



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.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Ken Quesnelle
Member

Karen Taylor
Member

DECISION AND ORDER

December 9, 2011

THE PROCEEDING

The Canadian Distributed Antenna Systems Coalition ("CANDAS") filed an application on April 25, 2011, subsequently amended by letters dated May 3 and June 7, 2011, seeking the following orders of the Board:

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 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;
4. its costs of this proceeding in a fashion and quantum to be decided by the Board pursuant to section 30 of the Act; and
5. such further and other relief as the Board may consider just and reasonable.

In summary, the issues before the Board are as follows:

1. Does the CCTA decision apply to the attachment of wireless equipment, including DAS components, to distribution poles?
2. If the answer to 1 is no, then should the Board require distributors to provide access for the attachment of wireless equipment, including DAS components, to distribution poles?

3. If the Board requires distributors to provide access for the attachment of wireless equipment, including DAS components, under what terms and conditions should those arrangement be governed?

It is these issues which will guide the Board in determining the relevance of the disputed interrogatories (the “disputed IRs”) that are the subject of the motions brought by CANDAS and the Consumers Council of Canada (“CCC”).

THE MOTIONS

On October 31, 2011 CCC filed a Notice of Motion for an order of the Board requiring Toronto Hydro Electric System Limited (“THESL”) to provide further and better responses to certain CCC IRs. On November 3, 2011, CANDAS filed a similar Notice of Motion in respect of certain CANDAS IRs. CANDAS filed an Amended Notice of Motion on November 8, 2011.

The Board determined that it would hear both motions in writing and provided dates for written submissions in Procedural Order No. 4, issued November 3, 2011.

CANDAS requests that THESL be compelled to provide responsive answers to the following IRs: CANDAS general IRs 1(h), 1(i), 3(d), 5(e), 10(e), (o), (p) and (q), 32 (a) and (b) and CANDAS Byrne IR 15(g)(iv). These IRs in CANDAS’ submission are relevant to the issues before the Board and relate to two questions:

- Is THESL's "no wireless" policy justified?
- Is THESL discriminating amongst parties who seek to attach equipment to its poles?

CCC requests that THESL be compelled to provide further and better answers to CCC IRs 1, 2, 3, 4, 5, 6(d) and 7. In CCC’s submission, these IRs seek material that is relevant to the issues raised by THESL in its evidence, and the material is necessary to allow a fair and complete examination of THESL’s evidence and THESL’s position based on that evidence; specifically:

- That the CCTA Order does not apply to wireless attachments;
- That safety is compromised by wireless attachments to THESL’s poles; and
- That there are viable market alternatives for hosting wirelsss attachments.

THESL declined to provide responses to the above referenced IRs on the basis that the requested material was:

- not relevant;
- privileged as communications between solicitor and client and were prepared in contemplation of anticipated litigation; and/or
- would be unduly onerous to produce relative to their probative value, if any.

As part of its written submissions on the motions, THESL filed the Affidavit of Ivano Labricciosa, sworn November 15, 2011, (the “Labricciosa Affidavit”). In their reply submissions, both CANDAS and CCC expressed concerns over the filing of the Labricciosa Affidavit at the submission stage of the hearing of the motions.

PRIVILEGE

THESL declined to provide responses to a number of the disputed IRs claiming that the requested information and materials are privileged as communications between solicitor and client or were prepared in contemplation of anticipated litigation. There is little dispute amongst the parties concerning the protection afforded by solicitor/client and litigation privilege. The disputed issue is whether THESL has met the test to establish privilege in this case.

Both CANDAS and CCC submitted that THESL’s claim for privilege is untenable as among other things, THESL has not identified the material over which it claims privilege or the grounds for making such a claim. CCC submitted that in making a claim for privilege THESL should be guided by the protocol set out in Rule 30.03(2)(b) of the *Ontario Rules of Civil Procedure*. CANDAS made a similar submission. Based on that protocol, THESL should have prepared an affidavit of documents listing all documents relevant to the matter in issue and for which privilege is claimed along with the grounds for the privilege claim. THESL has not done that.

THESL submitted that the requested documents are privileged by virtue of their circumstances. THESL further submitted that the *Ontario Rules of Civil Procedure* do not apply to proceedings before the Board and therefore THESL is not obligated to provide a list of the documents that it has refused to produce by reason of a claim of privilege. THESL added that it should not be required by the Board to list such documents as among other things, the task of producing such a list would be unduly onerous relative to its probative value, if any.

While the Board acknowledges that the protocol set out in the *Ontario Rules of Civil Procedure* does not directly apply to proceedings before the Board, the Board believes that it is a useful guide for parties to follow when making claims for privilege. As pointed out by CCC, in proceeding EB-2010-0184 recently before the Board, the Attorney General of Ontario followed the protocol. In the Board's view, without an appropriate evidentiary foundation for claims of privilege, the Board is not able to adjudicate the claims. Put another way, in this case, the Board cannot rely solely on THESL's assertion of privilege. It must have before it enough information to adequately assess the claim.

The Board will resolve these motions by considering the disputed IRs on two criteria: relevance and proportionality. With respect to relevance, the Board will require material which is relevant to the issues it is addressing in this proceeding, namely whether the CCTA Decision applies to wireless attachments, and if not, whether it should, and if so, under what terms and conditions. In particular, the Board does not intend to enquire into the motivations of THESL unless it has a direct bearing on the enumerated issues. With respect to proportionality, where the Board agrees that material (which is otherwise relevant) may be unduly onerous to produce, the Board will generally require a representative or more targeted response.

In the sections below the Board sets out its findings on relevance and proportionality for each of the disputed IRs. Based on these findings, the Board will order THESL to provide further and better answers to a number of the disputed IRs, either in whole or in part. If THESL intends to make a claim of privilege, the Board will require THESL to produce a list of the documents for which a claim of privilege is being made and the grounds upon which the claim is being made.

THE LABRICCIOSA AFFIDAVIT

The Board has considered the Labricciosa Affidavit only in relation to the questions of whether the material requested in the disputed IRs is relevant and whether the requested material would be too onerous to provide (the issue of proportionality). On that basis, the Board attached little weight to the information related to the so-called "Unauthorized DAScom Attachments." In any event, if THESL intends to rely any further on the material contained in the Labricciosa Affidavit, it will need to make him available for cross-examination during the hearing.

CANDAS INTERROGATORIES

CANDAS IR 1(h)

Were any presentations (oral or in writing) made to the THESL Board of Directors in relation to any of the subjects discussed in the THESL Letter, prior to the letter being filed with the Ontario Energy Board ("Board")? If yes, provide particulars of any oral presentations and copies of any written presentations, including, without limitation, power points, notes, memoranda, executive summaries and any similar writing.

CANDAS IR 1(i)

Provide copies of all drafts, including notes to draft, of the THESL Letter.

CANDAS IR 3(d)

Prior to adopting the "no wireless" policy did THESL seek and obtain legal advice as to the application of the CCTA Order to wireless attachments?

CANDAS submitted that the information and materials sought in the above referenced IRs are relevant and necessary to understand the basis for the assertions made in THESL's August 13, 2010 letter to the Board. CANDAS IR 1(h) is quite similar to CCC's IR 1, which reads:

Please provide copies of all reports, analyses, written communications, including email, with respect to the policy referred to in the letter of August 13, 2010. Please include copies of all reports to THESL's management and board of directors with respect to that policy.

CCC submits that the information is relevant and necessary to examine the basis for the positions expressed in THESL's August 13, 2010 letter.

THESL refused to provide the information and materials sought by those IRs on the basis that they are privileged as communications between solicitor and client and were prepared in contemplation of anticipated litigation. THESL submitted that its position about the applicability of the CCTA Order to wireless attachments is clear and investigation into how THESL arrived at its position is not relevant to the matters at issue in this proceeding. THESL added that it is not the applicant and this is not a compliance proceeding.

THESL has provided evidence on the record as to the intended meaning of the August 2010 letter, and in particular, that the letter should not be read as describing a “no wireless” policy by THESL. This evidence stands in some contrast to the words of the letter, which begins:

With this letter, Toronto Hydro-Electric System Limited (THESL) wishes to inform the Board that, in light of the many safety and operational concerns about the attachment of wireless communications equipment to its pole infrastructure that are set out in this letter and its Appendix, THESL has adopted a policy not to attach such equipment to its poles.

THESL’s letter goes on to explain the company’s position that the CCTA decision does not and should not apply to wireless attachments, providing a number of reasons for these positions. THESL may not have filed this letter in the current proceeding, however it is relevant, and indeed important, as it represents the position of the company as expressed to this Board. The Board finds that it is entirely appropriate for parties to ask interrogatories for the purposes of understanding the substantiation for the positions taken in the letter.

Given the now apparent ambiguity about the intent of the letter and the nature of THESL’s policy, the Board has concluded that it will be aided by having further evidence as to the understanding of THESL’s senior management (as requested in CCC IR 1) and Board of Directors (as requested in CANDAS IR 1(h)) in relation to the matters addressed in the August 2010 letter at the time. The Board will therefore require THESL to produce the information and material requested in CANDAS IR 1(h) and CCC IR 1.

The Board does not agree that draft versions of THESL’s August 13, 2010 letter to the Board (as requested in CANDAS IR 1(i)) are relevant to the issues before the Board in this proceeding and therefore will not order their production. The Board is also of the view that whether or not THESL sought and obtained legal advice as to the application of the CCTA Order to wireless attachments is not information which is relevant to the issues before the Board in this proceeding and therefore will not order THESL to provide a response CANDAS IR 3(d).

CANDAS General IRs 5(e), 10(e), 10(o), 10(p), 10(q) and 32 and Byrne IR 15(g)(iv)

CANDAS submitted that the information and materials sought in the above referenced IRs are relevant and necessary to understand whether THESL is discriminating amongst parties who seek to attach equipment to THESL's poles.

For each of the IRs listed above, a summary of the submissions of the parties and the findings of the Board are provided below.

CANDAS IR 5(e)

Do any third parties currently have any wireless attachments on THESL owned or controlled poles? If yes, provide all applicable agreements regarding these attachments and describe, for each third party,

- (i) What type of wireless attachment is located on the poles*
- (ii) The total number of each type of wireless attachment located on the poles*
- (iii) The attachment rate, and all other applicable fees, paid by such third party*
- (iv) The permitted term of each wireless attachment*
- (v) Whether there are also wireline attachments associated with any of the wireless attachments*
- (vi) The number of associated wireline attachments*

THESL submitted that it has already provided the best information available on the number of non-distribution attachments to THESL poles, including wireless attachments, and noted that the only wireless attachments identified in THESL's database are the DASCom attachments and that the agreement related to these attachments is already on record in this proceeding. THESL added that producing additional information relating to this IR would be unduly onerous to produce relative to its probative value, if any.

The Board finds that certain information and materials sought in these IRs are relevant to the issues in this proceeding. The Board will be determining whether to mandate access for wireless attachments to distributor poles. The Board finds that information as to the other attachments THESL is making (type of attachment and quantity) and under what arrangements those attachments are being made (price and terms and conditions) is relevant to the issues in this proceeding. The Board also recognizes that these various other attachments may or may not be comparable to the wireless

attachments sought by CANDAS. The Board will be able to assess that comparability better if it understands more fully the circumstances that surround these other attachments. THESL has provided evidence related to the potential alternative sites for wireless attachments. Similarly, the Board finds it relevant to understand the other types of attachments on distributor poles for comparison purposes.

THESL has maintained that the only wireless attachments are DAScom attachments. THESL has provided its view that while the TTC attachments on its poles operate using radio frequencies it does not consider them to be “telecommunications” equipment.¹ The Board concludes that THESL’s view of what constitutes a wireless attachment may be unduly narrow. The Board concludes that information related to all attachments which facilitate wireless communications in any form is relevant to the proceeding.

The Board will order THESL to:

- a) identify the parties (including the TTC and One Zone and any other parties with attachments which facilitate wireless communications) that currently have wireless attachments on THESL’s poles;
- b) provide THESL’s master agreement with each party;
- c) identify the price for the wireless attachments (if not covered in b);
- d) identify the approximate number of attachments for each party; and
- e) identify whether there are associated wireline attachments for the wireless attachments.

CANDAS IR 10(e)

What percentage of the poles currently owned or controlled by THESL have wireless attachments? Please provide a breakdown by pole type and identify the number and type of wireless attachments.

In THESL’s submission, the information provided in response to this IR is sufficient for CANDAS to complete its analysis of “scarcity”. THESL further submitted that the information relating to the breakdown by pole type, including the number and type of wireless attachments, is not relevant to the matters at issue in this proceeding and would be unduly onerous to produce relative to its probative value, if any.

¹ THESL’s response to undertaking No. JTC 1.4 made at the Technical Conference on November 4, 2011

The Board has already directed the production of further information on wireless pole attachments in its findings on CANDAS IR 5(e). The Board finds that the more granular detail requested in the second part of CANDAS IR 10(e) goes beyond what is required by the Board for this proceeding. The Board notes that the first part of CANDAS IR 10(e) has been effectively answered already.

CANDAS IR 10(o)

Provide copies of the distribution pole attachment agreement(s) as between Toronto Hydro (as it then was) and Toronto Hydro Telecom (as it then was).

CANDAS IR 10(p)

Provide copies of the distribution pole attachment agreement(s) as between THESL and Cogeco in respect of the One Zone network.

CANDAS IR 10(q)

Provide copies of the distribution pole attachment agreement as between THESI and Cogeco in respect of One Zone attachments to poles that are to be transferred to THESL.

THESL did not respond to CANDAS IR 10(o) on the basis of relevance and that the information sought is confidential. THESL responded to CANDAS IR 10(p) by stating that it has no records of any agreement with Cogeco in respect of the One Zone network. THESL refused to respond 10(q) on the basis that THESI is not a party to this proceeding and the information sought is not relevant.

The Board agrees with THESL that the information sought in CANDAS IR10 (o) is not relevant to this proceeding. With respect to CANDAS IR10(p) and 10(q), the Board notes that as a result of the Board's Decision and Order in EB-0180/0181/0182/0183, certain categories of poles currently owned by THESI will be transferred to THESL. The Board finds that it is relevant to understand the arrangements that will govern the relationship between THESL and Cogeco in respect of One Zone attachments which will be transferred to THESL along with the associated poles. Therefore, the Board will order THESL to:

- a) Confirm whether THESI has a distribution pole attachment agreement with Cogeco in respect of One Zone attachments to poles that are to be transferred to THESL. If so,

- b) Explain whether THESL will be bound by any existing contract between THESI and Cogeco? If so, produce the relevant agreement.
- c) If the answer to (b) is no, provide a copy of any agreement which will govern the relationship between THESL and Cogeco in respect of the One Zone attachments on poles which are transferred from THESI to THESL.
- d) If there is no agreement, explain what arrangements will govern the relationship between THESL and Cogeco in respect of the One Zone attachments on poles which will be transferred from THESI to THESL.
- e) Provide an estimate of the number of THESI poles which will be transferred to THESL and which have One Zone attachments.

CANDAS IR Byrne 15(g)(iv)

Provide a list of all wireless attachments that are used in conjunction with electricity distribution such as SCADA antennas or other SCADA equipment, and, for each such attachment, describe:

- (iv) The size, weight, dimensions and other physical specifications of each wireless attachment.*

THESL stated that its database does not include a breakdown of the specific technical information requested by CANDAS. THESL submitted that this information is not relevant to the matters at issue in this proceeding and that producing it would be unduly onerous relative to its probative value, if any.

CANDAS submitted that the requested information is relevant in that it would assist the Board in understanding:

- a) the engineering dimensions of current attachments and how they compare to the equipment associated with a typical DAS node installation, and
- b) the assertion in THESL's August 13, 2010 letter to the Board in relation to physical differences between wireline and wireless attachments.

