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Ms. Kirsten Walli
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Dear Ms. Walli:

Electricity Distributors Association (EDA) Stay Application
OEB File No.: EB-2012-0414

We are counsel to the applicant EDA. We write pursuant to the hearing of the above-noted stay application on January 23, 2013 (**Stay Hearing**), at which we gave certain undertakings to the Panel. The answers to those undertakings are set out below. Kindly ensure that this letter is brought to the attention of Members Long and Fry.

- 1 To provide references to the mandatory terms of agreement set out in the CCTA order dated March 7, 2005 (**CCTA Order**)

During the Stay Hearing, Board Staff referred to pages 14-17 of the CANDAS Decision dated September 13, 2012 which demonstrate that the binding terms of the CCTA Order were intended to prevail over any contractual terms which might be negotiated by the parties. The following passages are instructive:

It may be appropriate for the model joint use agreement to be re-visited with a view to addressing the matter of terms and conditions for wireless equipment attachments on a generic basis – or it may be appropriate for these to continue to be negotiated individually. Those issues are beyond the scope of the Preliminary Issue. What is clear is that LDCs cannot deny access for wireless attachments, including DAS components, on the basis of the model joint use agreement. ... (pp. 15-16; emphasis added)

The parties may wish to negotiate different terms and conditions for wireless attachments (but not a different rate), or to negotiate modifications or additions to the model joint use agreement. The Board concludes that this is best left to the parties in the first instance. ... (p. 17; emphasis added)

The terms of agreement were not finalized until after the CCTA Order was released, and accordingly, the CCTA Order itself contains a limited discussion of this matter. Page 8 of the Settlement Agreement of the Parties to the CCTA proceeding discusses the fact that a model agreement was not settled in advance of the CCTA Order. Page 10 of the CCTA Order itself acknowledges this fact and approves of the parties continuing their negotiations, as well as imposing the new rate and terms as set out in the CCTA Order on all existing contracts, whether or not they contained retroactivity clauses.

Concerning the Board's authority to require compliance with its orders, please see the letter from the CCTA to the Board dated April 14, 2004 complaining of non-compliance by certain LDCs with the CCTA Order based on the absence of a model agreement, and the responding Board Compliance Bulletin dated May 30, 2005 requiring LDCs to comply with the CCTA Order irrespective of the finalization of a model agreement.

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The Settlement Agreement, CCTA Order, CCTA Complaint, and Compliance Bulletin can be found in the CANDAS Application filed April 21, 2011, at Tabs 5-8 respectively.

2 To provide evidentiary references from the CANDAS proceeding in EB-2011-0120 regarding:

- (a) The number of LDCs that have attached wireless telecommunications attachments to LDC power poles

As Board Staff noted in her submissions at the Stay Hearing, the evidence filed in the CANDAS proceeding in this regard was limited to that put forward by Toronto Hydro-Electric Systems Limited (**THESL**) in respect of its own power poles, which evidence has been marked in this proceeding as Exhibits K 1.2 and 1.3.

On page 7 of the Written Evidence of Bob Boron filed by CANDAS on July 26, 2012, there is information regarding an agreement to build a DAS network on the island of Montreal in association with Hydro Quebec. However, the evidence does not confirm such a network has been built using attachments to power poles, and in any case, does not deal with an Ontario LDC.

The EDA is not aware of any other LDC having filed evidence in the CANDAS proceeding in this regard.

- (b) The substantial engineering and administrative costs related to attaching wireless attachments to LDC power poles

Please see generally the Affidavit of Mary Byrne sworn September 1, 2011 and exhibits, filed by THESL on September 2, 2011, and in particular pages 14-15.

Yours very truly,

Original signed by

Christine Kilby

CK/rp

Copies to: Alan Mark, Norton Rose Canada LLP
Kristi Sebalj, Ontario Energy Board
Michael Janigan, PIAC