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March 19, 2010

BY EMAIL & BY 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-2009-0347 Ontario Power Authority
Fiscal 2010 – Expenditure, Revenue and Fees Submission for Review
Energy Probe Argument**

Pursuant to the Decision and Procedural Order No. 2, issued by the Board on March 11, 2010, please find attached three hard copies of the Argument of Energy Probe Research Foundation (Energy Probe) in the EB-2009-0347 proceeding for the Board's consideration. An electronic version of this communication will be provided in PDF format.

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

Yours truly,

David S. MacIntosh
Case Manager

cc: Miriam Heinz, Ontario Power Authority (By email)
Fred Cass, Aird & Berlis LLP (By email)
Peter Faye, Counsel to Energy Probe (By email)
Intervenors of Record (By email)

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Ontario Energy Board

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 2010.

Final Argument On Behalf Of
Energy Probe Research Foundation

March 19, 2010

TABLE OF CONTENTS

	PAGE #
HOW THESE MATTERS CAME BEFORE THE BOARD	3
ARGUMENT OVERVIEW	4
COST COLLECTING AND REPORTING	5
COST RECOVERY – ASSISTANCE TO LDCS AND TRANSMITTERS	6
REGULAR STAFF VS CONTRACT STAFF	7
COSTS	12

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

How these Matters came before the Board

1. The Ontario Power Authority (the “OPA” or “Applicant”) submitted its annual proposed expenditure and revenue requirement and fees for review to the Ontario Energy Board (“Board”) on November 9, 2009. A Letter of Direction and a Notice of Application were issued on November 27, 2009. The Board approved an increased usage fee on an interim basis on December 30, 2009, to be effective January 1, 2010.
2. Energy Probe Research Foundation (“Energy Probe”) provided a Notice of Intervention to the Board on December 9, 2009. Confirmation of Energy Probe’s intervention was issued December 30, 2009.
3. Board staff proposed an Issues List which was circulated by the Applicant on November 30, 2009. The Notice of Application invited parties to file submissions on the proposed Issues List.
4. Energy Probe did file submissions on the proposed Issues List on December 9, 2009, as part of its Notice of Intervention, requesting one addition to the List in respect of the Applicant’s responses to prior Board expectations, as follows:

Has the OPA responded appropriately to the expectation of the Board Panel in respect of recasting the data in its pre-filed evidence to enable comparisons from year to year and to explain differences that arise from reallocations, as stated on page 4 of the Decision and Order in the EB-2008 -0312 proceeding?

5. The Issues Decision and Procedural Order No. 1 was issued by the Board on December 30, 2009. The Final Issues List included an amended Issue – Issue 9.0 – Previous Settlement Agreements and Decisions – to deal with the Energy Probe concerns:

9.1 Has the OPA responded appropriately to previous Settlement Agreements and Decisions?

6. Energy Probe submitted Interrogatories on January 25, 2010 and received Interrogatory Responses on February 8, 2010. Energy Probe actively participated in a Board directed Settlement Conference with the OPA and other Intervenor on February 16, 2010. A Settlement Proposal was filed with the Board by the Applicant on February 24, 2010.

7. There was a Complete Settlement on one Issue – Issue 9.0 – Previous Settlement Agreements and Decisions. There was a Partial Settlement of all other Issues. It was agreed that Energy Probe, the Vulnerable Energy Consumer Coalition (“VECC”) and the Association of Major Power Consumers in Ontario (“AMPCO”) would make written submissions in this proceeding to address their concerns within the partially settled Issues.

Argument Overview

8. As part of the proposed settlement agreement between intervenors and the OPA, Energy Probe reserved the right to make submissions on a number of issues. In its Argument, Energy Probe will seek to explore those issues, all in a manner which we believe can be of assistance to the Board.

- Cost Collecting and Reporting
- Cost Recovery – Assistance to LDCs and Transmitters
- Regular Staff vs. Contract Staff

Cost Collecting and Reporting

9. The Applicant has submitted an OM&A budget referenced to its strategic objectives and, at a low level of detail. Energy Probe has found it impossible to effectively analyze the Applicant's expenditures as a result. It has been suggested to the Applicant that it should collect costs on a project and functional basis so that future applications could be more effectively scrutinized.

10. OPA staff time should be charged to the projects or activities that they spend their time on rather than to more general overhead accounts. Identifying where time and money is spent by detailed cost accounting is fundamental to cost control and Energy Probe submits that the OPA is not currently collecting costs in sufficient detail to permit it to exercise effective cost control.

11. Cost reporting should also be done by project and functional department to allow the Board to make comparisons to similar functions in other companies. For example, contract administration is a standard function undertaken by most companies. If the OPA collected the costs of preparing and awarding FIT contracts those could be compared to outside costs of doing similar work. Contract administration post award should also be collected separately because this is likely to be a long term function whose costs need to be monitored and controlled.

12. Energy Probe recommends that the Board direct the Applicant to collect costs by project and by functional area and to provide detailed costs and budgets by project and functional area in the next application in order that proper analysis can be done by intervenors and the Board.

Cost Recovery – Assistance to LDCs and Transmitters

13. The Applicant is required under the Green Energy Act to review the green energy plans of distributors and transmitters. The cost of performing these reviews and for providing expert assistance at rate hearings is not presently recovered from the benefiting distributors and transmitters.

14. Energy Probe is concerned that without some form of inherent cost control on these activities, distributors and transmitters will have an incentive to use as much of the OPA's assistance as possible to reduce their own costs. At the same time, the OPA has no incentive to minimize its costs of assisting others because it is not accountable for its costs in the same way that distributors and transmitters are to the Board.

15. Energy Probe submits that if those assistance costs were recovered from distributors and transmitters, there would be at least some external review and scrutiny of those costs through the Board's rate application process. Because distributors and transmitters are subject to Board oversight and review on their costs, billings from the OPA for assistance rendered would be subject to the usual Board scrutiny in rate applications. This would provide an incentive for distributors and transmitters to ensure that the OPA's costs are reasonable and justifiable. By this means, some external cost control can be applied to the OPA at least in this particular function.

Regular Staff vs. Contract Staff

16. A third area of concern to Energy Probe is the rapid increase in staff proposed by the OPA. According to the evidence at D-2-1 page 8 regular staff is expected to reach approximately 221 persons by 2010 and increase of 39 persons or 21% over 2009 levels. At the same time, the proportion of temporary and contract staff is decreasing from 6.2% in 2009 to 4.4% in 2010.

17. Energy Probe submits that an organization with a rapidly changing work program like the OPA's should meet more of its manpower needs with temporary and contract staff until its long term staffing needs are clearer. For example, the OPA's staffing requirements to prepare and defend plans for new nuclear power plants and for renewables under the FIT program has been largely eliminated as Ministerial directive has preempted the Board's oversight of OPA's power system planning activities. Regular staff made surplus under those and other kinds of circumstances that OPA is likely to encounter, can be costly to redeploy or terminate whereas temporary and contract staff are simple to deal with when work programs end.

18. The evidence states at lines 18-20 on page 7 of D-2-1 that "*Permanent employees are retained to meet core, long-term requirements, while temporary and consulting resources are used wherever possible for non-core, short term assignments*". It is not clear how the OPA has determined that over 95% of its current activities are long term requirements and therefore require regular staff.

19. Energy Probe has brought matters of the OPA's "Work Force Hiring Practices" to the Board's attention in previous OPA Fees Reviews. In the Applicant's 2008 Fees Review (EB-2007-0791), Energy Probe argued that the OPA should not build another increase in manpower and revenue requirement into its 2009 Fees request.

Table 1

Board File: EB-2009-0347

OPA 2010 Fees Review

OPA Full Time Equivalent by Strategic Objective

Strategic Objective	2007 Budget	2008 Budget	Variance 08 / 07	2009 Budget	Variance 09 / 08	2010 Budget	Variance 10 / 09	Variance 10 / 07 (3 Year)
Strategic Objective 1	23.4	28.7		34.2		41.3		
Strategic Objective 2	32.9	70.2		63.1		65.8		
Strategic Objective 3	22.2	24.7		27.0		35.3		
Strategic Objective 4	4.4	4.0		4.2		6.0		
Strategic Objective 5	54.1	56.8		53.3		61.2		
Strategic Objective 6	–	–		11.9		21.6		
Total	===== 137.0	===== 184.4	===== + 35%	===== 193.7	===== + 5%	===== 231.2	===== + 19%	===== + 69%

20. As depicted in Table 1 above, the Applicant was more restrained in its work force request for 2009 (EB-2008-0312), with an increase of some 5% over 2008 Budget. But that has not continued into the 2010 request for its work force complement. As shown in Table 1, the Applicant has forecast a requirement of a 19% year over year increase. This translates into a 69% increase over three years.

