



October 3, 2012

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St., Suite 2700  
Toronto, ON, M4P 1E4

*via RESS and email*

Dear Ms. Walli,

**Re: CANDAS Application – OEB File No.: EB-2011-0120 - Submission on Costs**

We write to you representing a group of major electric LDCs in Ontario, specifically Enersource Hydro Mississauga Inc. ("Enersource"), Hydro Ottawa Limited, Horizon Utilities Corporation, PowerStream Inc. and Veridian Connections Inc. All of the above parties were registered as intervenors in the proceeding except for Enersource who was registered as an observer. These are our submissions on the costs recovery pursuant to the Ontario Energy Board's ("OEB") Decision on Preliminary Issue and Order dated September 13, 2012 (the "Decision") in relation to the following three outstanding issues related to costs in this proceeding:

1. CCC, VECC and Energy Probe have been found eligible for an award of costs. It remains to be determined from whom these costs should be recovered.
2. CANDAS is seeking recovery of its costs, and it remains to be determined whether CANDAS is permitted to recover costs and if so, from whom the costs should be recovered; and
3. Finally it remains to be determined who will bear the OEB's costs for this proceeding.

**Participation in the Hearing**

Our group sought either intervenor status or observer status in the proceeding following the application made by CANDAS.

CANDAS's application in this proceeding clearly was dealing with specific issues with Toronto Hydro Electric System Limited ("THESL") regarding attachment of wireless equipment to hydro poles. However, CANDAS' application extended the remedies it sought from THESL to apply to all electric LDCs in Ontario and as a direct result of the extension of this application to our companies, we became involved.

Equally our submissions on costs is now required because a number of parties to the proceeding have now proposed that all electric LDCs in Ontario should be responsible for recovery of the costs of this proceeding. Our submissions will be focused on two of



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the three questions raised above, specifically should CANDAS be eligible to recover costs and, second, who will bear the OEB's and intervenors costs in this proceeding.

#### **A. CANDAS Cost Eligibility**

In CANDAS's submission on costs at paragraph 5, CANDAS quite correctly states that:

'Although an applicant is *prima facie* not eligible for a cost award, section 3.07 of the **Practice Direction on Costs** states that "the Board may, in special circumstances, find that [an applicant] ... is eligible for a cost award in a particular process." More generally, a party will be eligible to apply for a cost award under subsection 3.03(b) of the Practice Directions where a party "primarily represents a public interest relevant to the Board's mandate." '

We agree with CANDAS's interpretation of the **Practice Direction on Costs** regarding how an applicant otherwise not eligible for costs, might be eligible for costs, that being "where a party primarily represents a public interest relevant to the Board's mandate." Our group interprets this to mean that (a) it is a public interest; and (b) relevant to the Board's mandate.

In the circumstance on this case, CANDAS neither represents a public interest nor a public interest relevant to the Board's mandate.

#### **CANDAS does not represent a public interest**

CANDAS is a collection of cellular phone companies who are in the business to sell cellular phone service to Canadians. The purpose of CANDAS' application was to acquire access to hydro poles for wireless equipment from all electric LDCs in Ontario under the same terms and conditions (including rates) as identified in the RP-2003-0249 Decision and Order of the OEB. If CANDAS' application was successful, CANDAS members would gain access to hydro poles for attachment of their wireless equipment, streamline their internal operations as this would reduce their need to secure access from a large number of independent building and property owners, and secure those services at less than market rates for wireless attachments, therefore reducing their operating costs. With the Board's decision, CANDAS members have indeed secured those benefits for their member companies; however, it is not clear, nor never will be, whether this will result in a public interest benefit or a private interest benefit. If 100% of the benefit (efficiency and costs savings) were passed on to cellular phone users, that benefit would be secured by only cellular phone users. Our submission is that cellular phone users would not represent the public interest at large but cellular phone user interest. Second and more important, it is highly unlikely that all the benefit will be passed on to the cellular phone users and therefore a portion, if not all of the benefit, will revert to the shareholders of the member companies of CANDAS and this is clearly a private interest. Therefore, no public interest benefit is accrued.

#### **CANDAS does not represent a public interest relevant to the Board's mandate**

We submit that the Board's mandate is clearly outlined in the *Ontario Energy Board Act, 1998* and that mandate is clearly confined to electricity and natural gas matters in the province of Ontario. As outlined above, any benefit from this application either



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provides benefit to cellular phone users or the shareholders of the member companies of CANDAS. There is no benefit conferred to electricity users in Ontario. As a result, there is no public interest benefit relevant to the Board's mandate.

In conclusion, CANDAS has agreed that an applicant is *prima facie* not eligible for a cost award and has not provided a compelling case that its only purpose in its application was in the public interest and specifically the public interest of electricity customers in the province of Ontario. Therefore, we submit that CANDAS is ineligible for a cost award.

## **B. Who should pay for the OEB's and intervenors costs?**

The issues in this case arose because of actions taken by THESL and CANDAS for their own purposes. Our group and other electric LDCs in Ontario were forced into this proceeding because CANDAS sought to extend rights and obligations it sought from THESL to all electric LDCs in Ontario.

As outlined above, the decision in this case results in benefits accruing directly to CANDAS member companies and potentially trickling down to cellular phone users. Therefore, we strenuously disagree with Board Staff's position that all electric LDCs should bear a portion of the OEB's and intervenors' costs. Board staff's suggestion for the cost award would have electric LDC customers paying for the costs of this proceeding while any benefit from the decision would reside with CANDAS member companies or possibility cellular phone users. Clearly this is a mismatch of benefits and costs. Typical proceedings at the OEB result in both the costs and benefits of the proceeding accruing to electric LDC customers. In this particular case, as described above, the trail of benefits flow to parties other than Ontario electric LDC customers.

In THESL's submission on costs, on page 4, it makes submissions that if the OEB were to grant recovery of CANDAS' costs in this proceeding that those costs should be recoverable from all LDCs in the Province of Ontario. Our group opposes this suggestion since the impetus of the application was a result of actions taken by THESL with regards to access by CANDAS member companies to THESL facilities. If the Board were to grant CANDAS recovery of its costs, then THESL should be responsible for recovery of all those costs.

Regarding the recovery of the OEB's costs and the costs of CCC, VECC and Energy Probe, we submit that these costs should be borne by CANDAS and THESL and that the Board determine a fair and adequate sharing between those two parties.

## **Conclusion**

Our submission can be summarized as follows:

1. CANDAS should be ineligible for recovery of its costs as it was the applicant and its application did not address any public interest, especially a public interest relevant to Ontario electricity customers;
2. The OEB's costs and the costs of CCC, VECC and Energy Probe should be recovered from CANDAS and THESL only; and
3. All other intervenors should be responsible for their own costs.



Respectfully submitted October 3, 2012

*Original signed by P. Hoey*

Patrick Hoey  
Director, Regulatory Affairs  
Hydro Ottawa Limited

Gia M. DeJulio  
Enersource Hydro Mississauga Inc  
(905) 283-4098  
[gdejulio@enersource.com](mailto:gdejulio@enersource.com)

Colin Macdonald  
PowerStream  
(905) 532 4649  
[colin.macdonald@powerstream.ca](mailto:colin.macdonald@powerstream.ca)

Indy J. Butany-DeSouza  
Horizon Utilities Corporation  
(905) 317 4765  
[indy.butany@horizonutilities.com](mailto:indy.butany@horizonutilities.com)

George Armstrong  
Veridian Connections  
(905) 427 9870 x2202  
[garmstrong@veridian.on.ca](mailto:garmstrong@veridian.on.ca)