

K3

EB-2013-0326

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 requirement for the year 2014.

Submissions of the Energy Probe Research Foundation

October 7, 2014

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| Ontario Energy Board | |
| FILE No. | EB-2013-0326 ... |
| EXHIBIT No. | K3 |
| DATE | Oct 7, 2014 |
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Background

How these Matters Came before the Board

The Ontario Power Authority (OPA) filed its application with the Ontario Energy Board on March 6, 2014. The submission is for the review of its proposed expenditures and revenue requirements and fees for 2014.

The matter has been assigned Board File No. EB-2013-0326.

Various procedural steps have taken place since then.

- The Board provided for settlement discussions to take place on July 8th, 9th and 31st.
- The Board ordered that any settlement proposal resulting from the July 31st settlement conference be filed with the Board by August 8th.
- The Board also ordered that to the extent there were unsettled issues, the Board Staff and the intervenors would have the opportunity to file submissions as to whether those issues should be heard orally or in writing.
- A settlement proposal was not filed. No submissions were filed on whether the matter should proceed orally or in writing.
- On August 8th, the OPA advised that it would not be in a position to file a settlement proposal. On August 13th, the OPA asked that the Board release hearing dates scheduled for August 18th and 19th.
- At the request of the OPA, the Board sat on August

20th, in order to hear submissions on the proposed next steps in this application.

The OPA filed a letter on August 19th providing details regarding the types of costs which it may incur as part of its proposed merger with the IESO.

The OPA amended its application on August 29th, 2014. As requested by the parties, the Board provided for an additional settlement conference which took place on September 5th. The Board ordered that any settlement proposal be filed with the Board by September the 12th.

The OPA wrote to the Board on September 12th, and asked for an extension by which to file a settlement proposal if one was reached. The Board granted that extension until September 15th.

The OPA wrote to the Board on September 15th to advise that no settlement had been reached on any of the issues among the parties.

When the parties were before the Board on August 20th, they indicated that in the event that they were not able to reach a settlement, further discovery on all the outstanding issues may be required.

Accordingly an Oral Hearing was held on September 18, 2014 followed by Argument in Chief from Counsel to the Applicant.

The Application and Fees Submission

The 2014 revenue requirement submission is made under section 25.21 of the Electricity Act under which the OPA shall submit its proposed expenditures and revenue requirements and the fees that it proposes to charge to the Ontario Energy Board for review.

In this particular case, the revenue requirement is the 2014 operating budget, given no requirements for Capital Expenditures of \$60.3 million. The second thing that is submitted for review by the Board under section 25.21 is the OPA's proposed fees, which it charges to fund the Revenue requirement. There are two categories, the usage fee and the registration fee.

The Board issued a decision on December 19th, 2013 -- approving an interim usage fee for 2014. 43.8 cents per megawatt-hour, The final fee that the OPA has submitted for review is 43.9 cents per megawatt-hour.

The OPA has also submitted proposed registration fees for review, the Board also has made an interim order in respect of part of that. The OPA is putting the registration fees forward for review and approval on a final basis.

There are also requests in respect to deferral and variance accounts. Consistent with what has happened in past years, the OPA has requested approval of certain deferral and variance

accounts for 2014.

In the 2013 Forecast Variance Deferral Account, there was a balance at the end of 2013 of \$33.8 million.

The OPA proposes to clear the majority of that balance to ratepayers, but to leave \$15 million in the account due to potential volatility in spending and the costs that will be incurred to carry out the merger of the OPA and the IESO.

OPA Business Plan

A prerequisite for the Fees Submission is that the Minister Approve the OPA Business Plan that underpins the fees submission and Operating Budget.

The Minister approved the OPA Business Plan by Letter Dated January 29th, 2014

ENERGY PROBE ORAL ARGUMENT

OUTLINE

Outstanding Issues Based on OPA's Updated Evidence

As noted above, a full procedural review of the OPA Application has occurred, including Interrogatories, Settlement Conference and Oral Hearing. Based on these prior steps Energy Probe will structure these submissions to address what we believe are the key outstanding issues:

- 2014 Revenue Requirement of \$60.3 million and associated usage fees of 43.9 cents per Mwh
- Forecast Variance Deferral Account 2013 Balance Disposition
 - Sub-issues
 - Use of FVDA Balance for 2014 Operating Contingency~\$5 million
 - Use of FVDA to fund OPA/IESO Merger costs~ \$15 million
 - Tracking and reporting all such costs for both OPA and IESO if use of FVDA is approved
- Proposed Registration Fees Deferral Account
- Follow up to Board directions/suggestions from prior cases
 - Performance Metrics,
 - Stakeholder Engagement.

