



EB-2012-0414

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
Electricity Distributors Association for a stay of the
Board's September 13, 2012 Decision and Order in
EB-2011-0120, pending disposition of the EDA's
appeal of the Decision and Order to the Superior
Court of Justice (Divisional Court).

PROCEDURAL ORDER NO. 2

December 10, 2012

The Electricity Distributors Association ("EDA") applied to the Ontario Energy Board on October 17, 2012 for a stay of the Board's September 13, 2012 Decision and Order in EB-2011-0120, pending the disposition of the EDA's appeal of the Decision and Order to the Ontario Superior Court of Justice (Divisional Court). In making its application, the EDA states that it relies on section 33(6) of the *Ontario Energy Board Act*, 1998, S.O. 1998, c.15 (Schedule B).

On November 27, 2012, the Board issued a Notice and Procedural Order No. 1 setting out the requirements for service by the EDA as well as the dates for the filing of submissions and for the oral hearing.

On December 5, 2012 the Board received a letter from the Vulnerable Energy Consumers Coalition ("VECC") indicating that it was a participant in the EB 2011-0120 proceeding and that it had not been served by the EDA with the Notice and Procedural Order No. 1 and only became aware of the oral hearing scheduled for December 20, 2012 by perusing the Board's website. VECC requested an extension for filing hearing materials to Friday, December 14, 2012.

The Board received a letter from the EDA on December 6, 2012 stating that it was not aware that the Notice and Procedural Order No. 1 had been issued until December 5, 2012. The Board notes that the Notice and Procedural Order No. 1 was issued to EDA's counsel, Mr. Mark on November 27, 2012. The Board has confirmed that the document was sent to the correct e-mail address. No message was received that would indicate that the e-mail did not reach the intended recipient. The Board also notes that Mr. Mark was

specifically identified in the application as the primary contact for Board related materials for this matter.

The EDA indicated that by way of the December 6th letter it was serving the Notice and Procedural Order No. 1 on all intervenors of record in the EB-2011-0120 proceeding. As a result of the failure by the applicant to comply with the Board's Order in a timely fashion, the Board will set new dates for the filing of submissions and the hearing of this matter. The Board has also determined that in order to ensure that the record in this proceeding is as complete and as accurate as possible, it will provide for further submissions from the applicant and amend the order of submissions.

On December 7, 2012, the Board received a letter from counsel for the Canadian Distributed Antenna Systems Coalition ("CANDAS") stating that CANDAS' members had also not been served with the Notice and Procedural Order No. 1 and noting that Board counsel had advised parties that the Board would be issuing amended procedures by way of an amended procedural order. CANDAS' counsel asked that the required service of the Notice and Procedural Order No. 1 be amended to include all wireless carriers licensed to provide service in Ontario from the CRTC's list of wireless carriers. The letter also submitted that the EDA had not perfected its appeal of the Board's September 13, 2012 Decision and Order within the prescribed timelines and that it may be a waste of resources for the Board to hear the EDA's stay application if the EDA is not pursuing its appeal in the courts.

The Board considers it necessary to make provision for the following matters related to this proceeding. This order may be amended, and further orders may be issued from time to time.

THE BOARD ORDERS THAT:

1. All procedural dates in Procedural Order No. 1 are hereby rescinded.
2. The EDA shall immediately provide proof of service of the Notice and Procedural Order No. 1 to the Board by way of affidavit.
3. The EDA shall no later than **December 12, 2012**, file with the Board an update of the status of its appeal at the Divisional Court and copy Board staff and all intervenors.
4. The EDA shall file with the Board any submissions in addition to the information

provided in its application and any additional evidence upon which it intends to rely in its application by **December 14, 2012**. The EDA shall copy Board staff and all intervenors with all such submissions and evidence.

5. Any intervenor who wishes to file a written submission or evidence, must file it with the Board and serve it on the EDA, Board staff and all intervenors on or before **January 4, 2013**.
6. The EDA shall file any reply submission with the Board and serve a copy on all intervenors on or before **January 9, 2013**.
7. An oral hearing will be held beginning at 9:30 a.m. in the Board's West Hearing Room on **January 14, 2013**.

All filings to the Board must quote file number EB-2012-0414, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, 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 email address. Parties must 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, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

DATED at Toronto December 10, 2012

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary