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BY E-MAIL

September 14, 2011

To: All parties to the Board's hearing of an application by the Canadian Distributed Antenna Systems Coalition ("CANDAS") regarding access to the power poles of electricity distributors for purposes of wireless communications

Re: Board File Number: EB-2011-0120

On September 9, 2011, the Board received a letter from Toronto Hydro-Electric System Limited ("THESL") in response to the Board's letter dated September 7, 2011 and the letter from CANDAS of the same date.

In its letter, THESL acknowledges the Board's treatment of THESL's motion, but identifies what it calls "sequencing questions" that it suggests raise the question of whether a bifurcated and phased proceeding may be the most appropriate method by which to dispose of the CANDAS Application dated April 21, 2011. THESL goes on to indicate that it is seeking the Board's direction on the following:

- (a) What matters are at issue and within the scope of this proceeding, by requiring Board staff to prepare and circulate a draft issues list;
- (b) The most appropriate procedural path for the proceeding; and
- (c) The procedural manner by which the Board will determine any rates that may apply.

THESL's letter also addresses CANDAS' letter of September 7, 2011 and requests that the Board require CANDAS to provide the specific details of its motion regarding objections to certain parts of THESL's evidence.

On September 12, 2011, the Board received letters from representatives of each of the Consumers Council of Canada ("CCC") and the Canadian Electricity Association ("CEA").

The CCC sought guidance on the scope of the interrogatories for the proceeding in light of the THESL letter of September 9, 2011 and suggested that the Board should resolve what the issues are in the proceeding prior to the required delivery of interrogatories to THESL.

The CEA supported THESL's notion that the proceeding should be considered in two phases, concurred with need for an issues list and requested that the Board should, with respect to CANDAS' indication that it would be challenging certain of THESL's filed evidence, require CANDAS to immediately identify the specific evidence of concern and to provide the grounds for such a ruling in writing well in advance of the upcoming technical conference.

On September 13, 2011, the Board received a letter from the Electricity Distributors Association ("EDA") supporting the request of THESL for the sequencing of the Board's inquiry into the issues raised in the proceeding and for the early settlement of an issues list. The EDA also noted what it called "inconsistencies in the Applicant's position" and asserted that CANDAS had already effectively bifurcated the proceeding by taking the position, as the EDA alleges, that evidence regarding the financial burden, including price, is not relevant. The EDA also suggested that the two days set aside for the oral phase of the hearing would not likely be sufficient.

On September 14, 2011 the Board received a letter from CANDAS responding to the September 9, 2011 THESL letter. In it, CANDAS outlined the issues that flow from its application to the Board and indicated that an issues list is unnecessary and potentially prejudicial to parties that have proceeded based on the application as filed and the process as outlined by the Board. CANDAS also clarified that it is not seeking to vary the current Board-approved attachment rate, but that if the Board determines that the attachment rate approved by the Board in the CCTA proceeding is not applicable to wireless attachments, it could declare the current attachment rate an interim wireless attachment rate, pending an application by distributors for a new rate. On the issue of sequencing, CANDAS indicated that there is no need to amend the current process. Finally with respect to the issue of CANDAS' contention that certain of THESL's evidence is opinion evidence as to whether the CCTA Order applies to wireless attachments, CANDAS asserted that the question of whether this evidence is admissible at all or whether it should be left to argument with respect to the weight appropriately given to the evidence should be left to submissions at the oral hearing.

With respect to the guidance that THESL and other parties seek regarding the matters at issue in the CANDAS proceeding the Board would direct THESL and all parties to the application filed by CANDAS, and in particular, parts (a), (b) and (e) of the relief sought by CANDAS. The Board is of the view that these three heads of relief encompass a review by the Board of the question of whether the CCTA Decision applies, or, in the alternative, whether the Board will amend electricity distributors' licenses to require them to provide access to the power poles of such distributors for purposes of attaching wireless equipment, including wireless components of DAS. With respect to the terms and conditions of access and what an appropriate pole access rate would be, the Board is of the view that the question of whether the current Board-approved attachment rate applies to wireless attachments is appropriately part of this proceeding. If, however, the current rate is not found to apply, the setting of a new rate for wireless attachments may require a new notice and additional evidence to be filed either as part of the current proceeding or in a new proceeding.

The Board has already spoken to the issue of forbearance in its letter of September 7, 2011.

The Board continues to be of the view that, in the absence of an alternative advanced to the Board that is agreed upon by all parties, the procedure as established in the previously issued Procedural Orders and written communications of the Board is appropriate and effective and will stand. As such, all of the issues addressed by THESL in its letter of September 9, 2011, with the exception of forbearance, will be addressed as part of the Board's current procedure in accordance with the application before it.

Finally, with respect to the sufficiency of time at the oral hearing to address all the matters before the Board in this proceeding, the Board notes that it has set aside October 17 and 18, 2011 as two potential additional hearing days in the event they may be required and would ask that the parties keep these dates clear in their calendars.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary