



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. 12

June 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.

Settlement Negotiations

In Procedural Order No. 10, the Board granted CANDAS' request to extend the suspension of the proceeding that had previously been granted by the Board at the request of the parties to allow CANDAS and Toronto Hydro-Electric System Limited ("THESL") time to explore the possibility of reaching a bilateral settlement. The parties were given until June 22, 2012 to complete their settlement negotiations and to file any settlement agreement by July 6, 2012.

In Procedural Order No. 11, the Board directed the parties to 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.

On June 27, 2012, CANDAS filed a letter advising the Board that CANDAS, THESL and the other intervenors in the CANDAS proceeding were unable to reach a settlement at the facilitated settlement conference held on June 22, 2012.

Experts' Conference

In Procedural Order No. 11 the Board set dates for a pre-hearing conference on policy and economic issues. In the interests of clarity, the Board hereby provides a complete list of those experts that are permitted to attend the pre-hearing conference:

- Dr. Patricia Kravtin
- Ms. Johanne LeMay
- Dr. Adonis Yatchew
- Mr. Michael Starkey

As previously indicated, the Board will allow counsel to the applicant, counsel to intervenors sponsoring the expert evidence, and Board staff to attend the expert pre-hearing conference. The Board re-iterates that the participation of counsel is expected to be limited to ensuring that the objectives of narrowing the issues, and producing a joint statement of the experts are achieved. The Board has also ensured that the services of a Board-sponsored facilitator will be made available to the experts to ensure that the objectives of the pre-hearing conference are achieved.

Oral Hearing

In Procedural Order No. 10 the Board advised parties that it had set aside the week of July 23 to July 27, 2012 for the purpose of an oral hearing. The Board has determined that it will sit on July 23, 2012 for one day for the purpose of hearing oral argument from the parties on the first head of relief sought by CANDAS in its application to the Board, specifically:

Does the CCTA decision apply to the attachment of wireless equipment, including DAS components, to distribution poles? (the "Preliminary Issue")

The Board will hear first from those parties arguing that the CCTA decision applies, beginning with CANDAS. The Board will then hear from those parties arguing that the CCTA decision does not apply. CANDAS will be provided with an opportunity to make an oral reply submission. All submissions, including any reply, will be required to be completed on July 23, 2012. As such, parties will be limited in the amount of time allowed for the completion of arguments.

The Board will not sit on July 24 to July 27, 2012 as previously advised. The Board will advise the parties of additional hearing dates in due course.

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

THE BOARD ORDERS THAT:

1. Parties shall file all materials on which they intend to rely for the purposes of oral submissions no later than **July 16, 2012**.
2. An Oral Hearing will be convened on **July 23, 2012, at 9:30 a.m.** at 2300 Yonge Street, Toronto in the Board's North hearing room on the 25th Floor to hear oral argument with respect to the Preliminary Issue.

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 29, 2012.

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary