



EB-2011-0120

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by
Canadian Distributed Antenna Systems Coalition for
certain orders under the *Ontario Energy Board Act*,
1998.

PROCEDURAL ORDER No. 1

The Canadian Distributed Antenna Systems Coalition ("CANDAS") filed an application on behalf of its member companies with the Ontario Energy Board, received on April 25, 2011 seeking the following:

1. Orders under subsections 70(1.1) and 74(1) of the *Ontario Energy Board Act*, 1998 (the "Act"): (i) determining that the Board's RP-2003-0249 Decision and Order dated March 7, 2005 (the "CCTA Order") requires electricity distributors to provide "Canadian carriers", as that term is defined in the *Telecommunications Act*, S.C. 1993, c. 38, with access to electricity distributor's poles for the purpose of attaching wireless equipment, including wireless components of distributed antenna systems ("DAS"); and (ii) directing all licensed electricity distributors to provide access if they are not so doing;
2. in the alternative, an Order under subsection 74(1) of the Act amending the licences of all electricity distributors requiring them to provide Canadian carriers with timely access to the power poles of such distributors for the purpose of attaching wireless equipment, including wireless components of DAS;
3. an interim Order under subsection 21(7) of the Act directing electricity distributors to refrain from adopting, implementing or enforcing, as the case may be, any policy or conduct that denies Canadian carriers timely access to the power poles of such

distributors for purposes of attaching wireless equipment, including DAS, pending disposition of the applicant's requests for final orders;

4. an interim Order under subsection 21(7) of the Act directing Toronto Hydro Energy Services Inc. ("THESI") to identify THESI's light standards, poles or other structures classified as distribution assets in accordance with the Board's EB-2009-0180 Decision and Order issued on February 11, 2010 and to refrain from removing, selling or disposing of any DAS facilities currently affixed to any of the foregoing, pending disposition of the applicant's requests for final orders;
5. an Order under subsections 74(1) and 70(2)(c) of the Act amending the licences of all licensed electricity distributors requiring them to include, in their Conditions of Service, the terms and conditions of access to power poles by Canadian carriers, including the terms and conditions of access for the purpose of deploying the wireless and wireline components of DAS, such terms and conditions to provide for, without limitation: commercially reasonable procedures for the timely processing of applications for attachments and the performance of the work required to prepare poles for attachments ("Make Ready Work"); technical requirements that are consistent with applicable safety regulations and standards; and a standard form of licensed occupancy agreement, such agreement to provide for attachment permits with terms of at least 15 years from the date of attachment and for commercially reasonable renewal rights;
6. its costs of this proceeding in a fashion and quantum to be decided by the Board pursuant to section 30 of the Act; and
7. such further and other relief as the Board may consider just and reasonable.

In letters to the Board dated May 3, 2011 and June 7, 2011, CANDAS withdrew its requests for interim relief (i.e., #3 and #4, above).

The Board issued a Notice of Application and Hearing on May 11, 2011. The following parties requested and are granted intervenor status in this proceeding: Canadian Electricity Association ("CEA"), Consumers Council of Canada ("CCC"), Electricity Distributors Association ("EDA"), Energy Probe Research Foundation ("Energy Probe"), Hydro One Networks Inc. ("HONI"), Hydro Ottawa Limited, Newmarket-Tay Power Distribution Limited, PowerStream Inc., Toronto Hydro-Electric System Limited

("THESL"), Veridian Connections, Vulnerable Energy Consumers Coalition ("VECC") and Horizon Utilities Corporation. An intervenor list is attached as Appendix A to this procedural order.

The applicant and CEA, CCC, EDA, Energy Probe, and VECC have applied for cost eligibility. The applicant responded to cost eligibility requests from these parties on June 7, 2011 accepting the requests of VECC, CCC and Energy Probe but opposing the requests of the CEA and EDA stating that no special circumstances have been presented by these groups to support their requests. In support of its own cost eligibility request, the applicant stated that is advancing broad public interest issues in the same fashion as VECC, CCC and Energy Probe in proceedings initiated by regulated utilities. CANDAS has stated that it is seeking to recover its costs directly from THESL whose letter to the Board of August 13, 2010 (Tab 3 of the application) was a major impetus for the application.

On June 10, 2011, THESL responded to CANDAS' submissions stating that the applicant's cost recovery proposal is inappropriate and should be rejected by the Board. THESL stated that according to section 3.05(a) of the Board's Practice Direction on Cost Awards ("Practice Direction"), applicants before the Board are not eligible for a cost award and therefore, CANDAS, as the applicant in this case, is ineligible to claim costs. THESL presented several reasons including that CANDAS does not represent a public interest that is relevant to the Board's mandate. In THESL's view, CANDAS represents a consortium of commercial private interests.

The Board makes the following determinations in accordance with the Practice Direction. Subject to the right of parties to object as described below, the Board has determined that CCC, Energy Probe and VECC are eligible to apply for an award of costs to the extent that they represent the interests of electricity ratepayers. The Board has determined that the EDA and CEA are not eligible for costs as the members of these associations are specifically excluded by the Practice Direction from eligibility for costs and the Board finds that no special circumstances exist in this proceeding that apply to these groups.

Given the nature of the application, the Board is not yet in a position to determine whether the applicant is eligible for an award of costs. As such, the Board will make its determination on this matter at the conclusion of this hearing.

Similarly, the Board is not yet in a position to determine what party or parties shall be assessed the costs of this proceeding. The Board may ultimately determine that costs be borne by one or more of (1) the applicant, (2) one or more of the electricity distributors (i.e. an individual distributor, such as THESL, or a group of distributors) who participate in this proceeding, (3) all licensed electricity distributors in the Province. Therefore, the Board hereby places each of the parties enumerated above on notice that a determination of the party or parties that shall be assessed costs will be made once the Board has heard and considered the record of this proceeding.

The Board therefore grants to the applicant and distributors the right to object to the cost eligibility status of CCC, Energy Probe and VECC. The Board will seek submissions on the issue of cost assessment in this matter in due course.

The following parties requested and are granted observer status in this proceeding: COGECO Cable Inc., Greater Sudbury Hydro Inc., Halton Hills Hydro Inc., Kitchener-Wilmot Hydro Inc., London Hydro Inc., Bluewater Power Distribution Corporation and City of Hamilton. An observer list is attached as Appendix B to this procedural order.

The Board has also determined that it will make provision for the filing of evidence by the applicant and by Board staff and intervenors. The Board has set the schedule for the proceeding up to the conclusion of the interrogatory phase for intervenor and Board staff evidence.

The Board will determine, in due course, whether the applicant's remaining requests for relief will be heard orally or in writing. Please be aware that this procedural order may be amended, and further procedural orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. The applicant's supplementary fact evidence and expert evidence shall be filed with the Board and delivered to all intervenors by **July 26, 2011**.
2. Interrogatories on the applicant's evidence shall be filed with the Board and sent to the applicant and other intervenors by **August 9, 2011**.
3. Responses to interrogatories by the applicant shall be filed with the Board and sent to all intervenors by **August 16, 2011**.

4. Intervenor and Board staff shall file evidence with the Board and send it to the applicant and other intervenors by **August 30, 2011**.
5. Interrogatories on Board staff and intervenor evidence shall be filed with the Board delivered to the applicant and other intervenors by **September 7, 2011**.
6. Responses to interrogatories by Board staff and intervenors shall be filed with the Board and sent to the applicant and other intervenors by **September 14, 2011**.
7. A Settlement Conference will be convened on **Thursday, September 29, 2011**, at 9:30 a.m. with the objective of reaching a settlement among the parties on as many of the issues on the Issues List as possible. The Settlement Conference will be held at 2300 Yonge Street, Toronto in the Board's West Hearing room on the 25th Floor and if needed, may continue until **Friday, September 30, 2011**.
8. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than 4:45 p.m. on **Thursday, October 6, 2011**.
9. If there is no settlement among parties on some or all of the issues, the Board will hold an oral hearing beginning at 9:30 a.m. on **October 13 and 14, 2011** in the Board's North Hearing room on the 25th Floor.
10. All filings to the Board must quote file number EB-2011-0120, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the BoardSec@ontarioenergyboard.ca. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file seven paper copies. If you have submitted through the Board's web portal an e-mail is not required. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, June 13, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A to
Procedural Order No. 1
Canadian Distributed Antenna Systems Coalition
EB-2011-0120
June 13, 2011

**Canadian Distributed Antenna Systems Coalition
EB-2011-0120**

APPLICANT & LIST OF INTERVENORS

June 13, 2011

APPLICANT

Rep. and Address for Service

**Canadian Distributed Antenna
Systems Coalition**

Helen Newland

Barrister & Solicitor
Canadian Distributed Antenna Systems Coalition
#400, Toronto Dominion Centre, 77 King S
Toronto, ON M5X 1B2

Tel: 416-863-4471
Fax: 416-863-4592
Helen.newland@fmc-law.com

APPLICANT COUNSEL

Michael Schafner

Barrister and Solicitor
Fraser Milner Casgrain LLP
1 First Canadian Place, 100 King Street
Toronto ON M5X 1B2

Tel: 416-863-4457
Fax: 416-863-4592
michael.schafner@fmc-law.com

Kathleen Burke

Counsel
Fraser Milner Casgrain LLP
1 First Canadian Place
Toronto ON M5X 1B2
Tel: 416-863-4457
Fax: 416-863-4592
kathleen.burke@fmc-law.com

Canadian Distributed Antenna Systems Coalition
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APPLICANT & LIST OF INTERVENORS

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George Vinyard

Vice President & General Counsel
ExteNet Systems Inc.

