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April 18, 2011

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-2010-0142
Toronto Hydro-Electric System Limited – 2011 Cost of Service Application
Energy Probe – Final Argument

Pursuant to the direction of the Board during the March 30, 2011 Oral Hearing, please find attached the Final Argument of Energy Probe Research Foundation (Energy Probe) in the EB-2010-0142 proceeding for the Board's consideration.

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

Yours truly,

Original signed by

David S. MacIntosh
Case Manager

cc: Glen Winn, Toronto Hydro-Electric System Limited (By email)
Mark Rodger, Borden Ladner Gervais LLP (By email)
Olena Loskutova, Consultant to Energy Probe (By email)
Peter Faye, Energy Probe Counsel (By email)
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ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*,
1998, S.O. 1998, c.15, Sched. B, as amended;

AND IN THE MATTER OF an Application by Toronto
Hydro-Electric System Limited for an order approving
just and reasonable rates and other charges for electricity
distribution to be effective May 1, 2011.

Final Argument On Behalf Of

Energy Probe Research Foundation

April 18, 2011

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

How these Matters came before the Board

1. On August 23, 2010, Toronto Hydro-Electric System Limited (the “Applicant” or “THESL”), filed an Application seeking approval for changes to the rates that it charges for electricity distribution, to be effective May 1, 2011. The Board issued a Notice of Application and Hearing on September 15, 2010. Energy Probe filed a Notice of Intervention on September 16, 2010, as a full time intervenor.
2. Procedural Order No. 1 was issued by the Board on October 18, 2010 and provided both a Draft Issues List and a procedural schedule for the filing of submissions on the proposed issues list and interrogatories.
3. The Issues Decision and Procedural Order No. 2 was issued by the Board on November 11, 2010. Energy Probe filed its Interrogatories on November 19, 2010; the Responses of the Applicant were filed December 6, 2010.
4. The Applicant filed its cost allocation study in respect of suite metering services on December 1, 2010. Procedural Order No. 3, issued December 13, 2010, ordered a round of interrogatories allowing intervenors to file requests for information on the study by December 24, 2010 and provided a procedural schedule to include a transcribed Technical Conference and a Settlement Conference.
5. Responses to interrogatories in respect of suite metering services were filed by the Applicant on January 7, 2011.

6. The Decision on Confidentiality and Procedural Order No. 4 was issued on January 12, 2011. It called for parties wishing to make submissions on the confidentiality status of various proposed confidential documents to do so by January 18, 2011. The Applicant could file its reply by January 21, 2011.
7. On January 14, 2011, the Smart Sub-metering Working Group filed a Notice of Motion to obtain more complete responses to the interrogatories that it had filed in the proceeding. The Motion was held on January 19, 2011.
8. Procedural Order No. 5 was issued on January 18, 2011 and called for a round of submissions in respect of the Applicant's Business Plan.
9. On January 18, 2011, Energy Probe filed its Technical Conference Questions in anticipation of the Technical Conference scheduled for January 24, 2011. Energy Probe took part in the Technical Conference.
10. Energy Probe actively participated in the Settlement Conference on January 25, 2011, which was adjourned after 1.5 hours. On January 26, 2011, the Applicant filed a letter with the Board requesting that the Board adjourn the settlement discussions until THESL could file an update to its application to reflect material, late breaking mandatory accounting changes and to suggest changes to the procedural schedule set out in Procedural Order No. 3.
11. Procedural Order No. 8 was issued on January 27, 2011, adjourning the Settlement Conference and made provision for parties to make submissions in respect of the Applicant's request to alter the procedural schedule.

12. Procedural Order No. 9 was issued on February 1, 2011, and made provision for the Applicant to file an Accounting Update, for parties to file interrogatories on the Accounting Update and for a resumption of the Settlement Conference.

13. Energy Probe filed Interrogatories on the Accounting Update on February 16, 2011; the Applicant filed Responses on February 24, 2011.

Argument Overview

14. In the Settlement Agreement complete settlement was reached on 23 Issues and partial settlement was reached on 6 other Issues, leaving only 5 areas to be explored in the Oral Hearing and outstanding for Argument:

- i) Incentive Regulation Mechanism (Issue 1.5)
- ii) Emerging Requirements (Issues 4.1, 4.2, 9.1, 9.2 and 9.3)
- iii) Deferral and Variance Accounts (Issue 6.1)
- iv) Suite Metering (Issues 7.2 and 7.3)
- v) Cost Allocation and Rate Design (Issues 7.1 and 7.4)

15. In its Argument, Energy Probe will not seek to explore all outstanding Issues before the Board, but will be examining those Issues of concern to Energy Probe where we believe we can be of most assistance to the Board.

Issue 1. GENERAL

Issue 1.5 When would it be appropriate for Toronto Hydro to commence filing rate applications under incentive regulation? Is this application an appropriate base case for a future IRM application? If not, why not?

16. In its Argument, Energy Probe will examine the points that the Applicant has put forward to justify continuing on cost of service applications.

THESL was led to believe by the Board's decision in EB-2009-0139 that its 2011 rates application would be a standard COS application not a rebasing application.

17. The excerpts from the EB-2009-0139 Decision supporting this argument tend to be a little weak since they centre on suite metering and distributed generation for which the Board wanted more analysis and so directed THESL to file reports in its next cost of service application. That wording could very well have meant its next application whether standard COS or rebasing and it does not appear that the Board intended it to be interpreted as an expectation of what the next application would be.

