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February 13, 2013

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-2013-0029

**Application to Review Market Rule Amendments Renewable Energy Supply Generators
Energy Probe – Submissions on Cost Awards**

Pursuant to Procedural Order No. 2 issued by the Board on February 4, 2013, please find attached the Submissions on Cost Awards of Energy Probe Research Foundation (Energy Probe) in the EB-2013-0029 proceeding for the Board's consideration.

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

Yours truly,

David S. MacIntosh
Case Manager

cc: George Vegh, McCarthy Tétrault LLP (By email)
Fred Cass, Aird & Berlis LLP (By email)
Alan Mark, Norton Rose Canada LLP (By email)
Roger Higgin, Consultant to Energy Probe (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. A);

AND IN THE MATTER OF an Application made collectively
by entities that have renewable energy supply procurement
contracts with the Ontario Power Authority in respect of wind
generation facilities for an Order revoking certain amendments
to the market rules and referring the amendments back to the
Independent Electricity System Operator for further
consideration.

ENERGY PROBE RESEARCH FOUNDATION
SUBMISSIONS ON COST AWARDS

February 13, 2013

RENEWABLE ENERGY SUPPLY GENERATORS
EB-2013-0010/EB-2013-0029
SUBMISSIONS OF ENERGY PROBE RESEARCH FOUNDATION
RE: COST AWARDS

How these Matters Came before the Board

On January 24, 2013, a number of entities that have renewable energy supply procurement contracts with the Ontario Power Authority (the “OPA”) in respect of wind generation facilities (the “Applicants”, “RESG”) collectively filed with the Ontario Energy Board an application under section 33(4) of the *Electricity Act, 1998* (the “Electricity Act”) seeking the review of certain amendments to the market rules made by the Independent Electricity System Operator (the “IESO”) (the “Application”).

On January 28, 2013, the Board issued its Notice of Application and Oral Hearing (the “Notice”) in relation to the Application. In accordance with the Notice, interested parties were given until February 1, 2013 to notify the Board of their intention to intervene in this proceeding.

On January 29, 2013, the Board issued its Procedural Order No. 1 establishing the process for the hearing of a motion by the Applicants for the production of evidence from the IESO. The Procedural Order also established the deadline for requests for intervention and cost awards.

Energy Probe reviewed the Notice of Application and materials in the Board’s Web Drawer and filed a request for intervenor status and for an award of costs pursuant to the Boards Rules of Practice and Procedure and the Practice Direction on Cost Awards.

In Procedural Order No. 2, dated February 4, 2013, the Board noted inter-alia that it would address requests for intervention and requests for cost award eligibility in a later Procedural Order. Submissions on Costs were requested on February 12, 2013. Board Counsel informed parties at the Settlement Conference and by e-mail that this date is amended to February 13, 2010.

Submissions

Energy Probe assumes from the Board's comments in Procedural Order 2 that it has been formally granted intervenor status but that its eligibility for an award of costs has not been determined. A secondary issue upon which the Board has requested submissions is which party should pay the costs of the proceeding, including the Boards own costs.

We will address each issue, but will first provide our views on the context of this Application and the reasons for Energy Probe's request for Intervenor status and costs.

Context for Energy Probe's Intervention

Energy Probe is a non-profit environmental and consumer organization which promotes economic efficiency in the use of resources. Energy Probe intervenes in proceedings on behalf of its residential customer supporters in Ontario, which we have some number of thousands, and also represents a broader public interest concern with respect to the overall financial health and operational integrity of our provincial utilities.

This Application is unique in several ways. It is only the second time that the Board has been requested to exercise its powers under the Electricity Act to review proposed changes to the IESO Market Rules. The prior Review took place in 2007 under Docket EB-2007-0040.

In considering whether to intervene and what form that intervention should take Energy Probe was informed by what we believe to be the broader context for this Application.

That context, in our view, is the Objects of The Electricity Act (see Attachment) and the consistency of the Proposed Amendments with those Objects, rather than the narrowly framed context of the IESO's mandate under Part II of the Act as noted by Counsel to the IESO¹.

¹ Transcript Vol 1. Feb11 2013 Page 58 Line 12ff

We believe that the Legislative choice of the Board to conduct a Review of changes to the Market Rules and other matters under the Electricity Act is because a proceeding before the Board will consider the broader context and in particular, the Public Interest in conducting that review.

