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February 23, 2015

BY FAX & 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-2014-0072 & EB-2014-0301 Essex Powerlines Corporation
2015 IRM Distribution Rate Application & Smart Meter Recovery
Energy Probe – Submissions**

Pursuant to Procedural Order No. 2, issued February 6, 2015, please find attached the Submission of Energy Probe Research Foundation (Energy Probe) in the combined EB-2014-0072 & EB-2014-0301 proceeding for the Board's consideration.

As well, Energy Probe has attached as Appendix A, the EB-2009-0063 Brant County Decision and Order, issued August 10, 2010 and as Appendix B, the combined RP-2002-0147/EB-2004-0004 Natural Resource Gas Limited Decision and Order, issued April 19, 2004.

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

David S. MacIntosh
Case Manager

cc. Richard Dimmel, Essex Powerlines Corporation (By email)
Randy Aiken, Aiken & Associates (By email)
Parties of Interest (By email)

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IN THE MATTER OF the *Ontario Energy Board Act, 1998*,
S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Essex
Powerlines Corporation for an order approving a Smart Meter
Disposition Rate Rider (“SMDR”) and a Smart Meter
Incremental Revenue Requirement Rate Rider (“SMIRR”),
each to be effective January 1, 2015;

AND IN THE MATTER OF an application by Essex
Powerlines Corporation for an order approving just and
reasonable rates and other charges for electricity distribution to
be effective May 1, 2015.

ENERGY PROBE RESEARCH FOUNDATION
(“ENERGY PROBE”)

WRITTEN SUBMISSIONS

February 23, 2015

A. Introduction

Essex Powerlines Corporation ("Essex Powerlines") provided new information relating to an accounting error in the EB-2014-0301/EB-2014-0072 proceeding in its reply submission that was not known before the application was filed or the interrogatory responses were provided. As indicated in the Ontario Energy Board's ("Board") Procedural Order No. 2 dated February 6, 2015, the Board generally does not accept new information provided in reply submission when the record has closed.

The Board found that it needed to re-open the record of the proceeding and it granted intervenor status and cost award eligibility to all intervenors of record in Essex Powerlines' last cost of service proceeding, EB-2009-0143. Energy Probe Research Foundation ("Energy Probe") was an intervenor in that proceeding.

The error identified by Essex Powerlines relates to the allocation of the Independent Electricity System Operator's ("IESO") Global Adjustment ("GA") and Hydro One Network Inc.'s power billings for the 2011, 2012 and 2013 rate years. The allocation affects the Regulated Price Plan ("RPP") and non-RPP customers.

Essex Powerlines has proposed an adjustment and re-allocation between RPP and non-RPP customers of about \$11.5 million to correct the error. The proposed accounting adjustments are a credit to Account 1588 and a debit to Account 1589, which are both variance accounts. As a result of these proposed adjustments, some customers would receive a credit refund while others would have a debit balance owing.

In the February 6, 2015 Procedural Order, the Board requested that parties and Board staff to consider and provide written submissions to the Board on two questions. This is the written submission of Energy Probe on those questions.

Energy Probe submits that the error in the allocation of the costs between RPP and non-RPP customers is nothing more than a billing error, albeit a billing error that affects all customers.

B. Submissions on Questions

i) Should the Board consider an adjustment to the 2011 and 2012 DVA balances which were disposed of on a final basis as part of Essex Powerlines Corporation's 2014 IRM proceeding (EB-2013-0128)?

Energy Probe submits that the Board should consider an adjustment to the 2011 and 2012 DVA balance which was disposed of on a final basis as part of EB-2013-0128. Energy Probe has reviewed the submissions of Essex Powerlines dated February 11, 2015 and in general supports them.

In particular, Energy Probe submits that ratepayers should not be advantaged or disadvantaged as the result of an error related to the billing of wrong amounts to ratepayers. The purpose of a variance account is to hold all parties harmless. It is clear in this situation that the error that has been discovered has resulted in some ratepayers benefitting at the expense of other ratepayers through the calculation of erroneous rate riders.

