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June 10, 2011

**Delivered by Email and RESS**

Ms. Kirsten Walli, Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Ste. 2701  
Toronto ON M4P 1E4

Dear Ms. Walli

**Re: Canadian Distributed Antenna Systems Coalition ("CANDAS") Application  
EB-2011-0120 - Cost Awards**

We are counsel to Toronto Hydro-Electric System Limited ("**THESL**"). We herein respond to the submissions of CANDAS dated June 7, 2011 seeking a determination by the Board that: (i) any intervenor costs that the Board approves should be assessed against all licensed electricity distributors in Ontario; and (ii) the Board should award costs directly against THESL in connection with CANDAS' participation in the Application (the "**New Cost Proposal**"). This represents a change to the relief originally requested by CANDAS at paragraph 12.1 of its Application, where it had sought an order of the Board directing THESL to pay the costs of all parties in respect of the CANDAS Application (the "**Original Cost Proposal**"). CANDAS relies on the existence of THESL's August 13, 2010 letter and the Board's decision in EB-2009-0308 in support of both of its cost proposals.

For the reasons that follow, THESL submits that both CANDAS' Original Cost Proposal and the New Cost Proposal are inappropriate and should be rejected by the Board. In making these submissions, THESL has carefully considered the Board's Practice Direction on Cost Awards (the "**Practice Direction**") as well as the Board's prior cost award decisions.

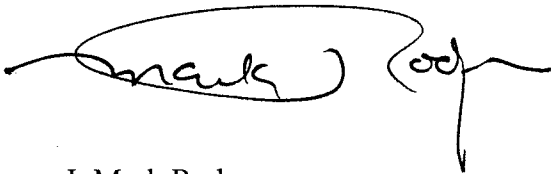
1. Section 3.05(a) of the Board's Practice Direction clearly states that applicants before the Board are not eligible for a cost award. CANDAS is undeniably the applicant in this proceeding, and is therefore ineligible to claim costs pursuant to the Board's Practice Direction.
2. Furthermore THESL filed its letter with the Board on August 13, 2010 explaining in detail its policy on the matter of wireless equipment attachments. In this letter, THESL detailed its position that the CCTA Decision upon which CANDAS relies does not apply to wireless attachments. At no time did the Board raise any concerns with THESL in respect of this policy. THESL would have been open to discussions had any concerns been raised.

3. The Application has been filed by a consortium of private interests, Public Mobile Inc., ExteNet Systems (Canada), Inc. and DAScom Inc., to advance a private, profit seeking, business model that is, essentially, based on a regulatory arbitrage opportunity. These companies seek to profit by attempting to pay an inappropriate rate of \$22.35 per year to attach to LDC poles, which amount is significantly below market and cheaper than both the costs incurred by THESL to facilitate such attachments and the costs of numerous other wireless attachment options already available in the market. As a regulated electricity distributor THESL submits that it has no obligation to facilitate or accommodate the business models of private interests, and that it is not up to LDCs, and ultimately electricity ratepayers, to subsidize the CANDAS group's arbitrage opportunity/business model.
4. LDCs are not exercising any monopoly power in respect of wireless attachments. There are numerous alternatives which are available for wireless attachments, including but not limited to building-top and side-of-building attachments as well as stand-alone structures. There is, in fact, an active competitive market to site and place wireless equipment. The presence of such competitive alternatives undermines any suggestion that an LDC could exert monopoly power. A regulated attachment rate of \$22.35 per year for wireless equipment may in fact seriously undermine the ability of this competitive market to further develop and efficiently operate in Ontario.
5. CANDAS does not represent a public interest that is in any way relevant to the Board's mandate. CANDAS represents a consortium of commercial private interests. The public interest in this proceeding centres around: (i) ensuring that LDCs and electricity ratepayers are not subsidizing a private business model and otherwise undermining a competitive market; (ii) ensuring that the safety and reliability of the distribution system is not compromised; and (iii) ensuring that scarce pole attachment space is appropriately valued and efficiently allocated among numerous competing demands for that very limited space.
6. The CANDAS proposal incorrectly assumes that LDCs, and by extension ratepayers, are required to pay for the costs associated with any and all applications that come before the Board. THESL submits that this is not the case, and that there is no support for this assumption in the Board's Practice Direction. In fact, in Section 92 applications, the Board regularly awards costs against applicants seeking to advance their own private business interests by obtaining leave to construct for transmission lines.
7. The CANDAS Application is in no way analogous to the Board's cost award order in the EB-2009-0308 Compliance Order, which occurred in the context of a compliance proceeding brought against THESL under Section 112.3 of the *Ontario Energy Board Act, 1998*. No compliance proceeding has been initiated against THESL, nor has the Board at any time raised any concerns with THESL about its policy on wireless attachments.

In conclusion, while THESL submits that the CANDAS submissions on costs are without merit and should be rejected by the Board, THESL is reluctantly prepared to shoulder its own costs in this proceeding in light of the Board's established rules on cost eligibility. Otherwise, there is no reason for the Board to depart from its existing practice and the Board should therefore order the Applicant, CANDAS, to pay the costs of the Board and of all eligible interveners.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

A handwritten signature in black ink, appearing to read "Mark Rodger", with a large, loopy flourish at the end.

J. Mark Rodger

Encl.

copy to:      Lawrence Wilde, Pankaj Sardana and Colin McLorg, THESL  
                 Helen T. Newland, CANDAS  
                 Kristi Sebalj, OEB counsel  
                 Intervenors in EB-2011-0120