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April 19, 2010

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-2009-0263
Festival Hydro Inc. – 2010 Cost of Service Application
Energy Probe – Comments on Draft Rate Order

Pursuant to the Decision and Order, issued by the Board on April 1, 2010, please find two hard copies of the Draft Rate Order Comments of Energy Probe Research Foundation (Energy Probe) in the EB-2009-0263 proceeding for the consideration of the Board. An electronic version of this communication will be forwarded in PDF format.

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

Yours truly,

David S. MacIntosh
Case Manager

cc: William Zehr, Festival Hydro Inc. (By email)
Debbie Reece, Festival Hydro Inc. (By email)
Randy Aiken, Aiken & Associates (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

EB-2009-0263

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 Festival Hydro Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2010.

COMMENTS ON THE DRAFT RATE ORDER OF ENERGY PROBE RESEARCH FOUNDATION ("ENERGY PROBE")

April 19, 2010

FESTIVAL HYDRO INC.
2010 RATES

EB-2009-0263

COMMENTS ON DRAFT RATE ORDER

As part of the Decision and Order dated April 1, 2010, the Board ordered Festival to file with the Board and forward to intervenors a draft Rate Order within 14 days of the date of the Decision. The draft Rate Order was to provide detailed supporting information showing the calculation of the final rates including the Revenue Requirement Work Form.

The Board further ordered that intervenors should file any comments on the draft Rate Order with the Board and forward to Festival within 7 days of the date of the filing of the draft Rate Order.

Festival filed the draft Rate Order on April 15, 2010. Energy Probe has had the opportunity to review the draft Rate Order and believes that further clarification is required in the areas addressed below.

a) Depreciation Expense - Account 1930

First, Energy Probe believes that Festival should provide further clarification on the calculation of the depreciation expense using the half year rule applied to account 1930 - Transportation Equipment.

In the original evidence, Festival calculated a full year of depreciation for the 2010 test year. Based on the Board's Decision, this was to be changed to a half year. Energy Probe has reviewed all of the depreciation calculations shown in the Depreciation Expense table shown in Appendix B of the Draft Rate Order and believes all of the calculations are correct, with the exception of account 1930 - Transportation Equipment.

As can be seen in the original evidence at Exhibit 4, Tab 2, Schedule 7, Appendix C, page 5 of 5, a depreciation expense of $254,836 was calculated on a base of $1,274,180 based on a 5 year life for these assets. This can be verified since the ratio of the depreciation expense to the base is exactly 20% (i.e. $254,836 / $1,274,180 = 0.20). The base of $1,274,180 includes the full addition of $300,000 in capital expenditures in this category in the test year.

In Appendix B of the Draft Rate Order, Festival has correctly calculated the base to which the depreciation rate is applied. The new base is $1,124,180, which is $150,000 or one-half of the $300,000 in capital expenditures. However, the amount of depreciation calculated is $236,086 which represents a depreciation rate of 21% ($236,086 / $1,124,180 = 0.21) rather than the 20% used in the original evidence. Application of the 20% rate from the original evidence to the corrected base of $1,124,180 would result in a depreciation expense of $224,836, a reduction of $11,250 from that included in the Depreciation Expense table shown in Appendix B of the Draft Rate Order.

Energy Probe notes that account 1930 has service lives of 5 to 8 years, depending on the type of vehicle. This is reflected in the table in Appendix B. However, this would tend to reduce the depreciation rate from that filed in the original evidence that assumed a 5 year life for all the assets in this category. Further, moving some of the assets to a longer life of 8 years from 5 would decrease the overall depreciation rate on these assets and not increase it from 20% to 21%.

Energy Probe therefore submits that Festival should continue to use the 20% depreciation rate for account 1930 as it did in its original evidence and reduce the depreciation expense included in the revenue requirement by $11,250. There would also be a corresponding change to the accumulated depreciation and the calculation of rate base.

b) Calculation of PILS

Festival has calculated PILS in an amount of $890,987 in Appendix B of the Draft Rate Order. This amount is based on a net tax expense calculated to be $904,987 less tax credits of $14,000. Energy Probe believes this amount is too high.

The following table shows the calculation of the net tax expense based on the average tax rates in place for calendar 2010. The clawback rate in the following table is applicable to taxable income between $500,000 and $1.5 million.

Taxable Income		2,909,395
Federal Tax	18.000%	523,691
Provincial Tax		
First $500,000	5.000%	25,000
Clawback	2.125%	21,250
All Over 500,000	13.000%	313,221
Total		883,162

As shown in the above table, the net tax expense is $883,162, not $904,987 as calculated by Festival, a difference of $21,825. In Appendix B of the Draft Rate Order, Festival has calculated PILS by assuming an equal amount of taxable income in each of the two periods in 2010 that have different tax rates. However, a review of the rates used by Festival shows a 16.25% for the provincial tax rate for the amount in excess of $500,000 when taxable income is below $1.5 million for the July through December, 2010 period. This percentage is made up of the 12% for the general provincial tax rate and the current 4.25% clawback rate on taxable income in excess of $500,000. This latter figure is not correct. The clawback rate has been eliminated effective July 1, 2010.

In addition to the above error, the Festival approach does not take into account the small business deduction and clawback rates that would apply to the net taxable income in the first half of the year.

Energy Probe submits that the application of the weighted tax rates shown in the table above is the more appropriate and accurate methodology to calculate PILS and reflects the known changes in rates that will take place on July 1, 2010. As noted above, this would reduce the PILS expense by $21,825.

In addition to the above, Energy Probe does not believe that Festival has accurately reflected the reduction for the Ontario apprentice tax credit. As shown in Appendix B of the Draft Rate Order, Festival has included a deduction of $10,000. Energy Probe submits this amount should be $20,000. As shown in the response to Energy Probe Interrogatory #35, Festival indicated that the apprentice tax credit would increase to $20,000 from the $10,000 used by Festival to reflect the new legislation. Festival appears to have included an amount based on the then current maximums allowed. Energy Probe submits that this is incorrect as it does not reflect the legislation that is now in place and that this credit should be increased to $20,000, as confirmed in the interrogatory response. This would reduce the PILS expense by a further $10,000.

In total, Energy Probe submits that the PILS expense of $890,987 as calculated by Festival is $31,825 too high. Based on this reduction in the PILS expense to $859,162, the effective tax rate would decline from 30.62% to 29.53%.

c) Cost Allocation

Energy Probe notes that Festival has included a reduction in the revenue-to-cost ratio for the Unmetered Scattered Load class from 120% in 2010 to 105% by 2012 (pages 13 and 14 of 72 of the Draft Rate Order). Energy Probe agrees that the Board directed Festival to reduce the revenue-to-cost ratio for this class of customers to 120% in 2010 but submits that the Board did not direct Festival to reduce this ratio to 105% by 2012. As a result, the ratio should be maintained at 120% beyond 2010.

d) Revenue Requirement Work Form

Energy Probe notes that the Distribution Revenue at Current Rates used in the calculation of the revenue deficiency is $8,872,663, which is unchanged from the original application. However, as shown in Appendix B of the Draft Rate Order in the table titled "Summary of Changes Impacting Revenue" Festival has estimated the increase in distribution revenue as a result of the Board's Decision on the billed energy forecast to be $253,298. This increase in distribution revenue at current rates does not appear to be reflected in the calculation of the revenue deficiency per the Board Decision.

Energy Probe believes that the increase in distribution revenue at current rates should be reflected in the deficiency calculation. The deficiency would be reduced accordingly, but would not affect the overall revenue requirement.