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January 5, 2012

BY FAX & BY COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St, Suite 2701  
Toronto ON M4P 1E4

Ms. Walli:

**Board File No. EB-2011-0120**  
**Canadian Distributed Antenna Systems Coalition**  
**Energy Probe Interrogatories – CANDAS Kravtin Reply Evidence**

Pursuant to the Board Decision and Procedural Order No. 6, issued December 6, 2011, please find attached the Interrogatories of Energy Probe Research Foundation (Energy Probe) in respect of the Kravtin Reply Evidence filed by the Applicant in the EB-2011-0120 proceeding.

Should you require additional information, please do not hesitate to contact me.

Yours truly,

David S. MacIntosh  
Case Manager

cc. Helen Newland, Fraser Milner Casgrain LLP (By email)  
Michael Schafler, Fraser Milner Casgrain LLP (By email)  
Mark Rodger, Borden Ladner Gervais LLP (By email)  
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**Ontario Energy Board**

**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*.

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**INTERROGATORIES OF  
ENERGY PROBE RESEARCH FOUNDATION  
("ENERGY PROBE")**

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**January 5, 2012**

**CANADIAN DISTRIBUTED ANTENNA SYSTEMS COALITION  
EB-2011-0120**

**ENERGY PROBE RESEARCH FOUNDATION  
INTERROGATORIES**

**On the Reply Evidence of  
Patricia D. Kravtin**

**Filed on behalf of Canadian Distributed Antenna Systems Coalition (“CANDAS”)**

**Interrogatory # 1**

**Ref: Kravtin Report, p. 3-6**

**Issue: Natural Monopoly**

**Ms. Kravtin states that pole capacity is not a scarce resource and that consumption of that space is “nonrivalrous” (p.4) and subject to zero marginal or incremental cost of use (p.5), except in a state of**

**“full capacity ... in which all poles are actually fully occupied after all practical modifications or rearrangements have been made and pole change-outs for higher capacity poles cannot practically occur due to terrain, obstructions, zoning, or other such externally-imposed restrictions.” (p.6)**

- a) Is Ms. Kravtin aware of any locality in North America in which full capacity has been achieved?**
- b) Has Ms. Kravtin undertaken a review of Toronto Hydro’s hydro pole network and reached a conclusion that such a state of full capacity does not exist?**
- c) Recognizing that Toronto Hydro (i) is wholly-owned by the City of Toronto, (ii) owns the hydro poles in the City, and therefore (iii) has “monopoly control” (p.6) over their use, how, in Ms. Kravtin’s opinion, can the Board distinguish between an abuse of monopoly control and a mere exercise thereof properly incidental to ownership?**

## **Interrogatory # 2**

**Ref: Kravtin Report, p.7-11**

**Issue: Market Definition**

**Ms. Kravtin states that the concept of substitutability (p.7) has demand-side and supply-side aspects.**

**Section 4 of the U.S. Department of Justice Horizontal Merger Guidelines state:**

**Market definition focuses solely on demand substitution factors, i.e., on customers' ability and willingness to substitute away from one product to another in response to a price increase or a corresponding non-price change such as a reduction in product quality or service. The responsive actions of suppliers are also important in competitive analysis. They are considered in these Guidelines in the sections addressing the identification of market participants, the measurement of market shares, the analysis of competitive effects, and entry.**

**Similarly, the Merger Enforcement Guidelines of the Canadian Bureau of Competition Policy state:**

**4.2 Market definition is based on substitutability, and focuses on demand responses to changes in relative prices after the merger. The ability of a firm or group of firms to raise prices without losing sufficient sales to make the price increase unprofitable ultimately depends on buyers' willingness to pay the higher price. The ability of competitive suppliers to respond to a price increase is also important when assessing the potential for the exercise of market power, but the Bureau examines such responses later in the analysis—either when identifying the participants in the relevant market or when examining entry into the relevant market.**

- a) Since supply conditions are not part of the market definition exercise in the analysis of market power in these Guidelines, please explain why Ms. Kravtin calls her approach “widely-accepted” (p.7).**
- b) In Ms. Kravtin’s view, has Professor Yatchew based his opinion on market definition on the principle of “functional equivalence”, i.e. that two products or technologies (such as hydro poles and rooftops) that enable wireless attachments are to be included in the relevant market?**
- c) If so, is functional equivalence sufficient in Ms. Kravtin’s view to place products or technologies in the same relevant market in a market power inquiry?**

- d) Does Ms. Kravtin accept the view that since Public Mobile deployed cell towers after being refused access to hydro poles, those two technologies for connecting wireless cables must be in the same relevant market for a market power analysis?

**Interrogatory # 3**

**Ref: Kravtin Report, p.12-13**

**Issue: Access pricing**

Ms. Kravtin indicates that the utility and its ratepayers “stand to be made much better off financially after the accommodation of an additional attachment.” She also states that the payment of rent for pole access by the attacher provides the utility and its ratepayers “with a contribution to the cost of providing core electric distribution service that it would not otherwise have but for use of available pole capacity.”

- a) If full capacity of the pole network has not been achieved, what are the relevant “economic costs” to which Ms. Kravtin refers, other than “make ready”, pole maintenance and related administrative work for which the attacher reimburses the utility? Is the economically efficient price for the incremental attachment to a pole zero? Please explain why or why not.
- b) Should the economically efficient price for the incremental attachment to a pole be limited to a normal return on investment in the pole by Toronto Hydro? Please explain why or why not.
- c) In her capacity as an expert witness and an adviser to the Board in this matter, how would Ms. Kravtin advise as to how the access price to hydro poles should be determined when the condition of full capacity does not obtain?

#### **Interrogatory # 4**

**Ref: Kravtin Report, p. 14-15**

**Issue: Social Welfare**

**Ms. Kravtin states that the monopoly owner of poles might charge “a price for attachment that is too high relative to economic costs”, thereby creating deadweight loss.**

- a) If, as Ms. Kravtin states on p. 15, “...there are essentially no costs to society” of a policy of non-discriminatory access to utility poles, and if the attacher assumes all relevant costs of installation, maintenance and administration resulting from the attachment to the pole, would not any positive fixed price charged for pole access simply re-distribute income?**
- b) Does the payment of rent (i.e. the annual attachment fee) by the attacher constitute a subsidy to utility ratepayers?**
- c) What would Ms. Kravtin expect to be the result of such a subsidy to ratepayers? In particular, would it lead ratepayers to underestimate their power costs and use more electricity?**
- d) Which group or groups would bear the burden of this subsidy: shareholders of the attachers, customers of the attachers, and/or others?**
- e) In light of the burden of the subsidy, why does Ms. Kravtin insist that “social welfare” would be improved? Is there an implicit assumption that ratepayers are more deserving than the shareholders and customers of the attachers?**