



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. 11

June 19, 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.

Board's Extension and Settlement Negotiations

In Procedural Order No. 10, the Board granted 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.

On June 14, 2012, CANDAS filed a letter with the Board advising the Board that there was no reasonable prospect of reaching a bilateral settlement. On June 15, THESL filed a letter responding to the CANDAS letter, indicating that, given the current impasse in settlement negotiations, it may be useful to re-involve the Board's appointed settlement facilitator.

The Board is of the view that there is benefit in having all parties re-convene with a view to having THESL and CANDAS apprise the parties of any progress made as a result of the settlement discussions and to allow another opportunity, with the benefit of facilitation, for THESL and CANDAS to potentially reach a settlement. The Board therefore invites all intervenors in the proceeding to attend a settlement conference at the Board's offices on June 22, 2012. The facilitator previously retained by Board staff will facilitate this settlement conference. If it becomes clear that a settlement cannot be

achieved, the Board expects that the parties will use this time to determine whether, as a result of the settlement discussions or otherwise, there is any need or ability to narrow or redefine the scope of issues for determination at the oral hearing.

Experts' Conference

Pursuant to Procedural Order No. 10, CANDAS and THESL advised that they would make their respective experts available on July 10 through July 12, 2012 for the purposes of a two-day pre-hearing experts' conference with respect to policy and economic issues.

The participating experts will be expected to produce a joint written statement on or before July 18, 2012 outlining the key issues, and points of agreement and disagreement on those issues. The joint statement will be filed as evidence in this proceeding. 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.

Given that dates for the pre-hearing conference and filing of concurrent evidence have been determined, the Board will not hold an Oral Hearing on June 26, 2012. All other procedural dates set out in Procedural Order No. 10 remain unchanged.

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

THE BOARD ORDERS THAT:

1. A facilitated settlement conference will be convened on **June 22, 2012, at 9:30 a.m.** at 2300 Yonge Street, Toronto in the Board's west hearing room on the 25th Floor. Any settlement agreement, or information regarding a settlement, shall be filed with the Board by July 6, 2012.
2. If a settlement is not reached, but the parties reach an agreement refining or narrowing the scope of the proceeding, that scoping agreement shall be filed with the Board by June 29, 2012.
3. The Oral Hearing that was scheduled for **June 26, 2012 at 9:30 a.m.** is cancelled.

4. If a settlement is not reached, a pre-hearing experts' conference with respect to policy and economic issues will be held at the Board's offices on **July 10, 2012 and July 11, 2012, from 9.00 a.m. to 5:00pm.**
5. If a settlement is not reached, a joint written statement outlining the key issues, points of agreement and disagreement with respect to policy and economic issues shall be filed with the Board by the experts participating in the pre-hearing experts' conference on or before **4:45pm on July 18, 2012.**

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, June 19, 2012.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary