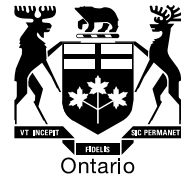


**Ontario Energy  
Board**  
P.O. Box 2319  
27th. Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416- 481-1967  
Facsimile: 416- 440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
C.P. 2319  
27e étage  
2300, rue Yonge  
Toronto ON M4P 1E4  
Téléphone: 416- 481-1967  
Télécopieur: 416- 440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL**

March 21, 2012

To: All parties to EB-2011-0120

**Re: Canadian Distributed Antenna Systems Coalition ("CANDAS")  
Application for Access to Power Poles of Electricity Distributors  
Board File Number EB-2011-0120  
Request to Suspend Proceeding and Request for Interim Order for Costs**

### **CANDAS' Request to Suspend the Proceeding**

The Board is in receipt of Ms. Newland's letter dated March 14, 2012 written on behalf of CANDAS to request that the Board suspend the EB-2011-0120 proceeding until May 25, 2012 to allow CANDAS and Toronto Hydro-Electric System Limited ("THESL") time to explore the possibility of reaching a bilateral settlement. The Board understands from CANDAS' letter that all of the participants to the settlement conference held on March 5, 2012 have agreed to CANDAS' proposal to suspend the proceeding.

The Board hereby grants CANDAS' request to suspend the proceeding until May 25, 2012. The Board expects to be notified by CANDAS no later than May 25, 2012 if no settlement has been reached. The Board will adjourn all remaining procedural dates with respect to this application, and shall set further procedural dates, as necessary, by way of Procedural Order at a later date.

In the event that CANDAS and THESL reach a bilateral settlement, it is the Board's expectation that CANDAS will provide a copy of the settlement agreement, or a description of the nature and terms of the settlement. It is also the Board's expectation that the Board and parties will be permitted to ask questions regarding the settlement, including questions regarding ratepayer and similar impacts and that the Board will be provided with assurances from THESL and CANDAS that a more specific examination of any rate impacts will be possible in THESL's next cost of service rate case.

## **Request for Interim Order for Costs**

The Board received a letter dated March 14, 2012 from Mr. Warren on behalf of the Consumers' Council of Canada ("CCC"). CCC has requested that the Board make an interim order for costs in this proceeding. CCC argued that is both reasonable and fair that the Board make an interim order for costs citing, among other things, the fact that CANDAS' application and THESL's motion have important implications for residential consumers (the constituency which CCC represents), the length of the proceeding to date, the volume of materials filed to date, the further delay to be caused by suspending the proceeding for over two months and the material burden on CCC.

CCC noted that the Board has deferred resolution of who should ultimately bear the responsibility for payment of costs but indicated that the Board could make either or both of CANDAS and THESL responsible for costs on an interim basis and defer the question of who is ultimately responsible for costs.

THESL objected to CCC's request by way of letter dated March 15<sup>th</sup> wherein it said that it is premature and potentially prejudicial for the Board to determine cost responsibility now and it indicated that the issue of costs in the proceeding may be part of a settlement or a joint position put forward by CANDAS and THESL. THESL submitted in the alternative that if the Board determined that it would award interim costs, it should be strictly without prejudice to the ultimate disposition of the costs issue and that the interim order be reconciled to the final costs award.

On March 19<sup>th</sup>, the Board received a letter from counsel for the Vulnerable Energy Consumers' Coalition in support of CCC's position and indicating that an interim cost award would not, in its submission, be an impediment to settlement.

On March 21<sup>st</sup>, CCC responded to THESL's letter of March 15<sup>th</sup> indicated that there has been an extraordinary lapse of time and that CCC should not now be delayed in the recovery of its costs because THESL and CANDAS have decided to seek a commercial agreement that in some measure may by-pass a consideration of the important issues raised in the application of both public policy and financial significance for residential consumers. CCC went on to address some specific assertions in the THESL letter regarding potential outcomes when the Board does determine cost responsibility and

regarding whether financial hardship is a consideration for the Board in the context of awarding costs.

The Board notes that as indicated in Procedural Order No. 1, cost responsibility has not been determined for this proceeding and while it does not appear that any party has actually requested that the Board determine cost responsibility at this point, for clarity, the Board is of the view that it would be premature to do so at this stage of the proceeding.

CANDAS has requested an adjournment for purposes of settlement discussions. In the absence of that adjournment, the Board would proceed to hear the application and make a decision, which would likely take at least as long as the requested settlement period. Therefore, the Board concludes that the delay resulting from the adjournment is not so significant as to warrant an interim award of costs at this time. If the settlement discussions are not successful, and the matter proceeds to a hearing, the Board will revisit this issue.

*Original signed by*

Kirsten Walli  
Board Secretary