Energy Probe's Interest on the Current Proceeding

Energy Probe does not consider this matter to be a bilateral dispute between the IESO and the Applicant (RESG). (with indirect links to OPA and the Ministry of Infrastructure and Energy). The implications reach out to issues on which Energy Probe and its constituents and supporters have in the past and continue to have, a direct interest.

- Long term security of electricity supply
- Appropriate supply mix and balance
- Efficient development and operation of the Electricity system
- Competitive Electricity prices and long-term stability of electricity rates.

From the above, it is hoped that it will be understood that Energy Probe is not purely a ratepayer group, although by virtue of its constituency, the interests it seeks to advance are aligned with those of residential and small commercial customers. These electricity consumers pay for the cost of power and delivery of electricity, including the uplift costs related to renewable generation

It is evident that we are at the early stage of discovery in this proceeding. Accordingly our research has been limited primarily to identify the issues of interest for the purpose of Intervention.

Energy Probe does not consider itself to be in one “camp” or other at this point in the proceeding, rather our intervention is aimed at representing the public interest and our constituency of electricity consumers.

Having considered the options, Energy Probe intends to participate fully in the hearing and will be assisted by experts. We will coordinate our activities with other intervenors to the greatest extent possible, given the compressed time frame of this proceeding.

In that respect, Energy Probe notes that if the Board determines that the statutory 60 day review period is not feasible, the provisions of Section 33 (7) and (8) allow for a longer review period.

In sum, if the Board agrees with our interpretation of the context of this Application, it is on the above grounds that that we respectfully request Energy Probe be granted intervenor status.

Cost Eligibility and Cost Award

As noted earlier, Energy Probe is a non-profit organization which relies on individual donations to help protect the public interest. Without the prospect of an award of costs, Energy Probe's ability to participate in proceedings would be very limited. Energy Probe intends to seek a cost award in this proceeding. Energy Probe has been adjudged to be eligible for an award of costs in many proceedings and although this proceeding is more unique, we believe the same criteria should apply here.

We note that, in the prior review of IESO Market Rule Amendments (EB-2007-0040), among the parties granted intervenor status was the Vulnerable Energy Consumers Coalition (VECC). VECC was also granted cost eligibility. As the Board is aware, VECCs constituency includes a subset of residential ratepayers. From what we can determine VECC was granted 100% of its legitimately incurred costs.

Payment of Costs

Ultimately it will be Ontario Electricity Consumers that indirectly pay the costs of this proceeding, including the IESOs costs, the costs of Intervenors and the Board.

Based on participation in the IESOs fee cases in years past, it is our understanding that the IESO's Fees include provisions for the costs of Stakeholdering Processes, and in our view, this proceeding is an extension of the IESO's processes. Accordingly, we suggest that the costs of this proceeding be paid for the IESO.

All of which is Respectfully Submitted this 13th Day of February, 2013.

A handwritten signature in dark ink, appearing to read "RM Higgin", is centered on a light blue rectangular background.

Roger Higgin PhD., MBA, BSc, P. Eng., SPA Inc.

On Behalf of Energy Probe Research Foundation

Electricity Act, 1998, SO 1998, c 15, Sch. A

**PART I
GENERAL**

The purposes of this Act are,

- (a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;
- (b) to encourage electricity conservation and the efficient use of electricity in a manner consistent with the policies of the Government of Ontario;
- (c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;
- (d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;**
- (e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;
- (f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;**
- (g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;**
- (h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;
- (i) to facilitate the maintenance of a financially viable electricity industry; and**
- (j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1.

PART II

INDEPENDENT ELECTRICITY SYSTEM OPERATOR Objects and character

- The objects of the IESO are,

- (a) to exercise the powers and perform the duties assigned to the IESO under this Act, the market rules and its licence;
- (b) to enter into agreements with transmitters giving the IESO authority to direct the operation of their transmission systems;
- (c) to direct the operation and maintain the reliability of the IE SO-controlled grid to promote the purposes of this Act;
- (d) to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems;
- (e) to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities;
- (f) to collect and provide to the OPA and the public information relating to the current and shortterm electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and
- (g) to operate the IESO-administered markets to promote the purposes of this Act. 2004, c. 23, Sched. A, s. 5 (1).