



EB-2013-0234

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
Toronto Hydro-Electric System Limited for an order
pursuant to section 29 of the *Ontario Energy Board
Act, 1998*.

Before: Cynthia Chaplin
Presiding Member

Cathy Spoel
Member

Christine Long
Member

**DECISION ON ISSUES LIST AND
PROCEDURAL ORDER NO. 4**

January 28, 2014

On June 14, 2013, Toronto Hydro-Electric System Limited ("THESL") filed an application with the Ontario Energy Board seeking an order pursuant to section 29 of the *Ontario Energy Board Act, 1998* that the Board refrain from regulating the terms, conditions and rates for the attachment of wireless telecommunications devices ("Wireless Attachments") to THESL's utility poles.

THESL is currently required by the Board's Decision and Order in EB-2003-0049 dated March 7, 2005 to give Canadian carriers' and cable companies' access to its distribution poles for Wireless Attachments at a regulated rate. THESL is proposing to charge a competitive rate for Wireless Attachments to its utility poles.

A record of all procedural matters that have been dealt with up to this point in this proceeding is available on the Board's website.

Issues List

On January 23, 2014 the Board held an Issues Day to hear submissions on the list of issues arising from the Issues Conference held on January 13, 2014. The Board heard submissions on two disputed issues and rendered its decision orally. The Issues List approved by the Board is attached at Appendix A.

Case Timetable

The Board will establish the dates for the remaining procedural steps for this proceeding, up to the start of the oral hearing. The Board has attempted to accommodate the parties in setting the schedule, however, not all preferences can be accommodated. The Board has set the schedule so that the application can be heard as expeditiously as possible while ensuring that all appropriate steps are included. Parties to the proceeding should be mindful that the schedule for this proceeding is subject to change. The Case Timetable is attached as Appendix B. Further information on the various conferences will be provided in due course.

The Board considers it necessary to make provisions for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Parties and Board Staff seeking further information that is in addition to the pre-filed evidence of THESL shall request it by written interrogatories filed with the Board and served on all parties on or before **February 14, 2014**.
2. Interrogatories must reference the pre-filed evidence and be filed by issue. Interrogatories should be numbered consecutively throughout and not have new starting points for each issue, or section of issues.
3. THESL shall file written responses to all interrogatories on or before **February 28, 2014**. THESL shall file the responses with the Board and serve all parties.

4. THESL shall file the responses to interrogatories by issue (instead of by intervenor). Interrogatory responses for each issue shall be grouped by intervenor.
5. Intervenors and Board staff who wish to file evidence shall do so on or before **March 14, 2014** and shall serve it on all parties.
6. Parties seeking information that is in addition to the evidence filed by intervenors and Board staff shall request it by written interrogatories filed with the Board and served on all parties on or before **March 21, 2014**.
7. Intervenors and Board staff shall file written responses to all interrogatories on or before **April 4, 2014**. Intervenors and Board staff shall file the responses with the Board and serve all parties.
8. A Technical Conference will be held on **April 9, 2014** beginning at **9:30 a.m.** in the Board's West Hearing Room on the 25th Floor at 2300 Yonge Street, Toronto, ON. The Technical Conference will continue on **April 10, 2014** if necessary.
9. A Settlement Conference for the purpose of settling or narrowing Issues that are not related to expert evidence will be held in the Board's West Hearing Room on the 25th Floor of the Board's offices located at 2300 Yonge Street, Toronto on **April 16, 2014** beginning at **9:30 a.m.** and will continue on **April 17, 2014** if necessary.
10. An Expert Conference will be held in the Board's ADR Room on the 25th Floor of the Board's offices located at 2300 Yonge Street, Toronto on **April 23, 2014** beginning at **9:30 a.m.** and will continue on **April 24, 2014** if necessary.
11. An Oral Hearing will be held in the North Hearing Room on the 25th floor of the Board's offices located at 2300 Yonge Street, Toronto commencing on **May 12, 2014 at 9:30 a.m.** and will continue on **May 13, 15-16, 2014** if necessary.

All filings to the Board must quote the file number EB-2013-0234 and be made electronically through the Board's web portal at in searchable/unrestricted PDF format at www.pes.ontarioenergyboard.ca/eservice/. Two paper copies must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in

the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. 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 in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:00 p.m. on the required date.

Ontario Energy Board
P.O. Box 2319
27th Floor
2300 Yonge Street
Toronto ON M4P 1E4
Attention: Board Secretary
Filings:
www.pes.ontarioenergyboard.ca/eservice/
E-mail: boardsec@ontarioenergyboard.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, January 28, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED EB-2013-0234

Issues List

Technology

1. What is the current and likely future state of modern wireless networks?
2. For the technical operation of a modern wireless network, are there certain kinds of wireless network elements for which pole access is an option?
 - (a) For each such element, what purpose(s) does it serve and/or for what services and applications is it used?
 - (b) For each such element, are there siting alternatives to pole access?
 - (c) For each such element, are there technological alternatives?
3. For each of the elements discussed in Issue 2, is there an expectation that this is likely to change in the foreseeable future?

Competition

4. What is the relevant antitrust market in which THESL supplies pole access for wireless attachments? Specifically:
 - (a) What is the relevant product market?
 - (b) What is the relevant geographic market?
5. What is the relevant downstream market to which THESL's supply of pole access for wireless attachments is an input?
6. Does THESL have market power in the provision of pole access to wireless service providers?
7. Given the relevant upstream and downstream markets, what effects, if any, would the exercise of market power by THESL in the supply of pole access to wireless service providers have in the downstream market, and what is the significance of those effects?
8. Is the "essential facilities" doctrine applicable in the circumstances of this case, and if so, to what extent?

General

9. If the Board were to forbear from regulating the terms, conditions and rates for the attachment of wireless equipment to THESL's distribution poles, what are the potential impacts on THESL's ratepayers in terms of rates and of service?
10. If the Board does refrain, in whole or in part, from regulating the terms, conditions and rates of wireless attachments, what is the appropriate treatment of and/or disposition of the costs and revenues?
11. What is the public interest for purposes of this application?
12. What options does the Board have if it determines that it will refrain **in part** from regulating wireless attachments to THESL's poles?
13. If the Board determines, pursuant to section 29 of the *Ontario Energy Board Act, 1998*, to refrain in whole or in part from regulating wireless attachments to THESL's poles, does the Board have the authority to impose conditions and, if so, what conditions should the Board impose?

APPENDIX B

**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED
EB-2013-0234**

**Case Timetable (Subject to change)
Date: January 28, 2014**

	Event	Date
1.	Interrogatories on application	February 14
2.	Interrogatory responses on application	February 28
3.	Intervenor / Board staff evidence	March 14
4.	Interrogatories on Intervenor / Board staff evidence	March 21
5.	Interrogatory responses to Intervenor / Board staff evidence	April 4
6.	Technical Conference	April 9-10
7.	Settlement Conference/Narrowing of Non-Expert Issues	April 16-17
8.	Experts Conference	April 23-24
9.	Filing of Joint Written Statement by Experts	May 2
10.	Oral Hearing	May 12-13, 15-16