



EB-2009-0347

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 requirement for the year 2010.

BEFORE: Cynthia Chaplin
Vice Chair and Presiding Member

Paul Sommerville
Member

DECISION AND ORDER

Application

On November 9, 2009, the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its proposed 2010 expenditures and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998* (the “Act”). The Board assigned file number EB-2009-0347 to this application.

The OPA, pursuant to subsection 25.21(2) of the Act, sought the following approvals from the Board:

- 1) approval of a net revenue requirement comprised of the proposed 2010 operating budget of \$65.127 million and a number of adjustments that result in a net amount of \$76.027 million;
- 2) approval of a \$0.551/MWh usage fee, which is an increase from the approved usage fee of \$0.485/MWh for 2009;

- 3) if necessary, interim approval of the usage fee described above, or such further or other interim orders as the Board may deem appropriate;
- 4) approval of registration fees of \$10,000 per proposal for electricity supply and capacity procurements;
- 5) approval of non-refundable application fees for the Feed-in-Tariff program of \$0.50/kWh of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000;
- 6) approval of proposed 2010 capital expenditures of \$1.8 million;
- 7) approval of its proposal to recover through fees the balances of the Government Procurement Costs Deferral Account and the 2009 Forecast Variance Deferral Account;
- 8) approval to continue to recover the balance of Retailer Settlement Deferral Accounts over three years;
- 9) approval of establishment of the 2010 Retailer Contract Settlement Deferral Account, of the 2010 Retailer Discount Settlement Deferral Account, of the 2010 Government Procurement Costs Deferral Account and of the 2010 Forecast Variance Deferral Account, and approval or continuation of such further or other deferral accounts as the Board may deem appropriate; and
- 10) all necessary orders and directions, pursuant to the *Ontario Energy Board Act, 1998* and the Board's Rules of Practice and Procedure, as may be necessary in relation to this submission, and execution of the approvals requested in the Business Plan.

The OPA sought interim approval of the proposed \$0.551/MWh fee effective January 1, 2010.

The Board issued a Notice of Application dated November 27, 2009. In response to the Board's Notice of Application the Board received requests for intervenor status from the Society of Energy Professionals, Ontario Power Generation, Shell Energy North

America (Canada) Inc., the Electricity Distributors Association, the Association of Major Power Consumers in Ontario ("AMPCO"), the Low-Income Energy Network ("LIEN"), the Vulnerable Energy Consumers Coalition ("VECC"), Pollution Probe and Energy Probe. The Board approved all intervention requests. The Board also received and approved the request for observer status from the Association of Power Producers of Ontario.

The following parties also applied for cost award eligibility: AMPCO, LIEN, VECC, Pollution Probe and Energy Probe. The Board found all of these parties eligible for a cost award.

Included within the Notice of Application was a Draft Issues List prepared by Board Staff. Submissions on the issues list were received from LIEN, VECC, Energy Probe and Pollution Probe. The OPA responded to these submissions on December 21, 2009.

In Procedural Order No. 1, dated December 30, 2009, the Board determined the Issues List and also approved an interim usage fee for 2010 of \$0.551/MWh, effective January 1, 2010 pending the final decision in this proceeding. The Board also set out dates for the proceeding up to and including the filing by February 24, 2010 of a Settlement Proposal.

Settlement Proposal

A settlement conference was held at the Board's offices on February 16, 2010. The following parties participated: AMPCO, VECC and Energy Probe. A Settlement Proposal dated February 24, 2010 was filed with the Board and is attached to this Decision and Order.

Partial settlement was reached on Issues 1.0 to 6.1 on the basis that the operating budgets for Strategic Objectives 1 through 6 for 2010 were accepted. However, it was agreed that parties would be allowed to make written submissions on certain unsettled issues, with the OPA having the right to file reply submissions.

In the Board's Decision on Settlement and Procedural Order No. 2, dated March 11, 2010, the Board accepted the Settlement Proposal as reasonable, and made provision for the filing of submissions by Energy Probe, VECC and AMPCO as stipulated in the

Settlement Proposal. In Procedural Order No. 2 the Board set out dates for submissions by intervenors and the OPA's reply submission.

Submissions were received from Energy Probe, VECC and AMPCO on the following matters: cost collecting and reporting; cost recovery – assistance to distributors and transmitters; workplace hiring practices; level of detail provided by OPA in the establishment of test year milestones and reporting; and the disposition of the balances in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Accounts. The OPA filed reply submissions on all of these issues.

Board Findings

Cost Collection and Reporting

Energy Probe recommended that the Board direct the OPA to collect and report its costs on a per-project basis and by functional area for inclusion in the OPA's next revenue requirement submission, similar to the way other organizations report their costs. Energy Probe submitted that this information would permit better analysis of the data provided by the OPA. AMPCO and VECC both supported Energy Probe's suggestion.

The OPA replied that insofar as Energy Probe's proposal was intended to facilitate comparisons with other organizations it is not appropriate. In the OPA's view there are no comparable organizations undertaking the range of tasks mandated for OPA.

The Board agrees with the OPA in that it is a unique organization which has been tasked with some very specialized responsibilities. The Board is satisfied with the OPA's level of detail and the manner in which it has reported its projected costs throughout its last several fees case submissions. The Board notes that the OPA's mandate is made up of many on-going projects that do not adhere to traditional cost allocation practices and that the manner in which the OPA has presented its costs and budgets by strategic objective is acceptable.

Cost Recovery – Assistance to LDCs and Transmitters

Energy Probe is concerned with the OPA providing support to distributors and transmitters through the OPA's review of Green Energy plans and through its expert

assistance at rate hearings. The primary concern that Energy Probe has with this function is 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 in order to reduce their own costs, while the OPA has no incentive to minimize its costs. Energy Probe submitted that if the OPA were to recover those assistance costs from distributors and transmitters on a cost recovery basis the quality of the Board's fee review and approval process would be enhanced. AMPCO supported Energy Probe's recommendation.

The OPA noted in its response that part of its mandate is to bring a broader perspective to the consideration of the plans and proposals of particular utilities. Its task is to consider the best interests of the Province, rather than just the interests of the individual utilities. The OPA submitted that it is not appropriate for it to charge utilities for its costs related to activities that it undertakes in order to fulfill its mandate.

The Board agrees with the OPA in that the review of Green Energy plans is part of the OPA's core business as the provincial system planner. The mandate in which the OPA is operating under calls for the OPA to review the distributors' plans, not prepare them.

Workforce Hiring Practices

In the past several OPA revenue requirement submissions the issue of workforce hiring practices, specifically related to the proportion of full-time equivalents ("FTEs") to contract or temporary staff has been raised by intervenors. Energy Probe argued that the OPA's work program is sufficiently volatile that it should be looking to compliment its FTEs with a larger ratio of contract and temporary staff, thereby mitigating the risk of overstaffing. VECC also argued that the evidence the OPA has provided to support the increase in permanent staff is insufficient. VECC requested that the Board direct the OPA to provide a more detailed analysis with internal planning information to support any such changes in the future.

The OPA argued that a predetermined percentage or ratio of temporary vs. permanent staff is an impractical governing mechanism for its hiring practices.

The Board considers that the OPA needs to have a measure of freedom to manage its staffing levels, and the proportion of permanent staff to temporary or contract staff as it feels is appropriate. The Board is not inclined to attempt to micromanage the OPA's

staffing resources at this time. It is the Board's expectation that in future fees submissions the OPA will make appropriate adjustments to its staffing practices, including its overall staffing levels in light of the organization's mandate.

It is important that OPA be prepared to demonstrate that it has done so in future revenue requirement filings.

The Board also notes that although not witnessed in this fees submission, future fees submissions from the OPA should not build in staffing levels in anticipation of unknown workload. The Board expects to see sufficient explanation and justification included in the OPA's evidence if further increases to staffing levels are seen in future revenue requirement review applications.

Test Year Milestones

VECC argued that the current state of the OPA's revenue requirement submission does not allow for a meaningful review of the OPA's milestones. VECC suggested that the OPA be required to increase the level of specificity of its Business Plan milestones and to provide more detailed evidence that it has developed some hard deadlines which can be measured through the review of its submission.

The OPA noted that the Business Plan milestones are strategic guideposts for business planning purposes and are not meant to be used in the manner in which VECC suggests.

The Board is not prepared to wholly adopt VECC's suggestions. However, the Board directs the OPA to include more precise and informative documentation of its performance metrics for review through the fees case process. Such an enhancement, comparable to the evidence provided with respect to the OPA's compensation payments, would enable parties to assess the extent to which the OPA has achieved its stated goals. In future applications the Board directs the OPA to report on its achievement of its metrics, sorted by Strategic Objective.

Disposition of Deferral Accounts

As guided by Sections 25.34(1) and (2) of the *Electricity Act, 1998*, the OPA makes and receives payments with respect to contracts between retailers and consumers. For

2010, the OPA has proposed to recover \$14.3 million from all users with a fee impact of 0.104 \$/MWh. In AMPCO's final submission, it argued that the recovery of the amounts in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Accounts should not be recovered from all users equally, but rather proportionally from those who contributed to the balances. On the other hand, VECC supports the current allocation of the amounts in the accounts in question.

VECC noted that the OPA has used the balance in the deferral accounts as a benefit to all users in the past, most notably in 2006 when its revenue requirement was completely offset with the credit balance in its Retailer Contract Settlement Deferral Account.

The OPA submitted that historically the balances in these deferral accounts have been used both as a credit to, and recovered from, all users equally in the past. This approach was endorsed by all parties, including AMPCO, in the OPA's revenue requirement review application for 2009. That approach also included the recovery of the total outstanding balances in the deferral accounts over a three year period.

The Board finds that the costs associated with these deferral accounts are costs which should not be allocated narrowly as the provincial system planner has the responsibility of providing information to all users.

The Board will maintain the practice approved in last year's proceeding, but notes that a thorough review of this matter is more appropriately suited following the final year of the three year recovery period, that being the 2012 revenue requirement submission. AMPCO suggested that the OPA include some options for how the amounts in these accounts can be recovered from the classes that have given rise to the accounts. The Board feels this is a reasonable request, but that it should take place in the OPA's 2012 revenue requirement submission.

COST AWARDS

Intervenors eligible for an award of costs shall file their cost submissions in accordance with the *Practice Direction on Cost Awards* with the Board Secretary and with the OPA within 15 days of the date of this Decision and Order. The OPA may make submissions regarding the cost claims within 30 days of this Decision and Order and the intervenors may reply within 45 days of this Decision and Order. A decision and order on cost awards and the Board's own costs will be issued in due course.

THE BOARD ORDERS THAT:

The interim usage fee of \$0.551/MWh effective January 1, 2010 is final.

DATED at Toronto, April 27, 2010
ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

APPENDIX A
OF THE DECISION FOR THE
ONTARIO POWER AUTHORITY

EB-2009-0347

DATED: April 27, 2010

SETTLEMENT PROPOSAL

February 24, 2010

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EB-2009-0347
SETTLEMENT PROPOSAL

February 24, 2010

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1 This Settlement Proposal is filed with the Ontario Energy Board (“OEB”) in connection with the
2 2010 Expenditure and Revenue Requirement Submission (“2010 RRS”) of the Ontario Power
3 Authority, filed November 9, 2009 under sections 25.20 and 25.21 of the *Electricity Act, 1998*. A
4 Settlement Conference was held on February 16, 2010 in accordance with the *Ontario Energy Board*
5 *Rules of Practice and Procedure* (the “Rules”) and the *Ontario Energy Board Settlement Conference*
6 *Guidelines* (“Settlement Guidelines”). This Settlement Proposal arises from the Settlement
7 Conference.

