

May 27, 2011

BY COURIER (2 COPIES) AND EMAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli:

**Re: Pollution Probe – Written Argument
EB-2010-0279 – Ontario Power Authority – Fiscal 2011**

Pursuant to the Board's oral direction on May 13, 2007, please find enclosed Pollution Probe's written argument for this matter.

Yours truly,



Basil Alexander

BA/ba

Encl.

cc: Applicant and Intervenors per Appendix A to *Issues Decision and Procedural Order No. 2* by email

ONTARIO ENERGY BOARD

IN THE MATTER OF sections 25.20 and 25.21 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Schedule A;

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 requirements and the fees which it proposes to charge for the year 2011 (the "OPA 2011 Fees Application").

POLLUTION PROBE

WRITTEN ARGUMENT

May 27, 2011

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Introduction

Pollution Probe's submissions are limited to the OPA's under spending incentive and its perverse results, which are discussed in detail below.

The OPA's CDM Under Spending Incentive Creates Perverse Results

Pollution Probe submits that the Ontario Power Authority's ("OPA's") conservation and demand management ("CDM") under spending incentive may act at cross-purposes to the Board's CDM performance incentives in certain circumstances. As illustrated by the Toronto Hydro example below, this result raises important questions about the OPA's efficiency and effectiveness with respect to the promotion of the Government's CDM objectives and hence the appropriateness of the OPA's requested fees. The Board should accordingly take measures to address this issue, and further details are provided below.

Pursuant to Minister Duguid's March 31, 2010 Conservation and Demand Management ("CDM") Directive, the Board established legally-binding minimum CDM targets for each of Ontario's electric utilities as well as performance incentives to reward them for achieving and exceeding their targets.¹

The OPA has entered into a *Master CDM Program Agreement* with the electric utilities to provide them with funding for the delivery of its CDM programs.² Pursuant to this *Agreement*, the OPA is providing the province's electric utilities with Program Administration Budgets ("PABs") totaling \$269.32 million for the administration and marketing of its CDM programs.³

However, Schedule A-5 of the *Agreement*, provides the electric utilities with an incentive to under spend their PABs.⁴ Pollution Probe submits that this incentive is inconsistent with Minister Duguid's CDM Directive, the OEB's CDM performance incentives, and the public interest for the following two reasons.

First, the OPA's under spending incentive can provide the electric utilities with a profit bonus for *failing* to achieve their OEB-mandated minimum CDM targets. For example, pursuant to Schedule A-5, it appears Toronto Hydro can earn a profit bonus of \$6,023,366 to \$8,533,102 for under spending its CDM budget⁵ even if it *fails* to achieve its Board established minimum CDM targets.⁶

¹ Ontario Energy Board, *Conservation and Demand Management Code For Electricity Distributors*, issued September 16, 2010. See also Exhibit K2.3, Tab 1.

² Exhibit I, Tab 2, Schedule 4, Attachment 1.

³ Exhibit J2.3.

⁴ Exhibit K2.3, Tab 3, pg. 11.

⁵ See Exhibit K3.2. According to the OPA's witness, Toronto Hydro's maximum profit bonus for under spending its CDM budget would be \$6,023,366, i.e., only the Tier 2 incentive. However, the Schedule is poorly written and it appears just as reasonable to assume that Toronto Hydro would be eligible to receive the sum of the Tier 1 and Tier 2 incentives, namely, \$8,533,102. See Transcript, Volume 3 (May 12, 2011), pgs. 54-57.

⁶ Transcript, Volume 2 (May 10, 2011), pg. 129.

Second, assuming an electric utility achieves its minimum CDM targets, the OPA's under spending incentive provides financial motivation for an electric utility to *not* try to achieve additional CDM bill reductions for its customers in certain circumstances. For example, as detailed in Exhibit K3.2, if Toronto Hydro achieves its minimum CDM targets, it would be eligible to receive a \$1,166,493 performance bonus from the OEB if it exceeds its CDM targets by another 10%. On the other hand, it could earn an OPA under spending incentive of up to \$8,533,102 if it does not try to achieve additional energy savings for its customers but under spends its budget instead.⁷ The result is that, in certain circumstances, the OPA's under spending incentive financially motivates the electric utilities to *not* seek to exceed their CDM targets, and the amounts involved are substantial.

Pollution Probe submits that this incentive structure creates perverse results that are *not* in the best interests of Ontario's electricity consumers and need to be addressed. In particular, Pollution Probe submits that the Board should urge the OPA and Ontario's electric utilities to amend Schedule A-5 to ensure that: a) the electric utilities are not eligible for a profit bonus if they fail to achieve their minimum CDM targets; and b) achieving additional cost-effective CDM savings is always the utilities' most profitable course of action. Such measures are necessary to ensure that the OPA's incentives do not act at cross-purposes to the Board's CDM incentives and the achievement of the Government's CDM objectives.

Pollution Probe also submits that the Board should advise the OPA and the electric utilities that, if they fail to amend Schedule A-5 in accordance with above by a particular date, the Board will consider modifying the Board's performance incentives by imposing penalties on electric utilities that fail to achieve their minimum CDM targets. Such penalties should be at least double the OPA's under spending profit bonus to counteract the OPA's currently perverse incentive.

Costs

Pollution Probe respectfully requests that it be awarded 100% of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 27, 2011


Basil Alexander, Counsel for Pollution Probe

⁷ Exhibit K3.2.