May 27, 2011

BY EMAIL & BY 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-2010-0279 Ontario Power Authority
Fiscal 2011 – Expenditure, Revenue and Fees Submission for Review
Energy Probe – Final Argument

Pursuant to the direction provided by the Board during the Oral Hearing on May 13, 2011, please find attached the Final Argument of Energy Probe Research Foundation (Energy Probe) in the EB-2010-0279 proceeding for consideration of the Board.

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

Yours truly,

David S. MacIntosh
Case Manager

cc: Miriam Heinz, Ontario Power Authority (By email)
Fred Cass, Aird & Berlis LLP (By email)
Olena Loskutova, Consultant to Energy Probe (By email)
Peter Faye, Counsel to Energy Probe (By email)
Interested Parties (By email)

EB-2010-0279

Ontario Energy Board

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 requirements and the fees which it proposes to charge for the year 2011.

Final Argument On Behalf Of

Energy Probe Research Foundation

May 27, 2011

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Final Argument On Behalf Of
Energy Probe Research Foundation

How these Matters came before the Board

1. The Ontario Power Authority (the "OPA" or "Applicant") submitted its annual proposed expenditure and revenue requirement and fees for review to the Ontario Energy Board ("Board") on November 2, 2010. A Letter of Direction and a Notice of Application and Hearing were issued on November 24, 2010.

2. Procedural Order No. 1 was issued on November 24, 2010 containing a Draft Issues List and inviting parties to file submissions on the List. The date for an Issues Day was contained in the Order.

3. Energy Probe Research Foundation ("Energy Probe") provided a Notice of Intervention to the Board on November 25, 2010. On December 15, 2010 Energy Probe submitted a letter supporting the Draft Issues List without change; Energy Probe did not attend Issues Day, held on December 17, 2010.

4. The Issues Decision and Procedural Order No. 2 was issued by the Board on January 11, 2011. The Procedural Order included a schedule for interrogatories and a Settlement Conference.

5. Energy Probe submitted Interrogatories on January 25, 2011 and received Interrogatory Responses on February 11, 2011.

6. HQ Energy Marketing filed evidence in respect of the OPA proposal to start charging exporters usage fees and Green Energy Coalition filed evidence on conservation on March 11, 2011.

7. Energy Probe actively participated in a Board directed Settlement Conference with the OPA and other Intervenors on March 30th and March 31st, 2011. As no settlement on the Issues was reach, no Settlement Proposal was filed with the Board. Parties did agree that there would be no submissions on Issues 8.1 and 8.2.

8. On April 4, 2011 Energy Probe filed a letter with the Board supporting intervenor requests for an oral hearing. Subsequently, on April 8, 2011 the Board issued Procedural Order No. 2, ordering the oral hearing to commence on May 9, 2011.

9. On April 29, 2011 the OPA filed rebuttal evidence from Concentric Energy Advisors in respect of its wish to extend the OPA tariff to exports of electricity.

10. Energy Probe actively participated in the Oral Hearing, including its counsel conducting cross-examination on May 9th, May 10th and May 12th, 2011.

Argument Overview

11. Energy Probe has conducted itself as an all issues intervenor throughout this proceeding.

12. 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. Energy Probe's submissions focus on two issues in this application:

- **Issue 6.0 Efficiency Metrics**
- **Issue 7.2 Export Tariff**

6.0 Efficiency Metrics

Issue 6.1 **Do the efficiency metrics submitted by the OPA provide a reasonable and appropriate basis for assessing the general performance and efficiency with which the OPA operates and delivers on its mandate?**

Issue 6.2 **Do the efficiency metrics submitted by the OPA provide a reasonable and appropriate basis for assessing changes in the scope, volume, and complexity of OPA operations?**

13. In this application, OPA has provided evidence relating to the efficiency metrics that it uses to assess how well it is achieving its objectives for key performance areas in electricity generation and conservation. This evidence is summarized in chart form and appears at Exhibit A-2-1 page 48 for the years 2009 - 2010.

14. Energy Probe IR 12 (Exhibit I-12-12) asked that the chart be expanded to include the years 2006-2011. The OPA's response was that reliable data was not available for 2006-2007 but updated the chart to include 2008. The revised chart appears on page 2 of the IR response.

15. The efficiency metrics for Generation are expressed in terms of generation capacity contracted in megawatts (MW) as a function of total OPA budget and as a function of total Full Time Equivalent employees (FTEs). The number of MWs under contract in a given year is a cumulative figure which includes contracted capacity from previous years. Incremental annual contracted capacity is not shown and cannot be reliably inferred from the data without a knowledge of what capacity from previous years is no longer included in the total.

16. Energy Probe cross examined the applicant's witnesses on the relevance of these metrics for measuring organizational efficiency. That cross examination appears in the Transcript Volume 1 page 159-169.

17. Energy Probe submits that the metrics used by OPA are inadequate for their intended purpose and can, in some circumstances, be misleading.

18. They are inadequate because they do not actually measure the efficiency of procuring and managing generation contracts. There are a number of reasons for this.

19. The first reason is that the metric calculation uses total FTEs and total OPA budget rather than just the FTEs and budget associated with the procurement and contract administration functions. Although there may be some contribution to procurement and contract administration from other departments such as legal department, the majority of the staff at the OPA is not engaged in these functions. Including their numbers in the calculation can mask inefficiency in the procurement and contract administration departments.

20. For example, according to page 2 of the response to VECC IR #2 (Exhibit I-9-2) the 2011 staff budget for Strategic Objective #3 (Supply Procurement and Contract Management) is 47 regular FTEs. The total OPA staff for 2011 is budgeted at 235 regular FTEs.