8 The Ontario Power Authority (the “OPA”) and the following intervenors listed alphabetically
9 (collectively, “the parties”), and the OEB technical staff (“Board Staff”), participated in the
10 Settlement Conference:

11 **Association of Major Power Consumers in Ontario (“AMPCO”)**

12 **Energy Probe Research Foundation (“Energy Probe”)**

13 **Vulnerable Energy Consumers Coalition (“VECC”)**

14 The Settlement Proposal represents the positions of the intervenors on the issues listed in the Table
15 of Contents and the Final Issues List attached as Appendix “A” to the OEB’s Issues Decision and
16 Order dated December 30, 2009 (the “Issues List”). The numbers given to each of the issues
17 correlate to the sections in the Settlement Proposal and each issue is categorized under one of the
18 following descriptions:

19 Complete Settlement – The OPA and all intervenors who take a position on the issue agree to the
20 proposed settlement;

21 Incomplete Settlement – The parties are only able to agree on some, but not all, parts of the
22 issue; or

23 No Settlement – The parties were unable to reach agreement on any part of the issue.

24 The categorization of each issue assumes that all intervenors participated in the negotiation of an
25 issue, unless specifically noted otherwise. Any intervenors that are identified as not having
26 participated in the negotiation of that issue also take no position on any settlement or other wording
27 pertaining to the issue. In accordance with the Rules and the Settlement Guidelines, Board Staff
28 takes no position on any issue and, as a result, is not a party to the Settlement Proposal.

29 The Settlement Proposal describes the agreements reached on the settled issues. The Settlement
30 Proposal identifies the intervenors who agree with each settlement, or who take no position on the
31 issue. The Settlement Proposal lists the evidentiary references for each issue. Therefore the
32 intervenors who are in agreement with any settled issue(s) believe that the evidence provides
33 sufficient information to support their views to support the Settlement Proposal and combined with
34 the rationale for settlement, will assist the OEB in its decision making on those issues.

1 Issues 1.0 to 6.1 in this proceeding relate to the OPA's Operating Budget, as allocated among its six
2 Strategic Objectives. The issues and their related evidence are provided individually below. The
3 parties' collective settlement status for these six issues follows.

1.0	Strategic Objective 1 – POWER SYSTEM PLANNING – Plan for and facilitate the development of a cost effective, reliable and sustainable electricity system.
1.1	Is the Operating Budget of \$6.391 million allocated to Strategic Objective 1 reasonable and appropriate?

4 **Evidence:** The evidence in relation to this issue includes the following:

5 A-2-1 2010 - 2012 Business Plan

6 B-1-1 Strategic Objective 1

7 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
8 on an Organizational Level

9 D-2-2 Variance Analyses by Strategic Objective

10 I-2-1, 2, 7 AMPCO Interrogatories 1, 2, 7

11 I-3-1, 2, 3, 4, 18 Energy Probe Interrogatories 1, 2, 3, 4, 18

12 I-5-10 VECC Interrogatory 10

2.0	Strategic Objective 2 – CONSERVATION – Plan, procure and support the development of verified conservation/energy-efficiency resources as identified in the integrated plan and its subsequent iterations. Build capability and enable partners to achieve targets and contribute to a culture of conservation in Ontario.
2.1	Is the Operating Budget of \$16.484 million allocated to Strategic Objective 2 reasonable and appropriate?

13 **Evidence:** The evidence in relation to this issue includes the following:

14 A-2-1 2010 - 2012 Business Plan

15 B-2-1 Strategic Objective 2

16 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
17 on an Organizational Level