3030 Warrenville Road
Suite 340

Lisle IL 60532

Tel: 630-505-3842

Fax: Not Provided

gvinyard@extenetsystems.com

INTERVENORS

**Canadian Electricity
Association**

Rep. and Address for Service

Peter Ruby

Barristers & Solicitors
Goodmans LLP

250 Yonge Street, Suite 2400

Toronto ON M5B 2M6

Tel: 416-597-4184

Fax: 416-979-1234

pruby@goodmans.ca

**Consumers Council of
Canada**

Julie Girvan

Consultant
Consumers Council of Canada

62 Hillsdale Ave. East

Toronto ON M4S 1T5

Tel: 416-322-7936

Fax: 416-322-9703

jgirvan@ca.inter.net

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APPLICANT & LIST OF INTERVENORS

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**Consumers Council of
Canada**

Robert B. Warren

Counsel
WeirFoulds LLP
The Exchange Tower
Suite 1600, P.O. Box 480
130 King Street West
Toronto ON M5X 1J5
Tel: 416-947-5075
Fax: 416-365-1876
rwarren@weirfoulds.com

**Electricity Distributors
Association**

Maurice Tucci

Senior Analyst, Advocacy
Electricity Distributors Association
370 Steeles Avenue West
Suite 1100
Vaughan ON L4L 8K8
Tel: 905-265-5300
Fax: 905-265-5301
mtucci@eda-on.ca

Alan Mark

Ogilvy Renault LLP
200 Bay Street
P. O. Box 84
Suite 3800, Royal Bank Plaza, South Tower
Toronto ON M5J 2Z4
Tel: 416-216-3930
Fax: 416-216-3930
amark@ogilvyrenault.com

**Canadian Distributed Antenna Systems Coalition
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APPLICANT & LIST OF INTERVENORS

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June 13, 2011

**Electricity Distributors
Association**

Teresa Sarkesian

Policy Director
Electricity Distributors Association
3700 Steeles Ave. W.
Suite 1100
Vaughan ON L4L 8K8
Tel: 905-265-5300
Fax: Not Provided
tsarkesian@eda-on.ca

**Energy Probe Research
Foundation**

David MacIntosh

Case Manager
Energy Probe Research Foundation
225 Brunswick Avenue
Toronto ON M5S 2M6
Tel: 416-964-9223 Ext: 235
Fax: 416-964-8239
DavidMacIntosh@nextcity.com

Lawrence Schwartz

Consulting Economist
82 Ridge Hill Drive
Toronto ON M6C 2J8
Tel: 416-785-4985
Fax: Not Provided
lschwartz5205@rogers.com

Horizon Utilities Corporation

Indy Butany-DeSouza

Vice President
Horizon Utilities Corporation
55 John Street North
PO Box 2249 STN LCD 1
Hamilton ON L8N 3E4
Tel: 905-317-4765
Fax: Not Provided
indy.butany@horizonutilities.com

**Canadian Distributed Antenna Systems Coalition
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APPLICANT & LIST OF INTERVENORS

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June 13, 2011

Hydro One Networks Inc.

Anne-Marie Reilly
Senior Regulatory Coordinator
Hydro One Networks Inc.
483 Bay Street
8th Floor - South Tower
Toronto ON M5G 2P5
Tel: 416-345-6482
Fax: 416-345-5866
regulatory@hydroone.com

Hydro Ottawa Limited

Jane Scott
Manager
Hydro Ottawa Limited
Ottawa ON
Tel: 613-738-5499 Ext: 7499
Fax: Not Provided
janescott@hydroottawa.com

**Newmarket - Tay Power
Distribution Ltd.**

Gaye-Donna Young
Chief Operating Officer
Newmarket - Tay Power Distribution Ltd.
590 Steven Court
Newmarket ON L3Y 6Z2
Tel: 905-953-8548 Ext: 2260
Fax: 905-895-8931
gyoung@nmhydro.ca

PowerStream Inc.

Sarah Griffiths
Manager
PowerStream Inc.
161 Cityview Boulevard
Vaughan ON L4H 0A9
Tel: 905-532-4527
Fax: 905-532-4616
PowerStreamRegulatory@powerstream.ca

**Canadian Distributed Antenna Systems Coalition
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**Public Interest Advocacy
Centre**

Michael Janigan

Counsel for VECC
Public Interest Advocacy Centre
1204 - One Nicholas Street
Ottawa ON K1N 7B7
Tel: 613-562-4002 Ext: 26
Fax: 613-562-0007
mjanigan@piac.ca

**Toronto Hydro-Electric
System Limited**

John A.D. Vellone

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto ON M5H 3Y4
Tel: 416-367 6730
Fax: 416-361 2758
jvellone@blgcanada.com

J. Mark Rodger

Counsel
Borden Ladner Gervais LLP
Scotia Plaza 40 King St. W
Toronto ON M5H 3Y4
Tel: 416-367-6190
Fax: 416-361-7088
mrodger@blgcanada.com

Colin McLorg

Manager, Regulatory Affairs
Toronto Hydro-Electric System Limited
14 Carlton Street
Toronto ON M5B 1K5
Tel: 416-542-2513
Fax: 416-542-2776
regulatoryaffairs@torontohydro.com

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APPLICANT & LIST OF INTERVENORS

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Veridian Connections Inc.

Steve Zebrowski

Regulatory & Key Projects Analyst
Veridian Connections Inc.

55 Taunton Road East

Ajax ON L1T 3V3

Tel: (427-9870 Ext: 3274

Fax: Not Provided

szebrowski@veridian.on.ca

Axel Starck

Veridian Connections Inc.

55 Taunton Rd. E

Ajax ON L1T 3V3

Tel: 905-427-9870 Ext: 3222

Fax: Not Provided

astarck@veridian.on.ca

Appendix B to
Procedural Order No. 1
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**Canadian Distributed Antenna Systems Coalition
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APPLICANT & LIST OF OBSERVERS

June 13, 2011

APPLICANT

Rep. and Address for Service

**Canadian Distributed Antenna
Systems Coalition**

Helen Newland

Barrister & Solicitor
Canadian Distributed Antenna Systems Coalition
#400, Toronto Dominion Centre, 77 King S
Toronto, ON M5X 1B2

Tel: 416-863-4471
Fax: 416-863-4592
Helen.newland@fmc-law.com

APPLICANT COUNSEL

Michael Schafner

Barrister and Solicitor
Fraser Milner Casgrain LLP
1 First Canadian Place, 100 King Street
Toronto ON M5X 1B2

Tel: 416-863-4457
Fax: 416-863-4592
michael.schafner@fmc-law.com

Kathleen Burke

Counsel
Fraser Milner Casgrain LLP
1 First Canadian Place
Toronto ON M5X 1B2
Tel: 416-863-4457
Fax: 416-863-4592
kathleen.burke@fmc-law.com

**Canadian Distributed Antenna Systems Coalition
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APPLICANT & LIST OF OBSERVERS

- 2 -

June 13, 2011

George Vinyard

Vice President & General Counsel
ExteNet Systems Inc.
3030 Warrenville Road
Suite 340
Lisle IL 60532
Tel: 630-505-3842
Fax: Not Provided
gvinyard@extenetsystems.com

OBSERVER

**Bluewater Power
Distribution Corporation**

Rep. and Address for Service

Leslie Dugas

Manager, Regulatory Affairs
Bluewater Power Distribution Corporation
P.O.Box 2140
855 Confederation Street
Sarnia ON N7T 7L6
Tel: 519-337-8201 Ext: 255
Fax: 519-332-3878
ldugas@bluewaterpower.com

City of Hamilton

Gord McGuire

Manager, Survey & Technical Services
City of Hamilton
320 - 77 James Street North
Hamilton ON L8R 2K3
Tel: 905-546-2424
Fax: 905-546-2463
gord.mcguire@hamilton.ca

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APPLICANT & LIST OF OBSERVERS

- 3 -

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COGECO Cable Inc.

Caroline Dignard

Senior Director, Legal Affairs and Chief Privacy O
COGECO Cable Inc.
5 Place Ville Marie
Suite 1700
Montreal PQ H3B 0B3
Tel: 519-764-4752
Fax: Not Provided
caroline.dignard@cogeco.com

Greater Sudbury Hydro Inc.

Brian McMillan

Greater Sudbury Hydro Inc.
500 Regent St.
P.O. Box 250
Sudbury ON P3E 4P1
Tel: 705-675-7536
Fax: 705-671-1413
brianm@shec.com

Halton Hills Hydro Inc.

Tracy Rehberg-Ralingson

Regulatory Affairs Officer
Halton Hills Hydro Inc.
43 Alice St
Acton ON L7J 2A9
Tel: (853-3700 Ext: 257
Fax: 853-5592
tracyr@haltonhillshydro.com

Kitchener-Wilmot Hydro Inc.

Lloyd Frank

VP
Kitchener-Wilmot Hydro Inc.
301 Victoria Street South
P.O. Box 9010
Kitchener ON N2G 4L2
Tel: 519-745-4771
Fax: 519-745-4176
lfrank@kwhydro.on.ca

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APPLICANT & LIST OF OBSERVERS

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June 13, 2011

London Hydro Inc.

David Williamson

Vice President

London Hydro Inc.

111 Horton Street

P.O. Box 2700

London ON N6A 4H6

Tel: 519-661-5800 Ext: 5745

Fax: 519-661-2596

williamd@londonhydro.com