised; and electrical customers do not cross-subsidize telecom companies.

6. Working under these guiding principles, CEA members have long-standing relationships with Canadian Telecoms through various types of joint use agreements which include joint ownership, parity, and license arrangements (see *Appendix A*). A 'one size fits all' solution would not be appropriate. Understanding the complexities the Telecoms face, some of our utility members may consider reviewing certain terms within their current joint use agreements in order to ensure timely and non-discriminatory access.

7. All joint use agreements that we are aware of with CEA members have dispute resolution processes in place with escalator provisions. The parties endeavor to resolve issues between themselves, with the ability to escalate through senior management or joint use committees in order to come to a resolution in an expedient manner. If necessary and as a last resort, the traditional formal dispute resolution processes of mediation, provincial regulator intervention, arbitration, or court proceedings continue to be available.

8. The work requirements of all parties are important, and good communication and co-ordination is required. Telecoms tend to be protective, for competitive reasons, about their rollout plans. However, it is critical that electric utilities be advised of any rollout plans impacting their infrastructure as early as possible. Telecoms also frequently alter their plans, and have even moved from jurisdiction to jurisdiction as economic viability changes. This is time consuming and very inefficient from the perspective of a support structure owner.

9. CEA members also believe the current access requirements should extend to include wireless attachment to telecommunication poles.

CEA responses to questions:

Support structure tariffs

Q1. Identify aspect(s) of the support structure service tariffs of ILECs or SILECs that, if modified, would have the greatest impact on timely and competitive access to telecommunications poles. More specifically:

(i) Identify the specific section(s) of the tariffs.

10. CEA members with joint use agreements that govern utility poles are not subject to CRTC support structure tariffs; therefore, CEA has no comment on the telecom tariffs. However, members do understand the complexities due to different levels of market power between competing entities. As such, some of our members are working with ILECs and CLECs to continue finding opportunities to improve make-ready processes and timelines to support broadband connectivity to remote and rural communities. As we have stated above, early and effective communication/co-ordination has led to positive experiences of both the electrical utilities and Telecoms.

(ii) Demonstrate, with examples, how the section(s) identified contributes to untimely and/or costly access to telecommunications poles.

11. The CEA member-owned utility poles that have joint use agreements with Telecoms, which includes one joint ownership agreement, are not subject to CRTC support structure tariffs; however, CEA members view that the original tariffs do not reflect the current and rapidly changing telecommunications landscape and that previous levels of service are not acceptable by today's standards.

(iii) Propose modifications to the sections identified in the answer to Q1 (i) above.

12. The CEA members' opinion is that clarifications as well as amendments to service level expectations and reporting based on tariff requirements may increase transparency and improve timely and non-discriminatory access to telecommunication poles.

(iv) Explain how the proposed modifications would contribute to more efficient access to telecommunications poles.

13. CEA members believe that restating service level expectations and requirements for ILECs, SILECs, and CLECs may reduce ongoing disputes in this competitive environment and will allow for more

efficient access.

Make-ready work

Q2. Should there be a maximum amount of time within which owners of telecommunications poles must complete make-ready work? If so, suggest what the maximum amount of time should be and when that time period should start. If not, provide rationale.

14. Although most CEA members' joint use agreements utilize reasonable efforts for make-ready work to be completed, members do understand that there are complexities associated with make-ready work completion that impact timelines and members are taking steps to collaborate with the Telecoms to increase efficiencies, enable more timely access to poles, and ensure transparency.

15. CEA members will not comment on make-ready timelines for telecommunications poles; however, they do not believe there should be a maximum time to complete make-ready work on power poles as there are a number of factors to be considered including, but not limited to, quality of submissions from Telecoms' scope of work, geographical location, road authority or property owner permissions, and work coordination under joint use arrangements.

