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October 4, 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-2010-0193**  
**Re: Toronto Hydro-Electric System Limited – Remediation Recovery**  
**Submissions of Energy Probe**

Pursuant to Procedural Order No. 4, issued September 8, 2010, attached please find two hard copies of the Argument of Energy Probe Research Foundation (Energy Probe) in respect of the EB-2010-0193 proceeding for the Board's consideration. An electronic version of this communication will be forwarded in PDF format.

Energy Probe wishes to apologise for the late filing of its submissions. Energy Probe is engaged in several concurrent proceedings before the Board and has fallen behind in this instance.

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)  
J. Mark Rodger, Borden Ladner Gervais LLP (By email)  
Peter T. Faye, Counsel to Energy Probe (By email)  
Interested Parties (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 approving the  
recovery of certain amounts related to contact voltage  
emergency remediation costs, to be effective May 1, 2011.

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

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**October 4, 2010**

**TORONTO HYDRO-ELECTRIC SYSTEM LIMITED  
EB-2010-0193**

**APPLICATION FOR  
RECOVERY OF CONTACT VOLTAGE REMEDIATION COSTS**

**FINAL ARGUMENT  
OF  
ENERGY PROBE RESEARCH FOUNDATION**

**How these Matters came before the Board**

1. On May 14, 2010, Toronto Hydro-Electric System Limited (Toronto Hydro or the Applicant) filed an application with the Ontario Energy Board seeking recovery of approved contact voltage remediation costs arising out of a Decision by the Board in an earlier proceeding in respect of the Applicant EB-2009-0243. The recovery sought would result in changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2011.
2. On June 4, 2010, the Board issued a Notice of Application and Hearing and Procedural Order No. 1 for the proceeding, assigning the application file number EB-2010-0193. Energy Probe was deemed an intervenor in the current proceeding, having been an intervenor in the previous proceeding EB-2009-0243.
3. Pursuant to Procedural Order No. 1, Energy Probe filed its interrogatories on June 29, 2010. Responses were filed by the Applicant on July 14, 2010.

4 In Procedural Order No. 2, issued July 26, 2010, the Board ordered the Applicant to file additional information to respond to a Board staff interrogatory in respect of its monthly controllable expenses for the years 2007, 2008 and 2009. On August 23, 2010, the Applicant filed its additional information but pleaded that it could only provide the sought after data for the 2009 monthly breakdowns.

5. In Procedural Order No. 3, issued August 31, 2010 the Board provided a schedule for parties wishing to file submissions, with Board staff and intervenors filing September 10, 2010, followed by the reply submission of Toronto Hydro on September 17, 2010.

6. On September 3, 2010, the Applicant requested that the Board permit it to file further clarification with the appropriate support material. Toronto Hydro suggested that an additional discovery process might take place if the Board felt it was required.

7. In Procedural Order No. 4, issued September 8, 2010, the Board granted the Applicant's request to file further clarifying information and provided a schedule for both an additional discovery process through supplemental interrogatories and the subsequent filing of submissions.

## Argument Overview

8. In its Argument, Energy Probe will not seek to explore all aspects of the issue before the Board, but will focus its submission on the quantum of recovery that the Board might find appropriate in its Decision in this proceeding and being consistent with its Decision in EB-2009-0243.

9. In the Decision in the EB-2009-0243 proceeding the Board expressed concern, on Page 9, “that if in fact there is underspending in the 2009 total controllable OM&A, it would confer a double benefit to the shareholder.” From the original claim by Toronto Hydro for Total Contact Voltage Expenditures of \$14.35 million, the Board approved a total conditional relief of \$9.44 million to be recorded in a sub-account of account 1572 (Extraordinary Events Costs), bearing no interest, for review at a later time.

## **SUBMISSION ON RECOVERY**

10. Energy Probe has the opportunity to review the submission of Board staff dated October 1, 2010 and concurs with its conclusion that the approach it describes as option (ii) is the fairest. That option disallows inclusion of the \$9.44 million of contact voltage costs eligible for recovery in the Board's decision in 2009 actual OM&A but does allow the inclusion of the \$4.91 million that was refused in the contact voltage decision.

11. The \$4.91 million consists, as described in Staff's submission, of two components:

- a) \$2.41 M of ongoing scanning costs. These costs were not proposed in Toronto Hydro's approved 2009 OM&A but were, in Energy Probe's submission, a legitimate use of OM&A funds redirected from other maintenance activities in the face of unexpected system requirements. It is probably true that they would not have arisen if the contact voltage emergency had not occurred, because neither Toronto Hydro nor any other distributor in Ontario included comprehensive system scanning in their OM&A plans prior to the contact voltage emergency. However, once a potential hazard was identified, it was a legitimate exercise of management's discretion to direct OM&A funds away from less urgent activities to deal with what the Applicant saw as a more urgent maintenance priority. Therefore, these costs should be included in the 2009 OM&A actuals.

- b) \$2.5 M for overtime maintenance costs and remediation work that would have otherwise arisen in the normal course and were therefore included in Board approved 2009 OM&A costs.

12. The first category (overtime maintenance costs) resulted in actual maintenance being accomplished that was included in Board approved 2009 OM&A. The only difference was that Toronto Hydro paid overtime labour rates for it when it could have done the work on regular rates if it had a secondary maintenance plan in effect. The relevant consideration is that the maintenance was actually necessary and management made an appropriate decision to redirect OM&A spending from what it considered to be other less urgent work.

13. If these costs were subjected to a prudence review, it might have been argued that only 50% was prudently incurred because Management should have had a secondary maintenance plan and the work should have been done on regular time at half what the overtime cost. However, no other distributors had the foresight to predict the consequences of running their secondary systems to failure so Toronto Hydro might well be excused for not foreseeing the contact voltage hazard that eventually developed from that neglect.

14. The fact that it reacted to repair the secondary deficiencies on overtime should not be a reason to disallow those costs in 2009 actual OM&A. However, Energy Probe submits that allowing inclusion of the maintenance at overtime rates in 2009 actuals should not be a precedent for future cost of service applications to propose doing similarly routine maintenance on overtime in the absence of any emergency conditions.

15. The second category, remediation work that would have arisen as trouble calls anyway, were disallowed in the contact voltage cost recovery Decision on the basis that this work was included in Board approved 2009 OM&A. Therefore it should be included in the 2009 OM&A actual costs.

16. Energy Probe supports the submissions of Board staff in respect of the mechanics of cost recovery, which took no issue with the proposals of the Applicant.

### **Costs**

17. 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 4, 2010**

**Energy Probe Research Foundation**