2014 Revenue Requirement

Energy Probe has reviewed the OPA Fees submission and proposed 2014 Revenue Requirement of \$60.3 million and associated usage fee of 43.9 cents per Mwh

Based on this discovery, Energy Probe has no issues with the "as filed" OPA Application and Evidence regarding the 2014 Revenue Requirement.

We have issues regarding the Updated Application and Evidence on Deferral Accounts and responses to OEB suggestions regarding Metrics and Stakeholder Engagement.

Forecast Variance Deferral Account 2013 Balance Disposition

Use of FVDA Balance for 2014 Operating Contingency~\$5 million

OPA's as "filed" request is for the continued use of the FVDA as a "contingency" for unforeseen operating costs and to retain a balance of \$5 million with the balance of \$28.788 million being rebated to ratepayers. This was also noted as being appropriate in the Ministers Letter of January 29, 2014 approving the OPA Business Plan.

This request has not explicitly been amended, but now seems to have become part of the larger updated request to retain \$15 million for contingency and merger costs

MR. RUBENSTEIN: And I believe the purpose of the five million dollar retention in the forecast variance

deferral account originally is because of any unforeseen or unplanned work that may come about by the OPA -- so, an example, a new Ministerial directive that you hadn't expected. Is that a fair summary?

MS. KOSIC: Yes, the five million was originally requested as appropriate to assist the OPA in managing volatility in spending driven by changes in the volume of activities and any external factors. [Tr.Vol 2. Page 14 Line 2 ff]

AND

MR. CASS: Just by way of clarification - and I apologize for interrupting, Mr. Rubinstein. **It may not have been precisely in the forecast variance deferral account in previous proceedings. It may have been just a contingency included in the budget.**

But one way or the other, there was contingencies allowed for the OPA. It may just not have been through that account; it may just have been a contingency in the budget.

MR. RUBENSTEIN: I understand. But those are -- they're two separate things, doing it by way of contingency in the revenue requirements submission, and doing it by way of Forecast Deferral Account. So I'm interested, in the undertaking, if it's been done by way of an amount remaining in the forecast variance deferral account. [Tr.Vol. 2 Page 15 Lines 7-21]

With respect to the above exchange which deals with the contingency aspect of the FVDA account it is suggested that the Forecast Variance Account appears to have evolved into two components

- **(a) to cover expenses in excess of those included in the revenue requirement**
- **And (b) to address changes to the forecast revenue from the OPA fee (based on the TWh of energy delivered to Ontario power users times the rate per Mwh).
For example the 2014 fee is 43.9 cents/Mwh based on an IESO 2014 forecast of 137.4 Twh of provincial power consumption.**

This was clarified by Counsel to OPA in his closing Argument in Chief

Mr. Cass

But the decision, I believe, was EB-2006-0233. And there is not a lot of discussion of the account when it was first established, but at page 2 of the order in EB-2006-0233, **the Board refers to a letter that the OPA had written requesting a 2007 forecast variance deferral account, and indicates that it was to be established:**

"...to capture revenue variances for disposition in the 2008 revenue requirement submission."

And there is some further discussion, but again, it just continues to repeat that -- those words about revenue variances. Tr. Vol. 2 Page 115 Lines18-28]

Accordingly, in our view this second requirement clearly positions the account as a *regulatory (revenue) variance account* rather than a deferral account (even though the period balance amounts are deferred to a future period for disposition)

With regard to Operating Expenses the use of the FVDA to net out normal course of business expenses over or under forecast, seems to have been accepted over the years.

Prior practice has been that at year end, in balancing its books, OPA takes the difference between actual revenue and actual expenses and in doing so the difference is recorded + in the Forecast Variance Deferral account. [Undertaking J2.1]

As to the Actual 2013 FVDA Balance, OPA indicates this arose as a result of Usage Fees being higher than forecast, together with netting out over/underspending relative to the approved revenue requirement. [Undertaking J1.2]. We will address this circumstance later.

However, it is not clear to Energy Probe how the Interest on the account was calculated and why and how this was "refunded to ratepayers". [Undertaking J1.2]

Standard Regulatory Practice is that Variance and Deferral account balances are reviewed prior to the Regulator Ordering disposition. That includes the calculation of interest at Approved Rates.

OPA indicates for 2014 that with respect to the core operations there is expectation that it will finalize the year on-track relative to budget. So there is no need for contingencies core operations. [Tr. Vol 2. Page 16 line 9]

Use of FVDA to fund IESO/OPA Merger costs ~\$15 million

In its Application Update OPA has requested a third use of the FVDA -to fund the costs of the IESO/OPA merger, which we believe OPA agrees, with the view that these costs are not in the "normal course of business".

The OPA's request raises concerns whether it is appropriate to use surplus ratepayer usage fee funds for such a purpose and if the request is appropriately framed with appropriate safeguards within the Electricity Act and the OEB Act and its objectives.

In our view OPA is now attempting to broaden the scope of the account to deal with costs "out of the scope of normal business" i.e. merger costs and that OPA has no authority to do so:

Mr Cass

So, you know, to the extent that there is an issue about the scope of the account, what it's established to cover is certainly broad enough to capture a difference between cost and revenues, such as what's being talked about in the current case. [Tr. Vol. 2 Page 117 Lines 1-6]

Counsel for OPA Relies on the Board's General Practice and authority regarding Deferral accounts

Mr. Cass

So then coming back to my discussion of the authority of the Board, again in my submission, the Board has the authority to say that none of this money goes back, some of it goes back, or all of it goes back.

In my submission, given the circumstances that I've described where this unexpected event has now come true, it is known that it will happen, I submit it's quite reasonable for the Board to conclude that not all of the balance in the account should be returned with this uncertainty that is now known to be one that will happen.

[Tr. Vol. 2 Page 119 Lines 22-27]

Energy Probe believes Usage Fees are designed to recover OPA legitimate normal course of business operating costs for the services OPA provides as set out in its Business Plan.

Clearly such an IESO/OPA merger and its costs do not fall in the ambit of normal operations. It involves another entity IESO, that although an intervenor, is not before the Board, but whose costs are to be covered under the \$15 million request by OPA. We consider that the record in this case probably indicates that the Board has no jurisdiction under this application to order the IESO, or place any enforceable conditions on IESO, until the merger is complete and 2015 Fees of IESO/OPA are before the Board.

It can be argued by the Applicant that ratepayers should and in any event will, cover the costs of the proposed merger and benefit in future by streamlined operations and lower usage fees of the merged entity. If that's the case, then as in the past, as I will allude to later, there should have been special provisions to allow for that situation.

Legislative Authority Arguments

Counsel for OPA has invoked the proposed merger legislation to address the question of whether the Board can bind the IESO in this matter.

Mr Cass

Then under a heading called "Transitional Matters" still in this part 2, there is section 25.8, and subsection 1 of that deals with a number of transitional matters.

One of these is that:

"All outstanding debts, liabilities and obligations of the predecessors, the IESO and the OPA, immediately before the coming into force of this statute, become the debts, liabilities and obligations of the IESO."

In other words, the obligations carry forward to the merged entity. [Tr. Vol. 2 Page 123 Lines 16-26]

We will leave to Legal Counsel to argue this point, but whether the OEB can bind the merged IESO/OPA to an Order made in 2014 in this case prior to the merger is, from our laymans view, highly debatable and to do so without proper legal authority would be

of concern to ratepayers.

OPA cites as precedent the Initial Costs of Setting up OPA in 2005

The OPA believes it may be helpful to provide an example of an analogous situation that occurred when the OPA was created. O. Reg. 47/05 *Fees for OPA's 2005 Fiscal* ¹¹ under the *Electricity Act, 1998* provided that the IESO would pay the OPA's established fees out of any surplus collected to the end of December 2004. In its 2006 revenue requirement submission, the OPA stated in EB-2005-0489 at Exhibit A-4-1, page 2 that:

Activities in 2005 were funded by a transfer of \$15 million in "seed money" from surplus operating reserves of the Independent Electricity System Operator ("IESO") to fund start up activities. This initial seed money was provided without any supporting analysis or intention that this amount would represent an appropriate amount for ongoing operations in future years. The seed money covered costs that included initial staffing, temporary accommodations, information technology tools, and consulting fees that were necessary to design the organization, its functions and administrative processes, and perform activities mandated by specific Government directives. Undertaking J 1.1 page 2

Regardless, of precedent, absent a Ministers Letter or Directive regarding the merger costs, Energy Probe suggests that OPA's request to use \$15 million of ratepayers' money to finance the merger is inappropriate and out of order.