16. In the CEA's comments to CRTC 2019-406-1, we outlined that the timely and efficient rollout of any telecommunications network requires the co-operation of many players. Incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), electric utilities, property owners, municipalities, provincial governments, and federal regulators (both the CRTC and the Ministry of Industry, Science, Innovation and Development or ISED) are the key and influential groups. Electrical support structures are important parts of these deployments since they support many wireline and forthcoming wireless attachments. However, the primary purpose of the electrical support structures has always been and continues to be the safe, reliable and affordable delivery of electricity and as such the regulations that govern them are formed by the confluence of many different bodies including the local road authority, the county/municipality, and the province/territory.

Q3. Should parties requesting access to telecommunications poles be permitted to commence preparatory work on the poles if the owner does not meet a relevant timeline established in the support structure service tariff (assuming that all permit applications include capacity plans prepared by a duly authorized engineer which validate the safety of the proposed installations)? Provide rationale.

17. 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. <u>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</u>.

18. At first glance, it may appear easy to engage an authorized engineer but the pole owner must be intimately involved in its asset planning and management. CEA members are accountable for the safety and reliability of their electrical utility infrastructure including their poles. To preserve accountability, it would be impractical for multiple parties to plan, design, install, maintain, and manage the same poles without undermining the safety and reliability requirements.

Q4. Should all occupants of a telecommunications pole be responsible for the costs associated with the maintenance required to keep the pole at its optimum capacity? Provide rationale.

19. As part of the CEA submission in the CRTC 2019-406-1 consultation, it was noted that all provincially regulated utilities must follow strict safety and reliability measures and, as a result, all electrical utility pole owners have robust maintenance and asset replacement programs. With respect to these maintenance costs, the existing pole maintenance is the initial responsibility of the asset owner. These aggregated annual maintenance and end-of-life asset replacement costs then flow into the joint use attachment rate through the indirect cost rate components which are charged to attachers through the annual pole rental fees.

Q5. When a telecommunications pole requires repair or replacement, should all current occupants, as well as any party requesting access that necessitates an upgrade, be required to share the costs? Provide rationale.

20. As noted in our response to Question #4, maintenance, including repair costs, differs from relocation of existing equipment to make space on the pole for new attachments or make-ready work required to place a taller/stronger pole to provide more spare capacity.

21. Typically with license agreements on electrical utility poles (which differs from parity or joint ownership agreements), the permit applicant pays for all make-ready work that benefits the permit applicant such as relocations of electrical equipment to create space on the pole for the said applicant(s) to accommodate the telecom request. If a pole replacement is required to accommodate a Telecom request prior to the end of its useful life, then the make-ready cost is typically borne by the said applicant(s), not by electrical customers.

Spare capacity

Q6. When access to telecommunications poles is denied due to a lack of spare capacity, should the pole owner be required to provide the party requesting access with supporting documentation, stating the current load on the poles, the amount of capacity reserved by the owner for its own future use, and giving the date by which the owner intends to use that capacity? Provide rationale.

22. CEA believes we have already provided a viable solution in our submission to CRTC 2019-406-1 which recommended that all rural and remote broadband funding be eligible to claim make-ready fees. There is a defined telecommunication space on most utility poles that facilitates Telecoms to attach. The current business practice is that the majority of CEA members endeavor to install a 24 inch (600 mm) vertical communication space on their new poles which typically provides capacity for three parallel vertical support strands (as per a typical model 40' or 45' electrical joint use pole).

23. As mentioned in our introduction, CEA members are well positioned to be part of this solution and are enthusiastic partners in the rollout of telecommunications services. 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). If permit requests are denied, they are for sound **non-**

discriminatory reasons such as:

- Technical and Safety issues – exclusion support structures (*Appendix B*) including complex poles
- Operational reasons – pole relocations or removals required such as a request from the applicable road authority
- Reserved capacity – future electrical requirements
- Security of the electrical system – RF interference

24. CEA members do provide timely 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 some large Telecoms resulting in delayed access for other attachers; therefore, reporting requirements may increase accountability and transparency.