Energy Probe also notes, and agrees with Essex Powerlines, that the account disposal has not yet been completed on a final basis. In particular, in the EB-2013-0128 Decision and Rate Order dated March 13, 2014, the Board directed the transfer of the balances in Accounts 1588 and 1589, among others, to the sub-accounts of Account 1595 and approved rate riders for the period April 1, 2014 through March 31, 2015. This period is not yet completed. Furthermore, the Board is now aware that the balances to be recovered/refunded that were transferred into Account 1595 were wrong, because the calculation of the amounts in Accounts 1588 and 1589 were wrong.

Energy Probe also notes the arbitrary nature of the timing of the discovery of the error. In the EB-23013-0128 proceeding, the 2012 year-end total balance for Group 1 accounts (including Accounts 1588 and 1589) amounted to a total credit of \$0.0080 per kWh. Since this was in excess of the \$0.001 per kWh preset disposition threshold set by the Board in the *Report of the Board on Electricity Distributors' Deferral and Variance Account Review Initiative*, Essex Powerlines was granted approval to dispose of the balances. Had the amount in total been lower - or the Board's preset disposition threshold been higher - the amounts would not have been disposed of, but would have been dealt with in the current proceeding along with the 2013 balances. When the error was discovered, there would not have been any issue with retroactivity because the amounts would still be included in the variance accounts. Energy Probe submits that it would not be just and reasonable to not correct the impact on ratepayers, thereby harming those that have overpaid.

Energy Probe notes that the Board's question is with respect to the 2011 and 2012 DVA balances, as the 2013 balances have not yet been disposed of through a Board order. Energy Probe submits that if the Board does not find that it can consider an adjustment to the 2011 and 2012 balances because they were disposed of on a final basis, then the Board should direct Essex Powerlines to adjust the opening balance of the 2013 DVA accounts (1588 and 1589) to take into account the correct allocation between RPP and non-RPP customers in 2011 and 2012. This would effectively reverse the impact on ratepayers of using incorrect information for the disposal of the 2011 and 2012 balances, through the 2013 balances.

ii) Would any such adjustment violate the legal requirements concerning retroactive ratemaking?

With respect to the legal requirements concerning retroactive ratemaking, Energy Probe submits that the Board has dealt with similar issues in the Brant County and Brantford dispute (EB-2009-0063 dated August 10, 2010) and in the Natural Resource Gas Limited ("NRG") purchase gas accounting error proceeding (RP-2002-0147/EB-2004-0004 dated April 19, 2004). Energy Probe has attached both of these Decisions to this submission as Appendices A and B, respectively.

Energy Probe has reviewed the Board's Decision and rationale in the EB-2009-0063 Decision and Order, which also refers to the NRG case that was related to faulty accounting, with respect to the issue of retroactivity for distribution rates. Energy Probe submits that the current Essex Powerlines error is similar to these two cases.

Energy Probe notes the rationale the Board used in its EB-2009-0063 Decision (paragraphs 66 through 82) and submits that the same points are applicable to the current situation. In fact, the current situation is somewhat simpler than either of the two noted proceedings, because in this case, Essex Powerlines is not being harmed as the accounts that have been corrected are purely flow through costs to ratepayers. The harm that has been incurred has been incurred by some ratepayers that have paid too much. Fixing the problem will result in other ratepayers paying more in the future because they did not pay enough in the past.

Section 7.7 of the Retail Settlement Code sets out the rules that apply to billing errors in respect of which Measurement Canada has not become involved in the dispute. Section 7.7.7 sets the time limit where the distributor has under billed or over billed a customer or a retailer to a maximum period of 2 years. Clearly in the case of Essex Powerlines, the two year period has not yet expired. The under and over billing began with the imposition of the rate rider on May 1, 2014 and will conclude on April 30, 2015.

Energy Probe submits that in this instance it is clearly billing error that has caused the under and over billing to ratepayers and the Retail Settlement Code deals with this type of billing error.

In both the Brant County/Brantford and NRG cases, the Board found that it did not believe that the rule against retroactivity prevents the Board from correcting certain billing errors. Energy Probe submits that the Board should find the same in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

February 23, 2015

**Randy Aiken
Consultant to Energy Probe**