CANDAS submitted that given THESL's pole permitting and attachment process, the information should be readily available to THESL.

The Board agrees with CANDAS that the information sought in (iv) is relevant to the issues in this proceeding. A comparison of wireless attachments is relevant to the safety considerations raised by THESL. The Board will not require THESL to provide the information for each individual attachment if that is not readily available to THESL. The Board will however require THESL to provide a list of all the types of wireless attachments used for electricity distribution and the technical information for a representative sample of each type of wireless attachment.

CANDAS IR 32(a)

Produce any and all documents, including contracts, evidencing the terms and conditions upon which THESL (or any affiliate) permitted the "One Zone" network to be attached to its poles.

The Board has already determined that THESL will be required to provide information regarding the One Zone attachments on THESI poles which are transferred to THESL.

To the extent CANDAS IR 32(a) seeks information from THESL's affiliates and documents other than contracts, the Board concludes that the requested material is either duplicative of what has already been ordered or is not relevant to the issues in this proceeding. The Board is not enquiring into the contractual relationships between THESL's affiliates and other attachers.

CANDAS IR 32(b)

How many of THESL's (or its affiliates') poles are currently utilized to hold:

- (i) TTC communications equipment*
- (ii) "One Zone" communications equipment*
- (iii) Any other telecommunications equipment*

This information has already been addressed in the Board's findings with respect to CANDAS IR 5(e) and CANDAS IR 10(q).

CCC INTERROGATORIES

CCC IR 2

Please provide copies of all communications, including correspondence and e-mails, between THESL and the Electricity Distributors Association or its members with respect to the following:

- a) *The interpretation of the Decision and Order of the Board in RP-2003-0249 (the CCTA Order);*
- b) *The attachment of wireless communication equipment to electricity distribution poles;*
- c) *THESL's policy reflected in its letter to the Board dated August 13, 2010.*

CCC submitted that the information is necessary to explore the accuracy of THESL's evidence that the treatment of pole space by utilities does not constitute anti-competitive behaviors and is relevant to the issues whether a market for the provision of wireless attachments.

THESL refused to provide the requested materials on the basis that they are not relevant to the questions at issue in this proceeding and that in any event they are unduly onerous to produce in relation to their probative value. THESL submitted that it is not the applicant and this is not a compliance proceeding.

The Board agrees with THESL's position and finds that the information sought in CCC IR 2 is not necessary to address the issues noted by CCC. The Board will therefore not compel a response to this IR.

CCC IR 3

Please provide copies of all communications, including correspondence and e-mails, between THESL and the City of Toronto with respect to the following:

- a) *The interpretation of the CCTA order;*
- b) *The attachment of wireless communication equipment to THESL's electricity distribution poles;*
- c) *The policy reflected in THESL's letter of August 13, 2010 to the Board.*

CCC IR 4

Please provide copies of all studies, reports and internal communications, including correspondence and e-mails, from the date of the CCTA Order to the present, with respect to the wireless communication plans of THESL, the City of Toronto and related or affiliated entities, including business plans with respect to the development and implementation of wireless communication system.

CCC submitted that the information sought in CCC IRs 3 and 4 is relevant to the issue of whether THESL's position on the use of its poles for wireless attachments is affected by the needs or desires of its ultimate shareholder, the City of Toronto, or of its affiliated entities. CCC further submits that the information is relevant to the nature and extent of a market for the provision of wireless attachments.

THESL submitted that the information is not relevant to the proceeding and in any event, it is unduly onerous to produce in relation to the probative value. THESL further submits that this is not a compliance proceeding and THESL is not the applicant.

The Board agrees with THESL that this is not a compliance proceeding and the information sought by CCC IRs 3 and 4 is not relevant to the issues before the Board in this proceeding. The Board will therefore not compel responses to these IRs .

CCC IR 5

With respect to the letter from THESL to the Board of August 13, 2010, please provide copies of all reports, analyses, and communications, including correspondence and emails, in support of the contention that wireless attachments impair operations efficiency and present incremental safety hazards to electricity distribution.

