



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. 2

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 were 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.

The following parties requested and were 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.

In Procedural Order # 1 the Board set the schedule for the proceeding up to the conclusion of the interrogatory phase for intervenor and Board staff evidence, setting August 16, 2011 as the date interrogatory response were to be filed by CANDAS. CANDAS filed responses to Board staff and THESLs interrogatories by August 16 but was late in filing the remaining responses. The actual date the responses were filed is shown in the table below:

Party	Number of Questions	Date Responses Filed On Board Portal
Board Staff	25	August 16, 2011 - on time
THESL	58	August 16, 2011 - on time
EDA	24	August 17, 2011
Hydro Ottawa	3	August 17, 2011
CCC	22	August 18, 2011
CEA	84	August 19, 2011
Energy Probe	10	August 22, 2011
VECC	3	August 24, 2011

On August 23, 2011 THESL and the CEA wrote the Board requesting that the date for intervenor and Board Staff evidence to be filed be altered to two weeks after CANDAS files all interrogatory responses as CANDAS had not filed all interrogatory responses on the August 16, 2011 date set out in Procedural Order #1. On August 24, 2011 CANDAS responded to these letters. In its response CANDAS stated it did not object to a minor variation in the schedule provided that the dates for the settlement conference and oral hearing are not altered. CANDAS suggested that intervenor and Board staff evidence should be filed by September 2, 2011. CANDAS also requested that it be allowed to file reply evidence and suggested that this be filed by September 27, 2011.

The Board will allow a short extension for the filing of intervenor evidence, and will allow CANDAS to file reply evidence. Given that CANDAS' responses to THESL's and CEA's interrogatories were filed on time and only three days late respectively, the Board is not inclined to grant a two week extension.

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. Intervenor and Board staff shall file evidence with the Board and serve it to the applicant and other intervenors by **September 2, 2011**.
2. Interrogatories on Board staff and intervenor evidence shall be filed with the Board and delivered to the applicant and other intervenors by **September 9, 2011**.
3. Responses to interrogatories by Board staff and intervenors shall be filed with the Board and sent to the applicant and other intervenors by **September 16, 2011**.
4. CANDAS shall file reply evidence with the Board and send it to all intervenors by **September 23, 2011**.
5. A Technical Conference involving Board staff, intervenors and the Applicant will be convened on **Thursday, September 29, 2011**, at 9:30 a.m. to examine the reply evidence filed by CANDAS. The Technical Conference will be held at 2300

Yonge Street, Toronto in the Board's West hearing room on the 25th Floor and will be transcribed.

6. A Settlement Conference will be convened on **Friday, September 30, 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.
7. If CANDAS does not submit reply evidence or if the Technical Conference concludes early and all parties are in agreement the Settlement Conference will convene on **Thursday, September 29, 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 West 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, August 26, 2011

ONTARIO ENERGY BOARD

Original signed by

John Pickernell
Assistant Board Secretary