The reasons for stating this include that under the current Application (as amended), the Board would not order such "out of normal course of business" costs related to IESO and OPA be paid from the OPA FVDA. This request should have been an add-on to the Revenue Requirement submission, supported by appropriate evidence. It is also not part of the Business Plan approved by the Minister.

Further, we suggest it is not appropriate for OPA to request such an order, without having set out appropriate financial safeguards and protection of ratepayer interests, including proper regulatory accounting and importantly, a clear statement from IESO that it will be bound by any such Order and Conditions

Another factor that bears on this issue is that if OPA had filed a fees submission for 2013, or other prior year the Balance in the FVDA would have been reduced following its disposition at that time. We will address this Matter later under Ratepayer Engagement.

Accordingly, it is our view that it is due to serendipity and

other factors that have combined to provide OPA (and IESO) a source of readily available ratepayer funds to fund the proposed merger.

We suggest that the null hypothesis is that, leaving aside any legal issues regarding jurisdiction, such a Ministers Directive, the costs of the merger would have been and should still be financed outside of the FVDA, either by an amended 2014 Revenue Requirement Application (with a Ministers Approved Business Plan) (timing issue) or by OPA and IESO borrowing the funds from available sources such as the Ontario Electricity Financial Corporation.

Using external financing would also deal with the key issue of appropriate third party review and accounting of costs and thereby relieve the OEB of the unreasonable onus that OPA has now placed on the Board arising from dealing with accounting for the funds.

It should be OPA's responsibility to discharge this onus and in our view it has not done so.

MR. CASS: Yes. And if I could, I would just like to make comments about a couple of things that have preceded this discussion, just for clarity before we proceed to argument.

First, the idea was thrown out of what would happen if the Board were not to approve the application and send it back with recommendations. And of course the Board can do that. The statute says the Board may approve the proposed requirements and the proposed fees, or may refer them back to the OPA for further consideration, with the Board's recommendations.

I just throw out the practical observation that if that occurs, the interim fee will continue, which I think is a 10th of a cent different from the proposed final fee. The account will continue; it will still be there. The OPA will need to go back for further consideration and file a new case with the Board.

I think it's unlikely that that can occur before the merger occurs. And so we'll now be in a situation where the next case under the legislation is the case of the combined organization. [Tr. Vol.2 Page 103 Lines 8-26]

Energy Probe suggests that with regard to Merger Costs OPA had options such as

- requesting a Ministers Letter on Merger Costs
- filing a request for a specific New deferral account and

Accounting Order for "out of normal business merger costs". It did not obtain such a Ministers Letter or make such request with supporting evidence in its Updated Application.

Therefore, in Energy Probe's view OPA failed to meet the appropriate onus of proof upon an Applicant for rates.

One other policy consideration is the incentive to OPA/IESO to keep merger costs as low as possible

Under the proposed plan, both the OPA and IESO receive an "interest-free loan" from the OPA FVDA to undertake the merger. While they argue this is the cheapest way to finance the merger, it comes at the expense of past ratepayers, who have overpaid in usage fees since 2012 and will not receive those fees, plus interest, back in a rebate.

If the two organizations had to borrow for the funds, then, future ratepayers will eventually pay the bill, but by having to borrow that money and make their case in 2015 for the necessary rates to recover the legitimate merger costs provides a clear signal to keep merger costs as low as possible.

In sum, Energy Probe submits the most reasonable and fair option approach is for the Board to determine that OPA's 2014 Revenue Requirement of \$60.3 million and usage fee of 43.9 cents/Mwh as filed, is appropriate and issue an Order approving it;

BUT for all of the above reasons, we submit that

The OEB should reject the OPA supplementary request to retain \$15 million in the FVDA for merger costs (since no contingency amount is required for 2014 normal course of business) and should direct that the full balance of \$33.788 million in the 2013 FVDA be rebated to ratepayers.

Tracking and reporting all such costs for both OPA and IESO if use of \$15 million of the FVDA balance is approved by the Board

These submissions relate to the scenario that the Board has determined to allow the use of \$15 million of FVDA funds to pay for the IESO/OPA merger costs.

With regard to tracking and accounting of costs of the merger for IESO/OPA, from the evidence on record, it is our view that OPA has only a conceptual idea as to how this will be done. Its witnesses are talking about options such as sub-accounts, "coding" of IESO and OPA costs and deriving an allocation of costs to the two pools of IESO/OPA ratepayers.

Further, it has no detailed plan as to how it will track and bring forward the savings resulting from the merger and how these will/may not be reflected in the 2015 fees submissions of merged entity.

MS. KOSIC: So I'm not in a position to speculate on the details of the accounting treatment of the new organization, **but in terms of tracking and reporting on merger-related costs, it is our expectation that both costs and savings would be reported in the next proceeding.**

[Tr. Vol. 2 Page 33 Lines 4-8]

And Again

MS. KOSIC

In terms of how the costs will be tracked, they will be tracked through the accounting systems of both organizations.

They will be costs that will be reviewed and approved by the integration project office to ensure that they qualify as merger costs, in the sense that they are incremental, that they are discernible and attributable directly to merger activity. So they are not costs that would otherwise be incurred in the cost of business by either organization.

So I think we have some guiding principles and we're developing the guidelines and the details of how the tracking will take place in both organizations.

[Tr. Vol. 2 Page 39 Lines 21-28 and Page 40 Lines 1-4]

In essence, OPA is saying to the Board and ratepayers "give us the \$15 million in the FVDA and trust us to account for it and bring the result back to the Board in the next Fees Submission(s)". Energy Probe submits that even setting aside the issue of OPA's authority to use the account for this purpose, this lack of definition is not acceptable.

Accordingly, it is suggested that following the Boards Decision, OPA be directed to return with a Draft Rate Order that includes an appropriate NEW Merger Cost Deferral Account with details of the tracking and accounting of the merger costs, including how BOTH IESO and OPA costs will be tracked and separated and how costs will be recovered from the respective rate pools.

Proposed Registration Fees Deferral Account RFDA

In 2014 the OPA proposes not to include registration fees in the usage fee calculation, because of the claimed uncertainty it had been experiencing regarding registration income. OPA specifically refers to the fact that there had to be reimbursement of feed-in tariff registration fees in 2012 and 2013.

OPA has not provided much evidence on this uncertainty or why a new RFDA is required.

In the hearing OPA indicated that historic year registration fees varied from forecast and so it was necessary to refund fees in 2012 and 2013.

MS. KOSIC: So the purpose of the account was to he provide greater clarity, and to give more transparency around registration fees.

So it's not a question of materiality; it is a mechanism to highlight that component of our P&L statement...

[Tr. Vol. 2 Page 48 Lines 8-12]

Energy Probe suggests that the small variation in forecast Registration Fees seems not to be material relative to the Board's usual requirements for establishing Variance Accounts and Materiality Thresholds.

However, having expressed this concern, since Board Staff have apparently reviewed this request and the Board has approved the 2014 RFDA on an interim basis, we will not make any further submissions

Follow up to Board directions/suggestions from prior cases re Performance Metrics and Stakeholder Engagement.

Performance Metrics

The main evidentiary reference is Exhibit C, Tab 1, Schedule 1. Page 5.

Energy Probe accepts that OPA has made reasonable efforts to develop measures and metrics including

Activity; Efficiency and Effectiveness/Value Metrics

However, it is disappointing after 3 years of effort that we have the result that is set out under "Relative Merits of Various Metrics".

Mr. Cass

I'm referring, for example, to page 5. On page 5, there is a heading "Relative Merits of Various Metrics". I won't go

through it all, but OPA offers its analysis and views about the merits of these metrics that have come out of all this work, and I will just read a couple of sentences:

"In referring the proposed metrics in the context of available results for the 2011 to 2013 period, the OPA found that a number of metrics did not provide an informative assessment of organizational efficiency. In some cases, a component of the metric was not meaningful, or was influenced by timing or other external factors in a manner that obscured any consistent and material trend or made interpretation of the metric challenging."

I'm only saying this to reinforce my point that despite all this work, it remains an issue that has no easy answer.

At page 6, the following page of the same evidence, the OPA actually recommended **that the Board might consider some other potential metrics and put those forward.**

And the OPA indicated its intention to continue to refine and expand the metrics, based on Board's, stakeholder, and staff input through 2014 and beyond.
{Tr.Vol. 2 Page 134 Lines 11-28 and Page 135 lines 1-6}

To Energy Probe it seems that OPA either doesn't understand who the various Metrics are to inform and/or who is important to OPAs Progress and Performance. The audiences/stakeholders should include those invited to the 2011 Metrics Meeting--Internal Management, the Industry, Government, Regulators, Ratepayers and other Stakeholders.