18. Nonetheless, THESL does have a point that it should be clear before a filing whether the Board expects it to be a rebasing for IRM exercise or not. In the EB-2009-0139 Decision the Board did not mention 3GIRM and moreover did not tell THESL that it expected it to file an IRM rebasing application for 2011 rates. Energy Probe submits this the most persuasive reason why it was reasonable for THESL to assume that its 2011 application would not be for the purpose of rebasing for IRM.

THESL's ratebase has not stabilized and so should not be used as a starting point for 3 years of IRM.

19. THESL argues that IRM freezes its ratebase for 3 years and that it won't be able to finance its expanding capital requirements to rebuild the system if it has to live with a static ratebase. A complicated argument is put forward in respect of capex exceeding depreciation for the next few years and that rates need to support expanded capital expenditure, not just the amount that would be equal to depreciation. The crux of the argument though, appears to be that THESL won't get a proper ROE if it is stuck with a frozen ratebase and that will lead to an inability to raise and service the debt needed for rebuilding.

20. The last two consecutive COS applications have been settled out of court, so to speak, and the Board has not had a hearing to test the evidence on capital and operating expenses that THESL says it needs to do all the proposed work.

21. While intervenors and THESL agreed on settlement proposals each time that were accepted by the Board, Energy Probe submits that as a result the Applicant obtained substantial increases in both capital and operating budgets without actually having to defend their evidence scrutinized in an oral hearing.

22. Energy Probe submits that in respect of the second largest electricity distributor in the province, the Board really needs a hearing to determine the level of capital and operating expenses that are reasonable over the next few years before it imposes an IRM. The Board is unable to do that in this application because those issues were settled, it has to allow at least one more application to be able to set the rate base for an IRM. That could be the 2012 application THESL proposes; if intervenors want that to be a rebasing for IRM application the monetary issues should not be settled in settlement conference but should go to a full hearing allowing the evidence to be tested before the Board.

THESL has not been in IRM yet so should not be rebased as though it was in IRM.

23. Energy Probe submits that this is the Applicant's weakest argument. Every utility currently in IRM would at some point in the past have been in THESL's position of not being in IRM. That didn't mean they weren't expected to some day go on IRM. THESL treats the IRM regime as though it is a voluntary option for distributors; the Board has never presented this alternative in its guidelines.

Board direction to distributors was that IRM was not intended for situations in which distributors had unique or complicated requirements.

24. The Applicant argues that it fits that description because its system needs an overhaul that is out of the ordinary and therefore unique and complicated. This argument is just a retake on the expanding capital and operating needs argument already presented but it places it in terms of Board direction which is persuasive.

25. If the Board indeed meant that situations where the distributor needs lots of new money for rebuilding and maintaining an aging system fall into that unique and complicated basket then THESL's argument is good. But once again the Board hasn't had a chance to hear the evidence that those needs are real and reasonable. So it shouldn't make the assumption that settlement conference agreements on Capex and Opex are a good foundation for the IRM rebasing of the second largest electricity distribution utility in the province.

26. The Applicant has presented some other arguments in favour of the unique and complicating elements like the street lighting assets that will be coming into ratebase but they are just additional fodder for the Board and don't really add anything to the main argument.

Issue 1.5 – In Conclusion

27. Energy Probe submits that the Board never gave clear notice that it expected an IRM rebasing in this application and THESL's conclusion that it was to be a standard COS was not unreasonable in the circumstances. The inclusion of issue 1.5 in this proceeding was the Board serving notice that it was time to debate the subject of when it would be appropriate for THESL to go on IRM, but was not necessarily notice that this application was the one in which THESL would be rebased for IRM.

28. The evidence concerning Capex and Opex for increasing system rebuilding requirements and to maintain deteriorating plant in the meantime has not been tested through cross examination in an oral hearing. Energy Probe submits it's not reasonable for the Board to rebase THESL for an IRM regime without exploring that the levels agreed to in settlement conferences are *appropriate on an ongoing basis*.

29. Therefore, Energy Probe submits that after weighing the pros and cons of the second question in Issue 1.5 – *Is this application an appropriate base case for a future IRM application?* – the Board would be correct to conclude that it is not.

30. Further, Energy Probe submits that a practical answer to the first question in Issue 1.5 – *When would it be appropriate for Toronto Hydro to commence filing rate applications under incentive regulation?* – would be to conclude the rate year 2012.

Emerging Requirements (Relating to Issues 4.1, 4.2, 9.1, 9.2 and 9.3)

31. Energy Probe has had the opportunity to review the submissions of the Building Owners and Managers Association of the Greater Toronto Area (“BOMA”) on this set of issues and adopts those submissions as expressed in their Final Argument filed on April 17, 2011.

Issue 6. DEFERRAL and VARIANCE ACCOUNTS

Issue 6.1 Is the proposal for the amounts, disposition and continuance of Toronto Hydro’s existing Deferral and Variance Accounts appropriate?

32. Energy Probe has had the opportunity to review the submissions of the Building Owners and Managers Association of the Greater Toronto Area (“BOMA”) on this issue and adopts those submissions as expressed in their Final Argument filed on April 17, 2011.

Costs

33. 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

April 18, 2011

Energy Probe Research Foundation