



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

ORDER

EB-2020-0288

Wireline Pole Attachment Charge

BY DELEGATION, BEFORE: Brian Hewson
Vice President, Consumer Policy &
Industry Performance

December 10, 2020

BACKGROUND AND SUMMARY

On March 22, 2018, the Ontario Energy Board (OEB) issued the [Report of the Ontario Energy Board: Wireline Pole Attachment Charges](#) (Report) which established a province-wide charge to be applied by licensed electricity distributors for wireline telecom attachments to their distribution poles.

The Report set the charge at \$43.63 annually per attacher, effective January 1, 2019, to be adjusted each year by the OEB's inflation factor. (As a transitional measure, the Report set the charge for September 1, 2018 to December 31, 2018 at \$28.09.) As a result of the inflationary adjustment for January 1, 2020, the charge is currently \$44.50.¹

Several telecom carriers appealed the Report to the Divisional Court. On November 2, 2020, the Court dismissed the appeal.² Although the Court concluded that the process for updating the charge was fair, it also identified that there should have been an Order embodying the new charge: "No submission was made, nor would it be reasonable to propose that the increase in the province wide charge is rendered a nullity by this omission, but an Order should be issued."³

The OEB is therefore issuing this Order, which embodies the pole attachment charge that was established by the OEB in the Report and subsequently adjusted for January 1, 2019 and January 1, 2020. No action needs to be taken by distributors to implement this aspect of the Order, which simply addresses the omission identified by the Court.

This Order also addresses the inflationary adjustment to the charge for 2021. The adjustment is normally a mechanistic exercise (i.e., simply a matter of multiplying the charge by the inflation factor for the following year). This year, however, there is an additional consideration. On October 1, 2020, the Minister of Energy, Northern Development and Mines sent a [mandate letter](#) to the Chair of the OEB's Board of Directors. One of the organizational priorities identified in the mandate letter is to "Consider pole attachment policy in the context of opportunities to better serve areas that are currently underserved."

¹ OEB [letter](#) to distributors, November 28, 2019.

² *Rogers Communications Canada Inc. v. Ontario Energy Board*, 2020 ONSC 6549. The appellants have brought a motion for leave to appeal the Divisional Court's decision to the Court of Appeal for Ontario.

³ *Ibid.*, para. 47.

The OEB is currently considering how to best move forward with this priority and expects to provide more information in the new year. In the meantime, the OEB has determined that the inflationary adjustment for 2021 (which, applying the inflation factor of 2.2% would have resulted in an increase to \$45.48) will be suspended. The current charge of \$44.50 will remain in effect as of January 1, 2021 on an interim basis, until further notice.

This approach will provide the OEB with flexibility to determine the next steps in pursuing the initiative referred to in the mandate letter. In the event that a change to the charge is the outcome, having an interim charge will avoid the need to make more than one update to the charge in the same year, while still allowing distributors an opportunity to true up any material differences in pole attachment revenue in the future. The OEB will consider the need for a variance account in due course if needed following completion of the initiative referred to in the mandate letter.

To be clear, this Order does not affect any distributor that has an approved distributor-specific wireline pole attachment charge other than the province-wide charge that has been set and adjusted in accordance with the Report.

This Order is being issued under delegated authority without a hearing pursuant to section 6 of the *Ontario Energy Board Act, 1998*.

IT IS ORDERED THAT:

1. The province-wide wireline pole attachment charge set by the OEB in the March 22, 2018 *Report of the Ontario Energy Board: Wireline Pole Attachment Charges* and adjusted thereafter is:
 - **\$28.09** per attacher per year per pole, from September 1, 2018 to December 31, 2018
 - **\$43.63** per attacher per year per pole, from January 1, 2019 to December 31, 2019, to be adjusted annually by the OEB-approved inflation factor commencing January 1, 2020
 - **\$44.50** per attacher per year per pole, from January 1, 2020 to December 31, 2020 (as a result of the inflationary adjustment for January 1, 2020)

2. The inflationary adjustment for January 1, 2021 is suspended until further notice. Effective January 1, 2021, the province-wide pole attachment charge will remain **\$44.50** per attacher per year per pole, on an interim basis.

DATED at Toronto December 10, 2020

ONTARIO ENERGY BOARD

Original Signed By

Brian Hewson
Vice President, Consumer Policy & Industry Performance