



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. 10
May 29, 2012

The Canadian Distributed Antenna Systems Coalition (“CANDAS”) filed an application on behalf of its member companies with the Ontario Energy Board (the “Board”), received on April 25, 2011 and 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.

Suspension of Proceeding

CANDAS filed a letter on March 5, 2011 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. By letter dated March 21, 2012 the Board granted CANDAS' request. The Board indicated that CANDAS would be expected to notify the Board no later than May 25, 2012 if no settlement had been reached.

Extension Request

On May 22, 2012, CANDAS filed a letter with the Board requesting an extension to the suspension of the proceeding from May 25, 2012 to June 22, 2012. CANDAS noted that while it had exchanged documents and had a number of meetings with THESL, negotiations continue and will not be concluded by May 25, 2012. CANDAS indicated that the extension request was discussed with several participants¹ in the Settlement Conference and no party objected.

¹ THESL, Consumers Council of Canada, Electricity Distributors Association, Energy Probe Research Foundation, hydro One Networks Inc. and the Vulnerable Energy Consumers Coalition.

The Board hereby grants CANDAS' request to extend the suspension of the proceeding to June 22, 2012 to allow CANDAS and THESL to complete their settlement negotiations with a view to reaching a bilateral settlement.

The Board expects that this extension of time will be used productively by CANDAS and THESL. In the event that a bilateral settlement is reached, the settlement agreement, or a description of its nature and terms will be required to be filed with the Board on or before **July 6, 2012**. The Board will hold an oral hearing for the presentation of the settlement or its terms **on July 16, 2012**. Parties will be afforded the opportunity to ask questions of the settling parties at this oral hearing.

In the event that a bilateral settlement is not reached, the Board will sit on **June 26, 2012** to hear from all parties with respect to next steps in this proceeding, including but not limited to, determining appropriate dates for expert pre-hearing conferences and dates for an oral hearing. For this purpose, the Board hereby provides notice to all parties that it has tentatively set aside the period from July 23 to July 27, 2012 for the purposes of an oral hearing. Currently the Board is contemplating the need for three days for the purposes of an oral hearing during that period.

Provisional procedural dates

In Procedural Orders No. 6 and No. 9, the Board gave notice to all parties that it intends to require the experts for all parties to, *inter alia*, participate in an expert pre-hearing conference for the purposes of, among others, narrowing issues; identifying the points on which their views differ and are in agreement; and preparing a joint written statement to be admissible as evidence at the hearing of this matter. The Board gave notice that it will hold separate pre-hearing conferences on the two broad areas of expert evidence provided: (1) technical issues, and (2) policy and economics issues. The Board hereby gives notice to all parties that, in the event that a bilateral settlement is not reached, the Board intends for the expert pre-hearing conferences to be held between June 30 and July 15, 2012, inclusive. The Board will hold a pre-hearing conference on expert evidence with respect to policy and economics issues only. In an earlier decision the Board indicated that any opinion evidence provided by Mr. Larsen, CANDAS' sole technical expert in this proceeding, is inherently not objective because he is an employee of one of the applicant's members, ExteNet Systems.² The Board will therefore not hold a pre-hearing conference on the technical issues as no joint

² Decision and Order, Privileged Documents Filed by Toronto Hydro-Electric System Limited, February 22, 2012.
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statement is possible. The Board expects the relevant experts to meet for two days over the aforementioned two-week period. The experts will be expected to produce a joint written statement (at a date subsequent to the pre-hearing conference) outlining the key issues, and points of agreement and disagreement on those issues. The joint statement will be filed as evidence in this proceeding.

The Board has determined that it will allow counsel to the applicant, counsel to intervenors sponsoring the expert evidence, and Board staff to attend the expert pre-hearing conference, but the Board wishes to advise counsel that their participation is expected to be limited to ensuring that the objective of narrowing the issues, and producing a joint statement of the experts can be achieved. A facilitator retained by Board staff will facilitate the expert pre-hearing conference to assist the experts in reaching the objectives of the pre-hearing conference.

The Board considers it necessary to make provision for the following matters related to this proceeding.

THE BOARD ORDERS THAT:

1. CANDAS shall file a letter with the Board on or before **June 22, 2012** to indicate whether or not a bilateral settlement has been reached.
2. If a bilateral settlement is not reached, an Oral Hearing will be convened on **June 26, 2012, at 9:30 a.m.** at 2300 Yonge Street, Toronto in the Board's hearing rooms on the 25th Floor to hear from all parties with respect to proposed next steps and appropriate dates for the proceeding.
3. If a bilateral settlement is reached, the bilateral settlement agreement, or a description of the nature and terms of the settlement and any supporting documentation related to the settlement shall be filed with the Board on or before **4:45pm on July 6, 2012.**
4. If a bilateral settlement is reached, an Oral Hearing will be convened on **July 16, 2012, at 9:30 a.m.** at 2300 Yonge Street, Toronto in the Board's hearing rooms on the 25th Floor to present the settlement agreement or a description thereof and to permit parties to ask questions on the settlement.

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, and be received no later than **4:45 p.m.** on the required date.

DATED at Toronto, May 29, 2012.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary