

September 24, 2012

**Sent By Email and Courier**

Ms. Kirsten Walli  
Ontario Energy Board  
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EB-2011-0120

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01009188-0043

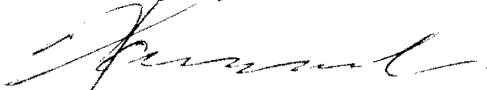
Email  
**alan.mark@nortonrose.com**

Dear Ms. Walli:

**Re: Canadian Distributed Antenna Systems (CANDAS) Application  
Board File Number EB-2011-0120**

We are counsel to the Electricity Distributors Association ("EDA") in the above-noted proceeding. We enclose herewith the EDA's Submissions on Costs. Hard copies have been sent by courier.

Yours very truly,



Alan Mark

AM/il

Copy to: Mark Rodger, counsel to THESL  
Helen Newland, counsel to CANDAS  
All parties

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**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 the Canadian Distributed Antenna Systems Coalition for certain orders under the *Ontario Energy Board Act, 1998*

**SUBMISSIONS ON COSTS  
OF THE ELECTRICITY DISTRIBUTORS ASSOCIATION**

- 1 The Electricity Distributors Association ("EDA") submits that no costs should be awarded in respect of this proceeding.

**CANDAS Not Eligible**

- 2 CANDAS is not eligible for a cost award as:
  - (a) it is an Applicant and therefore not eligible pursuant to section 3.05 of the Board's Practice Direction on cost awards ("Practice Direction"); and
  - (b) it is not eligible to apply for a cost award pursuant to Section 3.03 of the Practice Direction as CANDAS represents primarily its own commercial interest and does not represent the interests of ratepayers in relation to services that are regulated by the Board.
- 3 CANDAS in no respect represents the public interest. Despite attempting to convey this appearance by designating the Applicant as a "Coalition" it is clear that the Applicants are merely the three parties to a commercial joint venture seeking access to the support structures owned by Toronto Hydro in order to take advantage of an arbitrage opportunity created by the gap between the mandated price in the CCTA Order and the current market price for access to support structures. There is no evidence in the record that the public interest would be served by the Board granting the relief sought, and certainly no evidence that the public interest, as it affects the electricity ratepayers, would be

advanced by the Board allowing this application. In fact, it is clear that the interests of electricity ratepayers will be significantly harmed by this decision. Pursuant to Section 3.04 of the Practice Direction, even if the Applicant was considered to represent a public interest in respect of cell phone users or providers, such would not be a public interest relevant to the Board's mandate such as to permit an award of costs.

#### **Intervenors**

- 4 The EDA submits that the Intervenors, CCC, the ECC and Energy Probe should not be awarded their costs of this proceeding. Their interventions failed to demonstrate that they were representing any public interest with a real stake in the contest between CANDAS and Toronto Hydro. They may or may not have a legitimate interest in the cell phone market, but even if they do, that does not justify an award of costs in this proceeding.

#### **Any Costs Awarded Should be Payable by CANDAS**

- 5 CANDAS was advancing a purely commercial interest in this proceeding. It sought relief requiring electricity ratepayers to substantially subsidize its business. There is no reason why it should not have to bear the costs associated with obtaining the regulatory approvals necessary to achieve this purpose. Accordingly, any costs payable to any Intervenors or the Board should be paid by CANDAS.

#### **Any Costs Payable Should be Limited to the Preliminary Motion**

- 6 Most of the costs incurred in this proceeding relate to the marshalling of, and interrogatories and motions with respect to, evidence concerning the question the Board has thus far not considered, namely, whether there is sufficient competition in the market place for support structures such that the Board should refrain from mandating access. Accordingly, no costs should be awarded with respect to that evidence and the associated interrogatories and motions. Rather, costs should be restricted to those directly incurred with respect to preparation for, and attendance at the hearing of the preliminary issue on June 23, 2012. That is the only aspect of this proceeding which is ripe for consideration of a cost award.