

**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 Ltd. for an Order or Orders granting approval of initiatives and amounts related to the Conservation and Demand Management Code;

**AND IN THE MATTER OF** a Notice of Motion by Pollution Probe Research Foundation for review of parts of the Board's Decision on Issues and Cost Eligibility issued on March 11, 2011;

**AND IN THE MATTER OF** Rules 42, 44 and 45 of the Board's *Rules of Practice and Procedure*.

**Ontario Power Authority Submissions on Pollution Probe Motion to Amend the Issues List**

1. These are the submissions of the Ontario Power Authority on the motion to review the Board's order of March 11, 2011 setting an issues list in this proceeding. These submissions are restricted to 2 proposed issues which are described in paragraphs 1 (a) and (c) in Pollution Probe's Notice of Motion as follows:
  - i. "(a) ...to investigate the proposed participation rates for Toronto Hydro's OPA CDM Programs...
  - ii. (c) Toronto Hydro's budget for OPA CDM programs..."
2. The OPA's submission is that the Board correctly excluded these issues because they are irrelevant to the decisions that the Board has to make in this case. As a result, this motion fails to meet any of the threshold requirements of Rule 44 of the Board's Rules of Practice and Procedure.<sup>1</sup>
3. The Board has explained the purpose of an issues list as follows:<sup>2</sup>
  - i. The Board reminds parties that the Issues List has two purposes: 1) it defines the scope of the proceeding; and 2) it articulates the questions which the Board must address in reaching a decision on the application.

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<sup>1</sup> The Board's past practice respecting the application of the threshold requirements of Rule 44 is well known. The OPA's submissions will therefore not address them in detail. It should suffice to say that the burden on Pollution Probe is a significant one.

<sup>2</sup> EB-2007-0050.

4. Adding the proposed issues will not further either of these purposes.
5. With respect to scope, the Board has already determined that it does not have jurisdiction over the OPA programs and, in particular, it has no jurisdiction “to consider the nature, adequacy and cost of the OPA province-wide CDM programs.”<sup>3</sup>
6. Both of the proposed issues invite the Board to consider these matters. Thus, adding issues to review participation rates of OPA CDM programs (proposed issue 1(a)) and the budgeted cost of OPA CDM programs (proposed issue 1(b)) directly relates to the “nature, adequacy and cost” of those programs.
7. As a result, adding these issues would extend the scope of this proceeding beyond the Board’s mandate.
8. It is also clear that the second purpose of preparing an issues list is not furthered by the addition of the two proposed issues. Pollution Probe has not articulated any question that the Board must answer to reach its decision in this case.
9. Thus, the Board does not have to make any determination in this application on “the proposed participation rates for Toronto Hydro’s OPA CDM programs” (proposed issue 1(a)) or on “Toronto Hydro’s budget for OPA CDM programs” (proposed issue 2(a)). While these issues may be of interest to Pollution Probe, they do not (in the Board’s words) “articulate the questions which the Board must address in reaching a decision on the application.”
10. For these reasons, it is respectfully submitted that the Board dismiss Pollution Probe’s motion.

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<sup>3</sup> EB-2010-0331; EB-2010-0332, Transcript Volume 2, March 7, 2011, p. 3.