



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. 3

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. Procedural Order No. 1 was issued on June 13, 2011 approving intervenor and observer status requests and setting out the schedule for the proceeding. On August 26, 2011 the Board issued Procedural Order No. 2, providing for a short extension for the filing of intervenor evidence and for CANDAS to file reply evidence.

Interrogatories on intervenor evidence were due on September 12, 2011 and responses to interrogatories were due on September 19, 2011. On September 15, 2011, Toronto Hydro-Electric System Limited ("THESL") filed a letter informing the Board that it may not be feasible to respond to all the interrogatories by the set deadline and stated that it would provide an update by September 19, 2011. Another letter from THESL was received on September 19, 2011 stating that it expected to file its first tranche of responses to interrogatories on September 20, 2011. The letter also stated it is working on an urgent basis to provide responses to the remaining interrogatories, and that it would provide an update to the Board on its progress by September 22, 2011. On September 22, 2011 THESL filed additional responses to interrogatories and stated that it is continuing to work to complete the responses to interrogatories.

On September 22, 2011, the applicant's counsel filed a letter stating that CANDAS would be unable to file its reply evidence by September 23, 2011 and requesting a revision of the remaining procedural dates and a postponement of the oral hearing to the week beginning December 12, 2011. On September 23, 2011, THESL filed a letter responding to CANDAS' letter providing its position on the procedural schedule.

The Board is making provision for new dates for this proceeding, as set out below. The Board is cognizant of its busy regulatory schedule and wishes to emphasize that the dates set for the various filings are expected to be met in order to facilitate the effective management of the schedule.

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. Responses to interrogatories on intervenor evidence shall be filed with the Board and sent to the applicant and other intervenors by **October 3, 2011**.

2. CANDAS shall file reply evidence with the Board and send it to all intervenors by **October 11, 2011**.
3. Interrogatories on the applicant's reply evidence shall be filed with the Board and delivered to the applicant and other intervenors by **October 18, 2011**.
4. Responses to interrogatories on the reply evidence by applicant shall be filed with the Board and sent to all intervenors by **October 26, 2011**.
5. A Technical Conference involving Board staff, intervenors and the Applicant will be convened on **Friday, November 4, 2011**, at 9:30 a.m. to further examine any of the applicant's and/or intervenor evidence. 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 **Monday, November 7, 2011**, at 9:30 a.m. with the objective of reaching a settlement among the parties on as many issues 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 **Tuesday, November 8, 2011**.
7. Any Settlement Proposal arising from the Settlement Conference shall be filed with the Board no later than 4:45 p.m. on **Tuesday, November 15, 2011**.
8. 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 **December 12, 13, 15, and 16, 2011** in the Board's North hearing room on the 25th Floor.

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, September 23, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary