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April 21, 2011

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-2010-0008**  
**Payment Amounts for Ontario Power Generation Inc.'s Prescribed Facilities**  
**Energy Probe – Reply to Cost Objections**

Pursuant to the Decision With Reasons issued March 10, 2011, please find attached the Reply to Cost Objections Submission of Energy Probe Research Foundation (Energy Probe) in the EB-2010-0008 proceeding for the Board's consideration.

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

Yours truly,

*Original signed by*

David S. MacIntosh  
Case Manager

cc. Barbara Reuber, Ontario Power Generation Inc. (By email)  
Carlton D. Mathias, Ontario Power Generation Inc. (By email)  
Charles Keizer, Torys LLP (By email)  
Norm Rubin, Consultant to Energy Probe (By email)  
Larry Schwartz, Consulting Economist (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** an Application by Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an order or orders determining payment amounts for the output of certain of its generating facilities.

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**ENERGY PROBE RESEARCH FOUNDATION  
("ENERGY PROBE")**

**REPLY TO ONTARIO POWER GENERATION INC.  
COSTS OBJECTION**

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**April 21, 2011**

**ONTARIO POWER GENERATION INC.  
2011 - 2012 PAYMENT AMOUNTS**

**EB-2010-0008**

**ENERGY PROBE REPLY TO COSTS OBJECTION**

**How these Matters came before the Board**

1. On May 26, 2010, Ontario Power Generation Inc. (the "Applicant" or "OPG"), filed an Application seeking approval for increases in the payment amounts it charges for the output of certain of its generating facilities, to be effective March 1, 2011. The Board issued a Notice of Application and Oral Hearing on June 4, 2010, assigning the application file number EB-2010-0008.
2. Energy Probe Research Foundation ("Energy Probe") was one of eleven parties that applied for and were granted intervenor status and one of eight that were found to be eligible for costs; no objections had been received by the Board from the Applicant.
3. Procedural Order No. 1 was issued by the Board on June 29, 2010, providing a procedural schedule, a Draft Issues List and confirmation of the parties to the proceeding.
4. The Board issued its Decision With Reasons on March 11, 2011. The Payment Amounts Order was issued on April 11, 2011. It was a long proceeding with several parties filing evidence and the Board requiring 16 Oral Hearing days.
5. Pursuant to the Decision With Reasons, Energy Probe filed its Costs Submission on April 8, 2011. The Applicant filed its Cost Objections letter on April 15, 2011, finding specific objections to the Costs of all but three parties.

6. Much of the first two pages of the Applicant's four page letter consisted of submissions in respect of how the Board might improve its process of assessing intervenors' cost claims with some emphasis on the manner in which the Board might adjudicate the cost of intervenor meals.

### **Reply to Objections – General Submissions**

7. Beyond the Applicant's general focus on the cost of intervenor meals, it does appear that cost objections have been raised in respect of each participant in the proceeding that the Applicant has identified as an expert called by an intervenor:

- Lawrence Kryzanowski of Concordia University and Gordon Roberts of York University appearing for Pollution Probe
- Paul Chernick of Resource Insight Inc. appearing for GEC, and
- Bruce Sharp of Agent Energy Advisors Inc., whose evidence was entered by written affidavit, for CME.

### **Reply to Objections – Energy Probe**

8. Energy Probe will reply to the objections of the Applicant by responding to the specific objections raised by OPG in the order presented in the third paragraph on Page 3 of its letter under the heading Energy Probe.

**With respect to the cost claim submitted by Energy Probe, OPG submits that the number of hours claimed for Dr. Schwartz is not commensurate with the value provided by his participation. He did not prepare any written evidence and the OEB made no reference to his submissions in their findings.**

9. The fact that Dr. Schwartz did not prepare and file any written evidence might have alerted OPG that he was not retained as an expert witness. His role was to provide support as an economic consultant to the Energy Probe intervention and was listed in that manner in Energy Probe's Notice of Intervention on June 17, 2010. Energy Probe submits that there were many economic sub-texts to the Issues before the Board in this proceeding.

10. The status of Dr. Schwartz was recognized by the Board in the Decision With Reasons, Appendix A, Page ii, in the Section titled PARTICIPANTS. Expert witnesses called by intervenors are listed at Appendix A, Page v.

**Energy Probe's cost claim includes seven hours for Dr. Schwartz' participation in the Settlement Conference and OPG sees no reason for an expert on cost of capital to have participated in the Settlement Conference and notes that no other expert participated.**

11. The status of Dr. Schwartz as an economic consultant has been dealt with above in Paragraphs 9 and 10.

12. Energy Probe submits that it is somewhat disingenuous for the Applicant to pose an objection to the participation by Dr. Schwartz in the Settlement Conference because it "sees no reason" for his participation, when responding specifically to that objection would leave a party open to sanction for failure to follow the Board's *Rules of Practice and Procedure*, Section 38:10 in respect of confidentiality. There has already been one sanction in this proceeding.

13. Energy Probe will not comment on the extent to which the Applicant's revelation "that no other expert participated" is in itself a violation of Section 38:10.

**OPG submits that Energy Probe's claim for Dr. Schwartz' participation in the Settlement Conference should be disallowed and the allowable hours for Dr. Schwartz' preparation should be reduced.**

14. In response to this objection, Energy Probe notes that the Board's Settlement Conference Guidelines provide the following guidance to parties, quoted from the first full paragraph on Page 2:

**All parties to a proceeding and *their representatives* are entitled to participate in a settlement process. (emphasis added)**

15. In its Costs Submission, Energy Probe has provided a detailed timesheet for Dr. Schwartz as directed in the Board's Practice Direction on Cost Awards, Section 10.03 a). Energy Probe notes that his timesheet records reviews of evidence, preparation of interrogatories and preparation for oral examination. No hours have been specifically allocated to Settlement Conference preparation.

### **Final Comments**

16. It is the submission of Energy Probe that the Applicant simply misidentified the role of Dr. Schwartz in this proceeding and based its objection in respect of Energy Probe on that misidentification.

17. Further, Energy Probe submits that it is not within the purview of the Applicant to decide who may represent parties at the Settlement Conference.

18. For all the reasons submitted to the Board in this Reply, Energy Probe Research Foundation requests that it be awarded a full recovery of its costs incurred in its participation in this proceeding, which is only in the public interest and without pecuniary purpose.

Respectfully submitted at Toronto, Ontario this 21<sup>st</sup> day of April 2011.

**ENERGY PROBE RESEARCH FOUNDATION**