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**Delivered by Email, RESS & Delivered**

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

Dear Ms. Walli:

**Re: Toronto-Hydro Electric System Limited (“THESL”)  
CANDAS Proceeding (EB-2011-0120)  
Amendments to the Evidentiary Record and New Information  
Confidential Filings**

Pursuant to Rule 11.02 of the Board’s *Rules of Practice and Procedure*, and as set out and explained below, THESL writes to notify the Board of new information constituting a material change to the evidence already before the Board that is directly relevant to the Board’s determination in this proceeding and seeks an amendment to the evidentiary record regarding the same.

In CANDAS IR#5(e), CANDAS asked THESL:

*“Do any third parties currently have any wireless attachments on THESL owned or controlled poles? If yes, provide all applicable agreements regarding these attachments and describe, for each third party,*

*(i) What type of wireless attachment is located on the poles*

*(ii) The total number of each type of wireless attachment located on the poles*

*(iii) The attachment rate, and all other applicable fees, paid by such third party*

*(iv) The permitted term of each wireless attachment*

*(v) Whether there are also wireline attachments associated with any of the wireless attachments*

*(vi) The number of associated wireline attachments”*

THESL takes note of the Board’s Decision at page 8 of its December 9, 2011 Decision and Order that:

“The Board finds that certain information and materials sought in these IRs are relevant to the issues in this proceeding. The Board will be determining whether to mandate access for wireless attachments to distributor poles. The Board finds that information as to the other attachments THESL is making (type of attachment and quantity) and under what arrangements those attachments are being made (price and terms and conditions) is relevant to the issues in this proceeding. The Board also recognizes that these various other attachments may or may not be comparable to the wireless attachments sought by CANDAS. The Board will be able to assess that comparability better if it understands more fully the circumstances that surround these other attachments. THESL has provided evidence related to the potential alternative sites for wireless attachments. Similarly, the Board finds it relevant to understand the other types of attachments on distributor poles for comparison purposes.

[...]

The Board concludes that information related to all attachments which facilitate wireless communications in any form is relevant to the proceeding.

The Board will order THESL to:

- a) identify the parties (including the TTC and One Zone and any other parties with attachments which facilitate wireless communications) that currently have wireless attachments on THESL’s poles;
- b) provide THESL’s master agreement with each party;
- c) identify the price for the wireless attachments (if not covered in b);
- d) identify the approximate number of attachments for each party; and
- e) identify whether there are associated wireline attachments for the wireless attachments.”

THESL further takes note of the Board’s determination on page 5 of the January 20, 2012 Decision on Motion and Procedural Order No. 8, where the Board reiterated its finding from the December 9, 2011 Decision and Order in this proceeding that “the price THESL charges for other wireless attachments is directly relevant to the issues before the Board.”

THESL therefore writes to notify the Board, pursuant to Rule 11.02 of the Board’s *Rules of Practice and Procedure*, of new information constituting a material change to evidence already before the Board that is directly relevant to the Board’s determination in this proceeding particularly in light of the aforementioned findings of the Board.

Pursuant to Rule 11, THESL seeks an amendment to the evidentiary record to include the enclosed term sheet and agreement regarding wireless attachments on THESL poles, which THESL refers to as Term Sheet A and Agreement A (collectively the “New Confidential

Information”). As explained below, THESL is filing this New Confidential Information with the Board, in its entirety, pursuant to the Board’s *Practice Direction On Confidential Filings*.

The New Confidential Information involves a new agreement for wireless attachments which THESL has very recently negotiated with an arm’s-length commercial party within the City of Toronto. The arrangements involve wireless attachments on THESL’s distribution poles.

The Board will note that the wireless attachment rate negotiated and agreed to by the arm’s length third party is significantly higher than the Board’s regulated rate for wireline attachments. The net income derived from THESL’s negotiated wireless attachment rates ultimately benefit its customers as a set-off against THESL’s distribution revenue requirement.

The New Confidential Information is directly relevant to the issues before the Board and directly responsive to the interrogatory of CANDAS as referenced above. The agreement illustrates that a market for wireless attachments exists within the City of Toronto and that THESL has been successful in negotiating acceptable commercial terms and conditions, including market-based wireless attachment rates, with other (non-CANDAS) telecommunications providers. THESL is currently in negotiations with another prospective wireless attacher and will file any resulting agreement promptly with the Board in a similar manner. The Board may also find it of note that THESL’s affiliate THESI has entered into an agreement for wireless attachments on THESI’s street-lighting poles with an arm’s-length third party within a similar attachment price range and similar terms and conditions to those contained within Agreement A.

As the Board will note from the effective date of the agreement that is the subject of the New Confidential Information, Agreement A has only very recently been entered into.

Pursuant to the Practice Direction of Confidential Filings, THESL attaches un-redacted copies of the New Confidential Information for the Board’s review.

THESL seeks an order from the Board that the New Confidential Information in its entirety be held in confidence. As an arm’s-length negotiated agreement, concluded in a market context, the terms, conditions and pricing is highly commercially sensitive information. If this information were made public it would directly prejudice THESL’s ability to negotiate appropriate agreements with commercially acceptable terms, as well as that of the counterparty to Agreement A. Similarly for the wireless attachers, disclosure of the New Confidential Information would compromise their competitive position in the Ontario market by disclosing sensitive information about how these companies operate, how they deploy and utilize their particular wireless technologies, and the competitive prices they are paying for wireless attachments.

THESL requests the Board further order that disclosure of the un-redacted New Confidential Information be restricted to external counsel and CANDAS’ external consultants only who execute the Board’s form of Declaration and Undertaking. Specifically, THESL submits that all CANDAS member’s internal counsel and employees, such as Mr. Vinyard, should be prohibited from having access to the New Confidential Information given the obvious competitive advantage it would give to CANDAS members for the Toronto and other Ontario markets. Such disclosure would prejudice THESL (and potentially other utilities and the wireless attacher who is the counterparty to Agreement A) in achieving commercially acceptable wireless attachment

agreements with CANDAS in the future. Such disclosure would also prejudice the third party attacher by disclosing sensitive commercial information directly to a potential competitor.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

*Original Signed by John Vellone*

**John A.D. Vellone**

Encl.

copy to: CANDAS, all Parties, Board Staff  
J. Mark Rodger