18 D-2-2 Variance Analyses by Strategic Objective

19 I-1-1 Board Staff Interrogatory 1

20 I-2-6, 8, 9, 10 AMPCO Interrogatories 6, 8, 9, 10

21 I-3-5, 6, 7 Energy Probe Interrogatories 5, 6, 7

22 I-4-1, 2, 3, 4 Pollution Probe Interrogatories 1, 2, 3, 4

23 I-5-1, 2, 3, 4, 5, 6, 7, 8 VECC Interrogatories 1, 2, 3, 4, 5, 6, 7, 8

3.0	Strategic Objective 3 – SUPPLY PROCUREMENT AND CONTRACT MANAGEMENT – Plan and design standardized tariff-based, competitive and bilateral procurement processes and enter into procurement contracts for generation resources. These procurement and contracts will meet the requirements identified in the integrated plan, ministerial directives and legislation, and incorporate world-class contracting and settlement practices that support investment in electricity.
3.1	Is the Operating Budget of \$7.836 million allocated to Strategic Objecting 3 reasonable and appropriate?

- 1 **Evidence:** The evidence in relation to this issue includes the following:
- 2 A-2-1 2010 - 2012 Business Plan
- 3 B-3-1 Strategic Objective 3
- 4 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
- 5 on an Organizational Level
- 6 D-2-2 Variance Analyses by Strategic Objective
- 7 I-2-5, 11, 12, 13, 15 AMPCO Interrogatories 11, 12, 13, 15
- 8 I-3-8, 10, 11 Energy Probe Interrogatories 8, 10, 11
- 9 I-4-5, 6 Pollution Probe Interrogatories 5, 6

4.0	Strategic Objective 4 – BARRIERS TO THE DEVELOPMENT OF EFFICIENT AND ENVIRONMENTAL SUSTAINABLE GENERATION DEVELOPMENT – Identify barriers and limitations; develop and/or define methods and solutions to deliver enhanced generation developments, through innovation, analysis, assessment and benchmarking with a view to efficiency and environmental sustainability.
4.1	Is the Operating Budget of \$833,000 allocated to Strategic Objective 4 reasonable and appropriate?

- 10 **Evidence:** The evidence in relation to this issue includes the following:
- 11 A-2-1 2010 - 2012 Business Plan
- 12 B-4-1 Strategic Objective 4
- 13 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
- 14 on an Organizational Level
- 15 D-2-2 Variance Analyses by Strategic Objective
- 16 I-2-3, 4 AMPCO Interrogatories 3, 4
- 17 I-3-9, 12, 13 Energy Probe Interrogatories 9, 12, 13

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5.0	Strategic Objective 5 – ORGANIZATIONAL CAPACITY – Develop and maintain organizational capacity to achieve the strategic objectives and be recognized as a strategic partner.
5.1	Is the Operating Budget of \$24.474 million allocated to Strategic Objective 5 reasonable and appropriate?

2 **Evidence:** The evidence in relation to this issue includes the following:

3 A-2-1 2010 - 2012 Business Plan

4 B-5-1 Strategic Objective 5

5 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
6 on an Organizational Level

7 D-2-2 Variance Analyses by Strategic Objective

8 B-1-1 Strategic Objective 1

9 B-2-1 Strategic Objective 2

10 B-3-1 Strategic Objective 3

11 B-4-1 Strategic Objective 4

12 B-6-1 Strategic Objective 6

13 I-1-2, 4 Board Staff Interrogatories 2, 4

14 I-3-14, 15, 16, 17 Energy Probe Interrogatories 14, 15, 16, 17

15 I-5-9 VECC Interrogatory 9

6.0	Strategic Objective 6 – COMMUNICATIONS – Be a trusted and respected source of information in the electricity sector.
6.1	Is the Operating Budget of \$9.108 million allocated to Strategic Objective 6 reasonable and appropriate?

16 **Evidence:** The evidence in relation to this issue includes the following:

17 A-2-1 2010 - 2012 Business Plan

18 B-6-1 Strategic Objective 6

19 D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances
20 on an Organizational Level

21 D-2-2 Variance Analyses by Strategic Objective

22 I-1-3 Board Staff Interrogatory 3

23 I-2-14 AMPCO Interrogatory 14

24 I-3-19 Energy Probe Interrogatory 19

Incomplete Settlement:

The parties have reached a partial settlement of Issues 1.0 to 6.1 on the basis that the operating budgets for Strategic Objectives 1 through 6 for 2010 are accepted. However, parties propose to make written submissions in this proceeding as follows:

- Energy Probe proposes to make written submissions that the OPA develop internal processes to be able to track and report staffing and other costs on a per-project basis for the next revenue requirement submission.
- Energy Probe also proposes to make written submissions on the OPA's ratio of contract staff to permanent staff.
- VECC proposes to make written submissions regarding the level of detail to be provided by the OPA in the establishment of test year milestones and the reporting of its achievements.