We suggest that one of the reasons OPA has not drawn this Metrics project to a successful conclusion is because it has not met with many of those key stakeholders since 2011. To come to this Board for 2014 Fees Approval without a proposed focussed set of proposed Performance Metrics or Scorecard is a disappointing result and does not respond appropriately to the Boards Suggestions in the last Case.

Now OPA says the Board and ratepayers must wait for another year or more for a result that the Board and Ratepayers can accept. This is not appropriate and regrettably reflects on how OPA views the Board and Ratepayers.

Mr. Cass

So, in a nutshell, the OPA has put the effort in; it's done really everything it can do to deal with this issue. It's not an easy issue to resolve. **The other comment I would make is that given that we all know that there is an upcoming merger, I'm not sure that this case is the right place to somehow find an answer to the unanswerable question, that perhaps it's -- at this point, it is something that would best be left for the first case of the new combined entity, given that, you know, a lot of effort and time has gone into this, and it has not produced the sort of ready answer that we all might have liked.**

[Tr.Vol. 2 Page 135 Lines 8-18]

Energy Probe requests that the Board provide clear direction/suggestions to OPA that to return for Fees in 2015, without a set of balanced Performance Metrics developed in consultation with key stakeholders, will be viewed in a very negative light.

Stakeholder Engagement

With regard to broader Stakeholder Engagement, the facts are clear that since 2011 and the initial meeting on Metrics, OPA has not met with Ratepayers over the past 3 years.

In that period, apparently OPA decided it did not need to come in for amended Usage Fees, even though the Fee in place (0.551 cents/Mwh) was clearly too high and OPA collected over \$33 million in Revenue that it did not need.

This \$33.8 (net) million excess is relative to the 2012 and 2013 Aggregate Revenue of \$152.2 million and the Actual Expenses 120 .0 million. This corresponds to Rate Excess/surplus of 22%.

[2013 Annual Report Page 10 and Business Plan; Undertaking J1.2]

In undertaking J1.1 OPA states "It should be noted that the OPA was unable to file both its 2012 and 2013 Revenue Requirements as it was unable to obtain the Minister's approval of its Business Plans.

Why this happened, and why OPA did not inform the Board and Ratepayers of the situation is also of concern to Ratepayers, because apart from charging ratepayers too much in 2012 and 2013, the noted excess fees are the basis of the \$15 million request for funding the IESO/OPA merger. If Ratepayers and other stakeholders had been engaged by OPA in 2012 and 2013 we can suggest an earlier application for reduced usage fees could have been one result, disposition of the FVDA Balance another.

We suggest this outcome illustrates what may occur without Ratepayer Engagement.

Energy Probe requests that the Board suggest increased ratepayer engagement is important, especially with respect to the costs and efficiencies resulting from the merger.

In Conclusion, Energy Probe submits that the Board,

- Approve OPA's 2014 Revenue Requirement and Usage Fees of 43.9 cents/Mwh
- Reject the proposed use of \$15 million Ratepayer funds accumulated in the FVDA in 2012 and 2013 as not an appropriate use of the FVDA in the normal course of business.

In support of this position Energy Probe submits that

- OPA has neither provided authority for this use of the FVDA, nor provided the evidence required to establish a Merger Cost Deferral account and the proposed accounting for this account.
- We have made suggestions how to address these deficiencies should the Board determine that the use of the FDVA balance is appropriate.

As to Matters raised in the last Board Decision

- Energy Probe is extremely disappointed that OPA's Metrics Development Project has not resulted in a conclusion, in our view, in part due to lack of Stakeholder interaction since 2011. We hope the Board will strongly suggest that this deficiency be remedied by a full set of Performance Metrics and Scorecard in the next Fees Submission.
- As to the matter of broader Stakeholder Engagement, we point out that the result of OPA's failure to engage Ratepayers in particular, over the last 2 years has been collection of excess Usage Fees that are 22% in excess of OPA requirements for the 2012 and 2013 fiscal years. This in turn has led to the \$33.8 million balance in the FVDA.

Thank you for the opportunity to provide these submissions on behalf of Energy Probe and for your consideration.

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