

IN THE MATTER OF sections 25.20 and 25.21 of the
Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario
Power Authority to the Ontario Energy Board for the review
of its proposed expenditure and revenue requirements and
the fees which it proposes to charge for the year 2009.

REPLY SUBMISSIONS OF THE ONTARIO POWER AUTHORITY

Introduction

1. These are the reply submissions of the Ontario Power Authority (“OPA”) filed pursuant to Procedural Order No. 2 issued by the Board in this proceeding. Procedural Order No. 2 was issued on March 6, 2009 together with the Board’s Decision in respect of the Settlement Proposal that was filed with the Board on February 27, 2009.

2. In the Settlement Proposal, all participating parties accepted the OPA’s proposed operating budget for 2009, but it was agreed that Energy Probe Research Foundation (“Energy Probe”) and the Association of Major Power Consumers in Ontario (“AMPCO”) would be allowed to make written submissions that “will address the overall level or trend of the budget and will request that the Board provide direction to the OPA regarding the budget for 2010, and other future years”. The Settlement Proposal provided that the OPA would have the right of reply to these submissions.

3. The Settlement Proposal also provided as follows with respect to Issue 6.4 (“Workplace Hiring Practices”):

Energy Probe and AMPCO will make written submissions on issue 6.4, regarding OPA’s response to the Board’s expectations in respect of workforce hiring practices for 2009, and will request that the Board provide direction to the OPA regarding the budget for 2010 and future years. The OPA will have the right to reply to these submissions.

4. On March 5, 2009 (prior to the Board’s Decision on the Settlement Proposal), the OPA filed an amended Application, and supporting evidence, with the Board. The amended Application was necessitated by the provisions of Bill 150 (the proposed *Green Energy and Green Economy Act, 2009*) which contemplate a direction to the OPA to develop a feed-in tariff (“FIT”) program. In the amended Application, the OPA requested approval of registration fees of up to \$10,000 for electricity supply and

capacity procurement so that it will be able to establish an appropriate registration fee for the FIT program.

5. In its Decision on the Settlement Proposal, the Board accepted the Settlement Proposal as reasonable subject to the submissions by Energy Probe and AMPCO referred to in paragraphs 2 and 3, above, and subject to submissions by any party on the OPA's revised request for approval of registration fees.

6. The OPA has received written submissions from Energy Probe on the matters referred to in paragraphs 2 and 3, above (Operating Budget Level and Workforce Hiring Practices) and it has received submissions from AMPCO that address only Workforce Hiring Practices. As far as the OPA's revised request for approval of registration fees is concerned, no party other than Energy Probe has made any submissions in this regard.

Operating Budget Level

7. In its written submissions, Energy Probe states its view that the OPA has provided "convincing evidence" on budgeting processes, costs and revenue requirements in each of the Board's review proceedings.¹ Energy Probe goes on, however, to make certain observations about the OPA's reclassification of costs by Strategic Objective (although Energy Probe does not actually indicate what, if any, bearing it believes that these observations have on the Board's decision in this proceeding).²

8. In fact, as explained in the OPA's evidence, the reclassification of costs by Strategic Objective was intended to simplify the presentation of the OPA's budget on an ongoing basis. Overhead costs allocated to different Strategic Objectives in the 2008 Revenue Requirement Submission were brought under Strategic Objective 5 ("Maintain and develop organizational capacity to achieve all other strategic objectives") in the 2009 Submission.³ The OPA also presented the 2009 budgeted costs in a format that allowed a direct comparison with the 2008 budget. It is clear from Energy Probe's presentation of the year-by-year comparison of costs for each Strategic Objective that Energy Probe was able to make a direct comparison of costs.⁴

9. After presenting its year-by-year comparison of costs, Energy Probe poses a number of questions, to which it says it does not have "definitive answers".⁵ At no point does Energy Probe acknowledge that the OPA actually reduced its 2009 operating budget (\$65.073 million) from the amount that it had budgeted in 2008 (\$67.521 million).

¹ Final Argument on Behalf of Energy Probe Research Foundation ("Energy Probe Argument"), para. 10.

² Energy Probe Argument, paras. 11-12.

³ Ex. D-2-1, page 3.

⁴ Energy Probe Argument, Table 1.

⁵ Energy Probe Argument, paras. 17 and 18.

10. The OPA submits, with respect, that the questions put forward by Energy Probe include a number of subjects that the OPA could have addressed, had the questions been asked during the interrogatory process. It is respectfully submitted that the Board should not give any weight to questions asked in a rhetorical and speculative manner - but left unanswered – in final argument.

11. Energy Probe concludes its submissions on this point by making an offhand reference to what it calls “the OPA’s forecasting problems” and by submitting that the Board will have to give careful consideration to requiring an oral hearing of the OPA’s 2010 Revenue Requirement Submission. The fact is that, over the years encompassed by Energy Probe’s cost comparison, the OPA has been ramping up its activities in order to fulfill its mandate and it has been dealing with changes to the scope of its activities (which have occurred, for example, by reason of government directives). Seen in this light, there is nothing surprising about the results of Energy Probe’s year-by-year cost comparison and there certainly is nothing to suggest the existence of any systemic “forecasting problems”.

12. As for Energy Probe’s suggestion about an oral hearing of the 2010 Revenue Requirement Submission, the OPA respectfully submits that this is a determination that can and should only be made by the Board panel for the 2010 Revenue Requirement Submission when the 2010 Submission, and supporting evidence, are available to that panel.

Workplace Hiring Practices

13. The thrust of Energy Probe’s submission with respect to Workplace Hiring Practices is that the OPA has misinterpreted the comments made by the Board in the EB-2007-0791 Decision.⁶ Energy Probe is quite wrong, however, in its view of how the OPA interpreted the Board’s comments.

14. Energy Probe appears to have concluded that the OPA interpreted the Board’s comments to be “directing the OPA to move temporary employees to permanent status and to fully justify the reasons for doing so in the 2009 Fees Application”.⁷ Such an interpretation, of course, would not make any sense: if the Board’s comments were understood to mean that the Board was “directing” the OPA to move employees to permanent status, then it would not be a meaningful exercise for the OPA to provide full justification of the reasons for doing what the Board had directed it to do. There is no evidence to support the conclusion that the OPA interpreted the Board’s comments in this nonsensical fashion.

⁶ For example, Energy Probe submits in para. 33 of its Final Argument that the Board needs to correct “the Applicant’s mis-interpretation of the previous Board panel’s expectation”.

⁷ Energy Probe Argument, para. 23.

15. The evidence clearly explains how the OPA addressed the staffing issue that gave rise to the comments made by the Board in the EB-2007-0791 Decision.⁸ In 2008, the OPA completed a three year business plan that detailed the various initiatives of the organization through 2011. As part of this process, the OPA identified the resources, including staffing, needed to support the achievement of its Strategic Objectives over the planning period. Based on this effort, the OPA was able to conclude that workforce requirements were more certain in the fall of 2008 than they were in late 2007.⁹ Consistent with the Board's Decision in EB-2007-0791, the OPA aligned its staffing plan with its business needs, meaning that regular employees are hired for core longer-term requirements and that temporary and consulting resources are utilized wherever possible for non-core short-term assignments.¹⁰ The evidence goes on to explain how, in 2009, the OPA plans to leverage acceleration in work volume and institutional learning to be more productive, efficient and cost effective in the use of staff.¹¹

16. In considering the appropriate use of temporary staffing, the OPA took account of a number of important factors.¹² These include the following:

(a) The labour market in the electricity field is extremely tight and the OPA must present an attractive value proposition to compete in this market for skilled people with electricity sector experience. Temporary and contract employment arrangements are not perceived by labour market participants as attractive value propositions.¹³

(b) The OPA's data shows that temporary employees do not succeed as well as regular employees. The involuntary turnover rate, due to below standard performance, is 25% for temporary employees, which is far higher than the rate for regular employees.¹⁴

(c) Temporary and contract employment arrangements do not include pension and other benefits and an inequitable and unhealthy work environment is created if a significant number of staff have less attractive employment terms and conditions because they are employed on a temporary basis.¹⁵

⁸ Ex. B-5-1, pages 11 to 13; Ex. I-1-5, pages 1-2.

⁹ Ex. B-5-1, page 12.

¹⁰ Ex. B-5-1, page 12; Ex. I-1-5, page 1.

¹¹ Ex. B-5-1, pages 13-14.

¹² Ex. I-1-5, pages 1-2.

¹³ Ex. B-5-1, page 13; Ex. I-1-5, pages 1-2.

¹⁴ Ex. I-1-5, page 2.

¹⁵ Ex. I-1-5, page 2.

(d) There are a number of legal concerns that can arise if an employer is not careful about its reliance on temporary and contract employment arrangements.¹⁶ In this regard, Energy Probe says that there is no evidence before the Board about the legal advice given to the OPA.¹⁷ The OPA submits, however, that it is neither necessary nor appropriate for it to file legal opinions that it has received from its lawyers; instead, the evidence sets out clearly and in considerable detail the nature of the legal concerns.¹⁸

17. Energy Probe submits that there is no evidence that temporary employees have sued the OPA as a result of the failure of the OPA to appoint these employees to permanent positions.¹⁹ It would be quite unacceptable, however, for a public organization like the OPA, and indeed for any employer, to wait for lawsuits from employees before taking action to put in place an equitable and healthy work environment.

18. Energy Probe refers to the “Arnett Report” (Report of the Agency Review Panel on Phase II of its Review of Ontario’s Provincially-Owned Electricity Agencies) and asserts that it appears likely that some if not all of the recommendations in the Report will be acted upon.²⁰ The fact is, though, that this Report was clear in stating that the core work of the OPA will continue indefinitely.²¹ Further, the Arnett Report was released in late 2007 and, in the time that has passed since then, nothing has happened to cast any doubt on the OPA’s need to ensure that it has in place the requisite human resources to fulfill its Strategic Objectives. On the contrary, as already stated, the OPA concluded that its workforce requirements were more clear in the fall of 2008 than they were in late 2007. The recently introduced Bill 150 is a major legislative initiative by the Ontario government dealing with electricity matters and it gives no indication that the government intends to proceed with restructuring of electricity agencies in accordance with the recommendations of the Arnett Report.

19. AMPCO’s submissions on Workforce Hiring Practices do not add any additional points to those made by Energy Probe. In fact, AMPCO states that it has reviewed the submissions of Energy Probe that address Issue 6.4 and that it makes no additional submissions on this Issue,²² but AMPCO does not actually say whether, and if so to what extent, it agrees with the submissions of Energy Probe.

¹⁶ Ex. I-1-5, page 2.

¹⁷ Energy Probe Argument, para. 29.

¹⁸ Ex. I-1-5, page 2.

¹⁹ Energy Probe Argument, para. 30.

²⁰ Energy Probe Argument, para.34.

²¹ Ex. B-5-1, page 12.

²² Final Submission of the Association of Major Power Consumers in Ontario, para. B.3.

Amended Application

20. As mentioned above, the Board's acceptance of the Settlement Proposal was subject to submissions by any party on the OPA's revised request for approval of registration fees and Energy Probe was the only party to make submissions in this regard. Energy Probe, however, says little or nothing about the merits of the revised registration fees proposal. Rather, Energy Probe approaches the issue as if the OPA is attempting to revise a Settlement Proposal that has been approved by the Board.

21. Energy Probe quotes a passage from the Board's Settlement Conference Guidelines that addresses the circumstances in which acceptance of a settlement proposal by the Board is subject to reconsideration.²³ The OPA submits, with respect, that the provision of the Guidelines relied upon by Energy Probe has no application in this case. The amended Application was filed with the Board before the Board had accepted the Settlement Proposal; indeed, as already stated, the Board's subsequent acceptance of the Settlement Proposal explicitly left open an opportunity for parties to make submissions regarding the revised request for approval of registration fees. In short, no issue arises here about reconsideration of the Board's acceptance of the Settlement Proposal.

22. The Settlement Proposal filed with the Board was based on the original Application by the OPA. Later, the OPA filed an amended Application, but there was no settlement that was based on this amended Application. Thus, in Procedural Order No. 2, the Board quite rightly gave all parties (regardless of what positions they might have taken in the Settlement Proposal) the opportunity to make submissions with respect to the one new matter raised by the amended Application. No party has put forward any objection on the merits to the revised registration fee proposal that is the one new matter raised by the amended Application.

23. To come to the merits of the new registration fee proposal, while the amended Application contained only small changes in wording, the purpose of the changes is an important one. As stated in the supporting evidence, the OPA is requesting approval to charge registration fees of up to \$10,000 for electricity supply and capacity procurements to allow the flexibility to consult with stakeholders to develop appropriate fees for the FIT program.²⁴ Given this flexibility, the OPA will be able to set fees (with input from affected parties) that are appropriate to recover the costs to process applications, while not acting as a barrier to small distributed generation.²⁵ As Energy Probe acknowledges in its submissions, the OPA relies on registration fees as a tool to focus resources on participants who are committed to the procurement process.²⁶

²³ Energy Probe Argument, para. 41.

²⁴ Updated Ex. B-3-1, page 9.

²⁵ Updated Ex. D-2-1, page 1.

²⁶ Energy Probe Argument, para. 38.


24. The FIT program, of course, is a key element of a significant legislative initiative by the government of Ontario that is set out in Bill 150 (the proposed *Green Energy and Green Economy Act, 2009*). It is extremely important that the OPA have the flexibility to charge appropriate registration fees to make the FIT program viable and effective. It is true, as stated by Energy Probe, that Bill 150 has not yet been enacted into legislation.²⁷ However, it will not be possible for the OPA to move in a timely manner to implement the FIT program if it waits until the legislation is enacted before putting forward to the OEB its request for flexibility in relation to registration fees. Moreover, there is no reason why the OPA cannot be given some flexibility in relation to registration fees (subject to a cap of \$10,000 that is consistent with previous Board approvals) simply because Bill 150 has yet to be enacted into law.

Order Requested

25. The OPA therefore respectfully requests that the Board approve: (1) the revised registration fee described in the amended Application and (2) the OPA's final 2009 usage fee, the OPA's 2009 expenditure and revenue requirements and the OPA's deferral and variance account proposals, in accordance with the settlement of these matters in the Settlement Proposal.

All of which is respectfully submitted.

March 27, 2009



Counsel for the Ontario Power Authority

²⁷ Energy Probe Argument, para. 40.