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November 3, 2009

BY FAX & BY COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge St, Suite 2701  
Toronto ON M4P 1E4

Ms. Walli:

**Board File No. EB-2009-0331**  
**OPG – Consultation on Next Prescribed Payment Amounts Application**  
**Comments of Energy Probe**

Pursuant to the letter from the Board, issued September 24, 2009, please find attached three hard copies of the Comments of Energy Probe Research Foundation (Energy Probe) for the Board's consideration. An electronic version of this communication will be forwarded in PDF format.

Energy Probe apologizes for the delayed filing of its Comments. Our senior consultant, Mr. Rubin, became ill; the completion of our submission was delayed.

Energy Probe notes that the cost awards provided for in the September 24, 2009 letter from the Board did not anticipate reply comments in this consultative process, and requests that the Board provide additional time to allow funded participants to review and comment on the submissions of other participants.

Should you require additional information, please do not hesitate to contact me.

Yours truly,

David S. MacIntosh  
Case Manager

cc. Barbara Reuber, Ontario Power Generation Inc. (By email)  
Michael A. Penny, Torys LLP (By email)  
Norm Rubin, Senior Consultant to Energy Probe (By email)  
Peter T. Faye, Energy Probe Counsel (By email)

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## Ontario Energy Board

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c.15, Schedule B;

**AND IN THE MATTER OF** a consultation to determine the  
filing requirements and most efficient means to review the issues  
in Ontario Power Generation Inc.'s next application to the  
Ontario Energy Board to determine payment amounts under  
Section 78.1 of the Ontario Energy Board Act, 1998.

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**Comments  
of  
Energy Probe Research Foundation**

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**November 3, 2009**

**COMMENTS**  
**OF**  
**ENERGY PROBE RESEARCH FOUNDATION**

**Background**

1. On September 24, 2009, the Ontario Energy Board issued a letter to Parties that took part in the EB-2007-0905 proceeding, Payment Amounts for Ontario Power Generation Inc.'s Prescribed Facilities, and other interested stakeholders initiating a consultative process to discuss the filing requirements for Ontario Power Generation's ("OPG") next payment amounts application.

2. As well, the Board stated that it was seeking the most efficient means by which issues and evidence might be reviewed and tested in the course of the coming proceeding.

3. Also on September 24, 2009, the Board released a staff scoping paper, *Consultation on OPG's Payment Amounts Application*, to assist in the consultation by identifying subject areas which will be part of the review in the upcoming proceeding, suggesting probable issues and the evidence likely to be filed by OPG.

4. A stakeholder meeting was held on October 22, 2009, attended by a number of interested parties, including Energy Probe, OPG and Board staff. The discussions at the stakeholder meeting were not transcribed.

5. In response to the Board's invitation, Energy Probe submits its comments on the Staff Scoping Paper and the Filing Guidelines.

## Comments of Energy Probe

6. Energy Probe's most general comment concerns the transparency of OPG's budgeted and actual expenditures following the Board's decision in EB-2007-0905. (This issue may primarily arise in the context of Filing Guideline 2.1.1.)

7. At the consultation on October 22, 2009, we were clearly told by OPG's counsel that OPG's expenditures on (e.g.) Pickering-A OM&A were not necessarily decreased 10% in response to the Board's decision to decrease collection of these expenses by 10%. In the clear words of OPG's counsel, "The OEB doesn't run our business."

8. Be that as it may, Energy Probe submits that it is essential to the upcoming discussions in OPG's next payment amounts application that Intervenors and the Board be able to "follow the money" -- to determine where the money came from, or went, as a consequence of the spending decisions following the decisions and orders under EB-2007-0905. In the case of Pickering-A OM&A, the sums at issue may be large enough to force the facts to emerge -- but our interest extends down to the level of expenditure on (e.g.) Nuclear Public Relations, where we doubt that the facts would emerge unless their emergence were assured by the Filing Guidelines or the Scoping documents. We would submit that that assurance is essential to the fruitfulness and validity of this Proceeding.

9. For example, OPG may have decided to finance such sums -- sums whose collection was disallowed by the Board -- in several different ways, including the following:

- by decreasing its corporate profits,
- by transferring funds from unregulated activities, or
- by curtailing regulated expenditures whose collection was allowed in the Board's EB-2007-0905 Decision and Order.

10. In our view, each of these possibilities raises important and unique issues, which we believe the Board has the right and the obligation to investigate and discuss. But we are concerned that a filing that only includes broad-brush department-level spending for each year -- and only for OPG's regulated activities -- will not reveal the reality of what transpired.

11. We are also concerned about the financial implications on ratepayers of current and future spending decisions that have been substantially removed from discussion in this matter. For example, we understand that substantial funds are being spent and committed in an attempt to finish the Niagara Tunnel Project, but we have heard that the Board will have no direct authority over those sums because the project is not scheduled to be completed (and to enter the Rate Base) during the test period. But if -- hypothetically speaking -- those expenditures turn out to be ill-advised and not in the ratepayers' best interests, and the Board cannot review those expenditures in time to influence them, the Board may be left only with unpleasant, unfortunate and "second-best" options at the end of the project.

12. Similarly, significant expenditures are being made now, to address the possibility that (1) Darlington New Build and (2) Pickering-B Refurbishment will end up proceeding. There may be ways to limit the losses of ratepayers if one or both of those projects is cancelled, without jeopardizing their schedule if they end up proceeding. We would urge the Board to ensure that it gets the chance to review and discuss those spending plans in this Proceeding.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

November 3, 2009

**Norm Rubin**

**Energy Probe Research Foundation**