Q7. Should there be a limit on the amount of time for which a pole owner can reserve spare capacity? If so, provide, with rationale, suggestions on the maximum amount. If not, provide rationale.

25. For telecommunication-owned poles, the CRTC may want to consider adding reporting requirements to increase transparency in order to prevent competitive blocking.

Q8. Should there be a limit on the amount of capacity a pole owner can reserve for future use? If so, provide, with rationale, suggestions on the maximum amount of capacity to be reserved. If not, provide rationale.

26. As part of the CEA submission in the CRTC 2019-406-1 consultation, we identified that reserved and spare capacity can also apply to support strands.

27. The spare capacity of a pole is not just an ILEC and SILEC issue. Competitive blocking on electrical utility poles currently does occur by Telecoms resulting in delayed access for other attachers. There are examples of some CLECs that have support strand(s) on electrical utility poles where they are not using all the capacity and have denied, delayed, or blocked other carriers from over-lashing. This competitive practice on a pole (that is not partly or wholly owned by the CLEC essentially creates a 'reverse monopoly' on the pole) can frustrate the pole owner, the right-of-way custodian, and other Telecoms.

Joint-use agreements

Q9. How can the Commission, within the limit of its jurisdiction, best minimize the challenges that parties face when trying to access poles that are subject to a joint-use agreement?

28. The CRTC already has the necessary regulatory powers to significantly improve rural and remote connectivity through such measures as requiring CLECs to accept over-lashing by other Telecoms and ILECs to accept non-ILEC wireless equipment. In the CEA submissions to CRTC-2019-406-1, we provided these recommendations and others relating to regulatory changes that the Commission could make to improve access conditions.

29. CEA members believe that the pole owners (telecommunication and electrical utilities) and Regulators (CRTC and provincial) should provide increased awareness around the different types of joint use

agreements, processes, and standards that are in place to support the Telecoms. This awareness and common understanding would allow the electrical utility to fully resolve issues.

30. There are three main types of joint use agreements (see Appendix A) used by electrical utilities: parity, joint ownership, and license. With both the parity and the license agreements, there is only one owner of each pole; however, there are many complexities as a result of ILEC involvement where they manage part of the process under the current terms and conditions of their agreements.

31. Joint ownership arrangements typically have defined vertical sections of the pole which are owned and managed by different parties. Managing the two separate communication spaces adds a layer of complexity and requires active participation and coordination to ensure timely completion of make-ready work.

32. CEA members are committed to working with the Telecoms to improve make-ready processes to ensure efficient and timely access.

Q10. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should this authority be limited to the pole space that is assigned exclusively for the attachment of communication facilities? Provide rationale.

33. Power poles have functional divisions along the vertical pole space (i.e. from the bottom up: buried space, ground clearance space, communication space, safety separation space, and power space). The Telecoms attach to both the communication space and ground clearance space of the pole (e.g. cable dips & equipment boxes). There are also other non-Telecom parties that use space on the pole for other equipment including traffic lights, street lights, rectifiers, and decorative attachments (e.g. banners).

34. Telecoms who are authorized by way of a joint use agreement to approve third party attachments to poles owned by an electrical utility should only be limited to granting access to the communication space for telecom purposes, with non-discriminatory practices.

Q11. When a Canadian carrier is authorized by way of a joint-use agreement to approve third-party attachments to poles owned by a utility company, should all obligations relating to the review, approval, or denial of the requests be the same as those in the support structure tariffs for poles owned by the carrier? Provide rationale.

35. As noted in our Question # 3 response, electrical utilities have higher safety and reliability requirements, therefore no structural or additional loading work can proceed with poles that have electrical equipment unless the responsible electrical utility provides appropriate authorization of the work. As noted in our Question # 6 response, electrical utilities strive to accommodate new permit applications wherever possible, but there may be sound **non-discriminatory reasons** for any attachment denials and the utilities do provide those reasons to the applicants for such denials.

36. As part of the CEA submission in the CRTC 2019-406-1 consultation, the CEA notes that the provincial and territorial energy regulators are the entities best able to ensure the integrity of the electrical grid and are best equipped to provide requirements on pole access.

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Yours sincerely,

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Appendix A - Typical Joint Use Agreements

There are several common types of joint use model agreements used by electrical utilities:

Parity agreement means that any given support structure only has one owner but there are two or more arm-length entities that own support structures and are co-dependent on each other's support structures for each of their support structure networks. The joint use of each other's support structures, typically for wireline on poles, is usually in the ratio where installation, maintenance, and administration costs of the agreed-to basic support structure covers each group's equal use benefit. For example, several electrical utilities have a 60% / 40% sharing ratio with the incumbent Telecom where the electrical utility provides 60% and the incumbent Telecom provides 40% of the basic poles which balances the total basic pole costs (i.e. cost neutral) so no annual additional fees are assigned to the other owner (other than make-ready costs). Any costs above the defined basic support structure or the intended use beyond of the agreement is an additional charge to the owner requesting the work or additional capacity. Where an owner has their work done to their support structure by the other owner, the owner doing the work acts as the contractor and charges the requesting owner for the work.

Joint Ownership agreement means that any given support structure is co-owned by two entities. These agreements include provisions for management and utilization of space on the poles for electric system and telecommunication purposes with agreed upon cost sharing terms for replacement and maintenance activities. There can be more than one distinct communication space on the pole where one or more joint owner manages the requests associated to third party telecom attachments. As a result, Telecom carriers can have access to one or more communication spaces which requires communication and coordination between joint owners.

License agreement means that the support structures are owned by only one entity, and the other parties requesting to attach typically do not own support structures to offer in any form of a reciprocal agreement (i.e. Parity or Joint Ownership agreement). There are make-ready costs and annual fees for attachments with the requesting attaching party while meeting the safety, technical, and operational standards required when dealing with electrical facilities. This type of agreement is typical between electrical utilities and competitive Telecoms but also used with incumbent Telecoms when the intended use is beyond the reciprocal sharing agreement with Parity and Joint Ownership arrangements. In some areas of Canada, this agreement forms the basis of a reciprocal joint use arrangement between the electrical utilities and the incumbent telecom for access to each other's basic support structures rather than using Parity or Joint Ownership agreements.

Appendix B - Definitions, Abbreviations, and Acronyms

Exclusion Support Structure means a support structure that has been pre-identified by the owner not for new or additional specific equipment from others. For example, an Exclusion pole having certain existing equipment, a certain location, specific plans, and/or certain strength/height conditions may not be used for an attachment. Exclusion support structures may be permanently excluded or temporary until a specific requirement(s) is met, such as, a near-term pole removal or relocation for road widening.

Make-ready represent the planned work that the support structure owner must do in order to prepare the support structure(s) for a requested attachment or alteration in full conformance with the applicable safety codes, engineering standards, regulations, and by-laws. The associated onetime charges are paid by the attacher in a licensed agreement (versus a parity or joint ownership agreement).

Reserved Capacity means the unused capacity of the support structure required by the support structure owner to meet its current and future service requirements.

Spare Capacity means the difference between the unused capacity of the support structure and the reserved capacity required by the support structure owner to meet its current and future service requirements. Unused capacity is the difference between the capacity of the support structure based upon its design limitations and other pre-identified restrictions (e.g. Exclusion support structure, EMF, aesthetics, …) and the reserved capacity used by the support structure owner to meet its current and future service requirements plus any capacity previously allocated to others.

Support Strand is a steel cable or similarly strong material attached to a pole by a bolt and clamp type connection. This steel cable is used to support weaker jacketed cables in the air and minimize the conductor sag between poles by typically employing an over-lashing connection technique.