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October 22, 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-2009-0243**  
**Re: Toronto Hydro-Electric System Limited – THESL Z Factor Application**  
**Argument of Energy Probe**

Pursuant to the Notice of Hearing and Procedural Order No. 2, issued September 28, 2009, please find enclosed two hard copies of the Argument of Energy Probe Research Foundation (Energy Probe) in respect of the EB-2009-0243 proceeding for the Board's consideration. An electronic version of this Intervention 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: Colin McLorg, Toronto Hydro-Electric System Limited (By email)  
John Vellone, Border Ladner Gervais LLP (By email)  
Peter T. Faye, Counsel to Energy Probe (By email)  
Intervenors of Record (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 Toronto  
Hydro-Electric System Limited for an order or orders  
approving just and reasonable rates and other charges for  
electricity distribution to be effective May 1, 2010.

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**Final Argument On Behalf  
Of  
Energy Probe Research Foundation**

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**October 22, 2009**

**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED  
EB-2009-0243**

**Z FACTOR APPLICATION  
\*RECOVERY OF CONTACT VOLTAGE REMEDIATION COSTS\***

**FINAL ARGUMENT  
OF  
ENERGY PROBE RESEARCH FOUNDATION**

**How these Matters came before the Board**

1. On June 30, 2009, Toronto Hydro-Electric System Limited (Toronto Hydro or the Applicant) filed an application with the Ontario Energy Board seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2010.
2. On July 17, 2009, the Board issued a Notice of Application and Hearing for the proceeding. Energy Probe submitted a Notice of Intervention on August 17, 2009.
3. Pursuant to Procedural Order No.1, issued August 19, 2009, Energy Probe filed its interrogatories on September 4, 2009. Responses were filed by the Applicant on September 18, 2009.
4. In its Notice of Hearing and Procedural Order No. 2, issued September 28, 2009, the Board ordered an oral hearing, commencing on Thursday, October 8, 2009, and provided a schedule for the filing of submissions following the hearing.
5. Energy Probe took an active part in cross examination of the Applicant's Witness Panel during the October 8, 2009, Oral Hearing.

## Argument Overview

6. In its Argument, Energy Probe will not seek to explore all aspects of the issue before the Board, but will be examining those areas of concern to Energy Probe where we believe we can be of most assistance to the Board. Energy Probe has therefore focused its submissions on the areas of evidence in which it filed Interrogatories.

7. The Board set out eligibility criteria to be met for Z factor cost recovery in its *Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors* dated July 14, 2008. Table 8 on page V of the Appendix lists the three criteria to be met as Causality, Materiality and Prudence.

### Causality

8. To meet the Causality criterion, a distributor must demonstrate that amounts claimed are directly related to the Z-factor event and that the amounts must be clearly outside of the base on which rates were derived.

9. Energy Probe agrees, in part, with Toronto Hydro's contention that the amounts claimed are directly related to the contact voltage problem experienced. Specifically, costs incurred for scanning and remediation during the period of the Level III Emergency are, in Energy Probe's submission, directly related to the event.

10. However, Energy Probe does not agree that continuing costs for scanning after the emergency condition was ended are directly related to the event. According to Toronto Hydro witnesses, the entire distribution system was scanned by its contractor during the declared emergency and all identified contact voltage problems were dealt with. (Transcript, page 102, lines 13-17).

11. In addition, 65,499 individual locations were inspected by Toronto Hydro crews and the 1454 deficiencies found that could have led to contact voltage problems in the future were corrected. (Transcript, page 22, lines 16-28 to page 23, line 1, and page 152, lines 16-23).

12. Energy Probe submits that these responses by the Applicant adequately dealt with the contact voltage emergency which was the initiating Z-factor event. Once that event was dealt with, ongoing scanning of the system was no longer required to address identified or suspected public safety hazards but could be more properly characterized as an ongoing maintenance activity. Energy Probe submits that the \$2.41 M for ongoing scanning costs should not be approved by the Board for recovery as a Z-factor.

13. Energy Probe also agrees, in part, with Toronto Hydro's claim that the second part of the Causality criterion has been met, that is, that the amount claimed is clearly outside of the base on which rates were derived. Specifically, emergency scanning and remediation costs for contact voltage problems were clearly not contemplated by the company in its last rate application and so meet the criterion.

14. However, Energy Probe submits that some of the costs incurred for addressing the contact voltage problems offset some OM&A costs approved in rates. For example, costs for trouble crews used in the emergency during their usual shifts were already embedded in rates and should not also be recovered as part of the Z-factor costs.

15. Energy Probe also submits that some of the remediation work undertaken during the emergency would have otherwise arisen as forced outages of secondary circuits. Toronto Hydro would have responded to those events as normal trouble calls and the costs would have been reflected in their revenue requirement for OM&A. Because the faulty components were repaired under the emergency, Toronto Hydro has avoided the costs of repairing them under normal operating conditions. Therefore, some part of the remediation costs claimed as Z-factor costs should be disallowed.

## **Materiality**

16. The Board's guideline for materiality is \$1 M for distributors of Toronto Hydro's size. Toronto Hydro's claimed costs exceeded \$11 M not counting on going scanning costs. Therefore, Energy Probe agrees with Toronto Hydro that it has met the materiality criterion.

