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July 3, 2009

BY EMAIL & COURIER

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

Dear Ms. Walli:

Board File No. EB-2008-0401
Toronto Hydro-Electric System Limited – Recovery of 2007 LRAM & SSM Amounts
Submissions of Energy Probe

Pursuant to Procedural Order No. 2, issued June 23, 2009, please find attached two hard copies of the Submissions of Energy Probe Research Foundation (Energy Probe) in respect of Toronto Hydro-Electric System Limited for the Board's consideration in this proceeding. An electronic version of this communication will be forwarded in PDF format.

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

Yours truly,

David S. MacIntosh
Case Manager

cc: Glen Winn, Toronto Hydro-Electric System Limited (By email)
Norman Rubin, Energy Probe Research Foundation (By email)
Peter Faye, Counsel to Energy Probe (By email)
Intervenors of Record (By email)

Energy Probe Research Foundation 225 BRUNSWICK AVE., TORONTO, ONTARIO M5S 2M6

Phone: (416) 964-9223 Fax: (416) 964-8239 E-mail: EnergyProbe@nextcity.com Internet: www.EnergyProbe.org

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 **Toronto Hydro-Electric System Limited** for recovery of amounts related to Conservation and Demand Management activities.

Submissions On Behalf Of

Energy Probe Research Foundation

July 3, 2009

**Submissions On Behalf Of
Energy Probe Research Foundation**

How these Matters came before the Board

How these Matters came before the Board

1. The Toronto Hydro-Electric System Limited (“Toronto Hydro” or the “Applicant”) submitted an application for an order granting approval and recovery of amounts related to new and ongoing Conservation and Demand Management (“CDM”) activities in 2007 associated with the Lost Revenue Adjustment Mechanism (“LRAM”) and Shared Savings Mechanism (“SSM”) for review to the Ontario Energy Board (“Board”) on December 15, 2008. A Notice of Application and a Letter of Direction were issued on April 8, 2009.

2. Energy Probe Research Foundation (“Energy Probe”) provided a Notice of Intervention to the Board on April 28, 2009. Confirmation of Energy Probe’s intervention was issued May 7, 2009, as part of Procedural Order No. 1 in this proceeding.

3. Interrogatories were filed by Energy Probe on May 22, 2009. The Applicant filed Interrogatory Responses on June 4, 2009 to Energy Probe, the School Energy Coalition, the Vulnerable Energy Consumers Association and Pollution Probe.

4. Procedural Order No. 2, issued June 23, 2009, set out the schedule for parties to submit comments on Toronto Hydro’s requests for LRAM and SSM amounts.

Overview

5. In its comments, Energy Probe will not seek to explore all outstanding Issues before the Board, but will be examining those Issues of concern to Energy Probe where we believe we can be of most assistance to the Board.

Submissions

6. Energy Probe is concerned that the Applicant has applied for LRAM associated with Ontario Power Authority (“OPA”) CDM programs implemented in 2007 (Manager’s Summary, Schedule 1.1, p. 2), and recommends that the Board disallow these claims.

7. The Applicant has confirmed (Exhibit J, Tab 1, Schedule 1, section (a)) that these programs were delivered by Toronto Hydro but funded by the OPA. Yet Toronto Hydro is including their impacts in its LRAM claim, on the basis that the programs were “initiatives of Toronto Hydro, not the OPA”. (Exhibit J, Tab 1, Schedule 1, section (b)).

8. The subsequent portions of Exhibit J, Tab 1, Schedule 1 – Toronto Hydro’s Response to Energy Probe’s Interrogatory #1 – make it clear that the difference between Toronto Hydro’s views on LRAM and Energy Probe’s on this subject is fundamental and significant, and will have ramifications in future claims as well as this one. We urge the Board to adjudicate this matter.

9. In Energy Probe’s view, the purpose of LRAM is not to correct every error in the demand forecast that can be attributed to any conservation action, or even any conservation program by some party or other. Rather, the purpose of LRAM is to remove the perverse incentive that flows from having a utility’s test-year income perversely affected by the direct consequences of its own successful DSM or CDM programs. And by “its own. . . programs”, we mean those it has paid to accomplish,

whether the implementation was done by utility staff, or by a contractor to the utility. In this context, we submit that programs that are funded by OPA and implemented by Toronto Hydro are OPA programs, and not the Applicant's programs.

10. Similarly, Toronto Hydro's announced intention to apply for future LRAM payments "resulting from variances in forecast program performance . . . caused by government or ratepayer funded CDM programs run by other parties within its service territory" should be rejected in advance, in our submission.

Costs

11. Energy Probe submits that it participated responsibly in this proceeding. Energy Probe requests the Board award 100% of its reasonably incurred costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

July 3, 2009