All parties reserve the right to make written submissions with respect to the above issues. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO; Energy Probe; VECC

7.0	Proposed Fees
7.1	Is the proposed usage fee reasonable and appropriate?
7.2	Are the proposed registration fees per proposal for electricity supply and capacity procurement reasonable and appropriate?
7.3	Are the proposed application fees for the Feed-in-Tariff program reasonable and appropriate?

Evidence: The evidence in relation to this issue includes the following:

D-1-1 2010 Revenue Requirement and Usage Fee

B-1-1 Strategic Objective 1

B-2-1 Strategic Objective 2

B-3-1 Strategic Objective 3

B-4-1 Strategic Objective 4

B-5-1 Strategic Objective 5

B-6-1 Strategic Objective 6

D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances on an Organizational Level

D-2-2 Variance Analyses by Strategic Objective

I-1-5 Board Staff Interrogatory 5

Incomplete Settlement:

The parties have reached a partial settlement on the basis that the proposed usage fees, registration fees for electricity supply and capacity procurement and application fees for the Feed-in Tariff program for 2010 are accepted. However, parties propose to make written submissions in this proceeding as follows:

- Energy Probe proposes to make written submissions that the OPA consider billing third parties for the costs incurred to provide analysis and support in regulatory proceedings, based on the tracking of costs as described in the settlement status of Issues 1.0 through 6.1, above.
- AMPCO proposes to make written submissions that the OPA should increase its forecast registration fee income by \$80,000, to be collected as registration fees for the OPA's Hydroelectric Contract Initiative and NUG re-contracting.

All parties reserve the right to make written submissions with respect to the above issues. The OPA will have the right to reply to these submissions.

Participating Intervenors: AMPCO; Energy Probe; VECC

8.0	Deferral and Variance Accounts
8.1	Is the proposed disposition of the various Deferral and Variance Accounts reasonable and appropriate?
8.2	Are the proposed Deferral and Variance Accounts appropriate?

Evidence: The evidence in relation to this issue includes the following:

- D-3-1 Deferral and Variance Accounts
- D-3-2 Invoices from the Ministry
- D-3-3 Forecast Variance Deferral Account

Incomplete Settlement:

Parties have reached a partial settlement on the basis that the proposed Deferral and Variance Accounts are appropriate and that the OPA's proposals to dispose of the balances in the Government Procurement Costs and Forecast Variance Deferral Accounts are reasonable and appropriate. However, parties propose to make written submissions in this proceeding as follows:

- AMPCO proposes to make written submissions regarding the disposition of the outstanding balances in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Deferral Accounts.

All parties reserve the right to make written submissions with respect to the above issue. The OPA will have the right to respond to these submissions.

Participating Intervenors: AMPCO; Energy Probe; VECC

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

Evidence: The evidence in relation to this issue includes the following:

B-1-1 Strategic Objective 1

B-2-1 Strategic Objective 2

B-3-1 Strategic Objective 3

B-4-1 Strategic Objective 4

B-5-1 Strategic Objective 5

B-6-1 Strategic Objective 6

D-2-1 2010 Registration Fees, Operating Costs and Capital Expenditures: Discussion of Variances on an Organizational Level

D-2-2 Variance Analyses by Strategic Objective

I-3-22 Energy Probe Interrogatory 22

Complete Settlement:

The parties have reached a full settlement of this issue on the basis that the OPA's response to previous settlement agreements and Board Decisions is accepted.

Participating Intervenors: AMPCO; Energy Probe; VECC