21. Calculating the in service capacity under contract metric as OPA has results in 62 MW/FTE for 2011 (14,583 MW/235 FTEs). Using just the supply and procurement regular FTE total of 47 in 2011, the metric would be 310 MW/FTE (14,583 MW/47 FTE). Now, if we take the case in which staff in the procurement and contract administration department is increased by 10%, the metric calculation using just that department staff would decline to 282 (14,583 MW/(47x1.1) FTE) which is a noticeable change from the previous 310 MW/FTE. By contrast the metric calculation using total staff with an additional 10% in procurement and contract administration department would be 60.8 MW/FTE (14,583 MW/(235+4.7=239.7) FTE) which, compared to the previous metric of 62 MW/FTE is not significantly different. The conclusion that the Board might draw from the cumulative metric is that efficiency is marginally lower but not enough to warrant any action.

22. If the metric for just the procurement and contract management function is used, though, the Board could immediately see that efficiency had declined significantly and that some action might be warranted.

23. The second reason that the metric is inadequate, in Energy Probe's submission, is that it ignores temporary employees by not including them in the metric calculation. Again referring to VECC #2, the 2011 budget for employees in Supply Procurement and Contract Administration is 47 regular and 8 temporary/student. Similarly the total FTEs are 235 Regular and 18 temporary.

24. Calculating the metric as presented by OPA with 235 FTEs, results in 62 MW/FTE. Using the 18 temporary FTEs in the calculation yields a metric of 57.6 MW/FTE. Using just the Procurement and Contract Administration department employees in the metric results in 310 MW/FTE if just regular staff is considered (14,583 MW/47 FTE). If the 8 temporary staff in 2011 are included the metric is 265 MW/FTE (14,583 MW/55 FTE).

25. Because the metric fails to capture the effect of total staff (regular plus temporary) in a year, it is not effective for alerting either OPA management or the Board to potential inefficiencies occurring in that year.

26. The third reason that the metric is inadequate, in Energy Probe's submission, is that it uses cumulative not annual generation numbers in the calculation. This can have the effect of misleading the Board and OPA management into believing that efficiency is being maintained in the organization.

27. Using the same In-service capacity under contract numbers as above, it can be shown that the efficiency metric does not respond to radical changes in organizational workload. If, for example, no additional generation resources are procured after 2011 and staff levels remain the same as in 2011, the metric remains the same (i.e. 14583 MW/235 FTE = 62 MW/FTE). However, if no additional generation is procured then there would be procurement staff doing no work in that year. The efficiency metric would tell management and the Board that the organization was just as efficient as it had been the previous year.

28. If, on the other hand, the metric was calculated using annual not cumulative generation numbers, the inefficiency would appear immediately. Take, for example, the numbers under contract as before and assume that the difference between the 2010 forecast and the 2011 budget represents procurement in 2011. This would mean that 2718 MW would be procured in 2011. The metric calculated using total OPA staff for just the annual addition of generation would be 11.5 MW/FTE (2718 MW/235 FTE). Now if no additional resources were procured in 2012 and staff levels remained the same as in 2011 the annual efficiency metric would be 0 (0 MW/235 FTE).

29. This example, in Energy Probe submission, demonstrates how dramatically different the efficiency picture can be if annual rather than cumulative numbers are used. In the annual case, the Board and OPA management could not fail to notice that efficiency was a problem while in the cumulative case the metric would indicate that the organization was just as efficient as it had been the previous year.

30. The above examples focus on the MW/FTE metrics but, Energy Probe submits, the same results obtain using the MW/$M of budget and for the same reasons.

31. Similar arguments apply to the Conservation metrics which also compare cumulative demand and energy reductions to FTEs and total OPA budget. Because conservation initiatives yield persisting benefits over a number of years, it is possible for the metrics to indicate the same efficiency in a year without any additional conservation initiatives being implemented. In that case, some conservation staff could be idle without the metric showing a change.

32. Energy Probe submits that efficiency metrics that do not reveal when efficiency has declined are not useful for their intended purpose and that the metrics used by the OPA fall into that category.

33. The Board should, in Energy Probe's submission direct the OPA to develop more meaningful and responsive metrics to measure efficiency of its programs.

34. Energy Probe also notes that only Conservation and Generation programs are included in the metrics. This leaves a large part of the organization devoted to transmission planning and other activities unmeasured.

35. Energy Probe submits that metrics developed should measure the organization efficiency of achieving each strategic objective (not just Generation and Conservation) and should be focused on the staff and budget of individual departments working on those strategic objectives not on total staff and total budget.

36. Without such metrics, Energy Probe submits, that there is no effective way for the Board to assess the general performance and efficiency with which the OPA operates and delivers on its mandate.

37. In addition, Energy Probe submits that, because the metrics as calculated do not necessarily respond to changes in volume, scope or complexity of OPA operations, they are not a reasonable and appropriate basis for assessing changes in those factors.

7.0 Proposed Fees

Issue 7.2 Is the proposal to recover OPA fees from export customers reasonable and appropriate?

38. Energy Probe has reviewed the evidence submitted by the OPA and by intervenors on the subject of extending the OPA tariff to exports of electricity. In Energy Probe's analysis, there appears to be merit in thope OPA argument that its activities result in some benefit to exporters of electricity and, therefore, by causality, some of OPA costs should be borne by exporters.

39. However, Energy Probe also submits that there is insufficient evidence to support the OPA's proposal to impose the same tariff to exports that it does to domestic consumption. There is also inadequate evidence to establish what the export tariff should be, if the Board decides that causality is to be one of the determining factors.

40. Therefore, Energy Probe submits that the Board cannot make a supportable decision to impose the export tariff as proposed without further study.

Costs

41. 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

May 27, 2011

Peter T. Faye

Counsel to Energy Probe Research Foundation