## **Prudence**

17. Energy Probe agrees with Toronto Hydro that the contact voltage problems it experienced presented a danger to public and worker safety and was properly dealt with on an emergency basis. The costs incurred for the emergency period were, in Energy Probe's submission, prudently incurred.

18. The costs for additional scanning of Toronto Hydro's system after the emergency was concluded, however, are not necessarily prudent. Toronto Hydro has not provided any evidence that continuous scanning is required to protect public and worker safety. In fact, Toronto Hydro's witness testified that he had only seen contact voltage twice in ten years prior to the events leading to this application. (Transcript, page 102, lines 2-3).

19. Energy Probe submits that such a rare event cannot justify ongoing scanning costs of \$2.41 M after all of the hazardous conditions had been found and rectified and the emergency condition lifted. (Transcript, page 102, lines 13-17)

20. Toronto Hydro's evidence on page 8 of the Application states:

The presence throughout the city of salt water solutions, which are electrically conductive and can create a hazard where none exists under dry conditions, added to the urgency of identifying all contact voltage locations as soon as possible.

21. Under cross examination on the requirement for ongoing scanning Toronto Hydro's witnesses also testified that "...a lot of the contact voltage situations that may exist come the fall and winter months are certainly not present now..." (Transcript, page 107, lines 15-17). Energy Probe submits that scanning for contact voltage during seasons in which it is unlikely to occur is not a prudent expenditure and should not be approved by the Board for recovery as a Z factor.

### Cost Allocation

22. Toronto Hydro proposes to recover the costs of scanning from all customer classes. Because the proposed recovery is by secondary connection, the effect is that the majority of the scanning costs will be paid by residential and small general service customers. Energy Probe does not agree that this is an appropriate allocation of scanning costs.

23. Under cross examination Toronto Hydro witnesses stated that the "vast majority of contact voltage problems were with handwells" (Transcript, page 25, lines 4-6). Energy Probe's understanding from the evidence is that handwells are associated almost exclusively with unmetered scattered loads not with residential customers. Residential and small general service customers, then, derived little or no benefit from the scanning, whereas streetlighting and unmetered scattered load customers did derive a benefit by having the system devoted to serving them repaired.

24. Energy Probe submits that the bulk of the scanning costs should be borne by Toronto Hydro Energy Services Inc. (THESI) and by unmetered scattered load customers of Toronto Hydro.

## Summary

25. Energy Probe agrees that Toronto Hydro acted responsibly in responding to the contact voltage problems by declaring an emergency and taking steps to identify and correct deficiencies that were the cause of the problems despite the fact that many of the problems were not caused by its own system.

26. Energy Probe agrees that Toronto Hydro costs stemming from the emergency should be partly recoverable as a Z-factor.

27. Based on the evidence and the testimony of Toronto Hydro's witnesses, Energy Probe submits that some of the \$11.94 M claimed for emergency costs are already embedded in Toronto Hydro's rates and should not be recovered a second time as part of the Z-factor. These costs include trouble crew costs and some of the remediation costs that would have arisen in the normal course of business and were, therefore, part of the OM&A approved in the rates. Because there is no data available to quantify these embedded costs, Energy Probe recommends that the Board adopt a "deductible" to Z-factor recovery to account for them. That deductible might reasonably be set as the threshold below which costs would not be considered for Z-factor recovery, in this case \$1 M.

28. THESI should bear some of the costs of the emergency on the basis that a lack of maintenance on its street lighting assets was a major contributing cause of the contact voltage. Energy Probe recommends that this amount should be set at 25% of the remaining \$10.94 M total cost (\$2.74 M). This recommendation is based on the fact that 25% of contact voltage problems were associated with THESI assets according to Toronto Hydro's response to Energy Probe's Interrogatory # 2 and because THESI was in a position to prevent contact voltage problems by proper inspection and maintenance of its system.



**29. If the Board finds it is without jurisdiction to impose costs on THESI, Energy Probe submits that denying Toronto Hydro recovery of the 25% would have the same effect because of its common ownership structure.**

**30. Other unmetered scattered loads accounted for 54% of contact voltage problems. Agencies like the BIAs, TTC and Toronto Traffic are some of the unmetered scattered loads mentioned in the company's response to Energy Probe's Interrogatory # 2. Energy Probe recommends that 54% of the \$10.94 M remaining cost (\$5.91 M) should be recovered from this class of customers as a rate rider. This is based on the evidence that most of the contact voltage problems and repair work was associated with handwells containing wiring that serves these customers. They, therefore, derive the benefit of having a better, more reliable and safer system serving their loads.**

**31. In Energy Probe's submission, the Applicant has not demonstrated that continuing scanning is directly related to the emergency condition that forms the basis for the Z factor application nor has it demonstrated that the costs are being prudently incurred. Therefore, Energy Probe recommends that recovery of the \$2.41 M associated with scanning after the emergency was over should be denied by the Board.**

**32. The balance of \$2.29 M of the total emergency costs should be recovered from all Toronto Hydro customers on the basis that some contact voltage problems, according to the evidence, resulted from faulty distribution assets. Since these cannot easily be attributed to any one customer class, it is appropriate that all customers bear the costs. The allocation formula among the remaining customer classes (excluding USL) should be consistent with Board approved cost allocation methodology in Toronto Hydro's most recent rate case.**

## **Costs**

33. 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**

**October 22, 2009**

**Peter Faye**

**Counsel to Energy Probe Research Foundation**