21. Over the same three years, Energy Probe has argued for a more rational approach to dividing work assignments between regular, permanent employees and temporary employees on the basis that the Applicant's work program is volatile and its long term existence in its present corporate form is highly questionable.

22. Energy Probe has drawn the Board's attention to The Arnett Review Panel Phase II Final Report On Ontario's Provincially-Owned Electricity agencies, issued December 20, 2007, which made certain recommendations as to the future disposition of the OPA.

23. In its Reply Argument filed in the 2009 Fees Review, in Paragraph 18, the Applicant took comfort in the status quo:

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.

24. We wish the Board to note that the Arnett Report recommends disposition of the OPA following completion of the *initial* (ongoing) Integrated Power System Plan review.

Table 2

Board File: EB-2009-0347

OPA 2010 Fees Review

OPA Regular / Temporary Full Time Equivalents
by Strategic Objective

Strategic Objective	2008 Budget Regular	2008 Budget Temp.	2009 Budget Regular	2009 Budget Temp.	2010 Budget Regular	2010 Budget Temp.	Variance Regular 10 / 08	Variance Temp. 10 / 08
Strategic Objective 1	21.4	7.3	29.5	4.7	36.0	5.0		
Strategic Objective 2	64.2	6.0	65.2	0.6	64.8	1.0		
Strategic Objective 3	22.0	2.7	25.0	2.0	35.3	0.0		
Strategic Objective 4	3.0	1.0	4.2	0.0	6.0	0.0		
Strategic Objective 5	50.8	6.0	52.3	1.0	57.4	3.8		
Strategic Objective 6	–	–	8.9	3.0	21.6	0.0		
Total	161.4	23.0	182.4	11.3	221.4	9.8	+ 37%	- 60%

25. In response to the submissions of Energy Probe in respect of Workforce in the 2008 OPA Fees Review, the Board in its Decision and Order (EB-2007-07910), issued May 15, 2008, stated the following on Page 11:

Board Findings

The Board agrees that these are matters for the 2009 fees case. Having said that, the Board has noted that the OPA's 2008 budget reflects a substantial increase in its overall workforce – it increases from 137.0 in 2007 to 183.8 Full Time Equivalents in 2008. In the CDM area specifically, the OPA is doubling its workforce to 66.2 Full Time Equivalents. The Board has also noted from OPA's testimony that the OPA is currently not in a position to forecast its workforce requirements and acknowledged that in the future its workforce could be reduced. The possibility for a reduction in the future has not altered the OPA's practice in continuing to augment its existing workforce with full-time permanent employees. While the Board accepts the OPA's budget associated with its workforce for the 2008 year, in light of the uncertainties for future workforce requirements acknowledged by the OPA, the Board expects the OPA to review its hiring practices for 2008 and to fully justify increases to its permanent full-time workforce in its 2009 fees application.

26. It does appear to Energy Probe, as depicted in Table 2 above, that since 2008 the OPA has rapidly reduced its complement of temporary employees. As a result, temporary employees have been reduced from 12.5% of the OPA workforce in 2008 to a Budget for 2010 of 4.2% of its workforce.

27. Energy Probe submits that the OPA's work program is sufficiently volatile that it should be trying to resource at least 10% of its manpower requirements through temporary and contract staff. This would help mitigate the risk of finding itself with more regular staff than it needs in the future and avoid the costs of dealing with overstaffing.

28. Energy Probe submits that Ontario's ratepayers would benefit from the Board providing further direction to the Applicant in respect of its workforce practices.

Costs

29. 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

March 19, 2010

Energy Probe Research Foundation