CCC IR 7

In paragraph 40 of the Affidavit, Ms Byrne asserts that "wireless attachments create unique issues that affect the safety, adequacy, reliability and quality of electricity service". In paragraphs 42 to 46, inclusive, Ms Byrne provides details of those issues. For the period from the CCTA Order to August 13, 2010, please provide all reports, analyses, and communications, including correspondence and emails, describing or reporting on the issues described in paragraphs 42 to 46, inclusive, of Ms Byrne's Affidavit.

CCC submitted that the information requested in CCC IR 5 is required in order to examine whether, or to what extent, the policy reflected in THESL's letter to the Board dated August 13, 2010 was based on considerations of safety and that the information is relevant to THESL's position that considerations of safety preclude it from allowing wireless attachments to its poles. Also, in CCC's view, the information requested in CCC IR 7 is relevant to the fact of whether there is any basis for Ms Byrne's assertions.

THESL submitted that the materials and information sought are privileged as communications between solicitor and client and were prepared in contemplation of anticipated litigation. THESL further submitted that the information and materials sought are not relevant to the proceeding and that this is not a compliance proceeding and THESL is not the applicant. THESL added that it has provided detailed evidence in relation to its operational and safety concerns, but CCC chose not to ask IRs in relation to the information provided.

The Board finds that some of the information sought by CCC IRs 5 and 7 will assist the Board in examining whether safety will be compromised by wireless attachments to distribution poles. The Board therefore orders THESL to:

- a) provide copies of all reports including incident reports, analyses and communication, in support of the contention that wireless attachments impair operations efficiency and present incremental safety hazards to electricity distribution; and
- b) provide copies of all reports, analyses, and communications, reporting on the issues described in paragraphs 42 to 46, of Ms Byrne's Affidavit.

CCC IR 6(d)

In paragraph 28 of her Affidavit, Ms Byrne states that, pursuant to the CCTA Order, THESL has granted wireline attachers access to THESL poles on the basis of those attachments fitting within the communications space on THESL poles and assuming 2.5 attachments per pole.

- a) Please set out the process THESL followed in determining whether a wireless pole attachment application would be granted.*
- b) Does THESL have the discretion to reject an application? If so, what criteria are applied in deciding to reject an application?*
- c) Please indicate how many applications for wireless attachments have been rejected?*
- d) Please provide copies of all documentation related to each such rejection.*

CCC submitted that the information is required in order to examine whether, or to what extent, THESL rejected applications for wireless attachments on the basis of safety, operational and cost concerns and the information is relevant to an examination of THESL's position that considerations of safety operations and costs preclude it from allowing wireless attachments to its poles.

THESL submitted that the requested documents are not relevant to this proceeding and contain confidential customer information. In addition, THESL stated during the technical conference that in general, the application permitting process is an administrative task and the applications for wireless attachments are most often rejected for administrative reasons. THESL also stated, however, that there also might be safety and operational reasons that result in the rejection of applications for wireless attachments.

Given THESL's response, the Board has determined it would be informed by some of the information requested by CCC IR 6(d). The Board therefore orders THESL to:

- a) Provide an estimate of the percentage of the total number of applications for wireless attachments rejected for (i) administrative; (ii) operational; and (iii) safety reasons;
- b) In the case of those applications for wireless attachments rejections for reasons relating to safety, indicate the specific nature of the safety concern that resulted in rejection.

THE BOARD ORDERS THAT:

1. THESL shall file with the Board and copy all parties the information and materials identified in this Decision and Order by **December 23, 2011**.
2. If in THESL's view any of the information or materials that THESL has been ordered to produce in this Decision and Order is subject to solicitor/client or litigation privilege, THESL shall file with the Board and copy all parties a privileged list and the grounds for the claim of privilege, in accordance with the protocol set out in Rule 30.03(2)(b) of the *Ontario Rules of Civil Procedure*, by **December 23, 2011**.

DATED at Toronto, December 9, 2011.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary