

**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.

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**ENERGY PROBE RESEARCH FOUNDATION**  
**(“ENERGY PROBE”)**

**WRITTEN SUBMISSIONS**

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**April 30, 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 submitted a request to cease the rate riders related to the disposition of the 2011 and 2012 DVA balances yet to be billed to customers. This request, which was approved by the Board effective February 1, 2015, would mitigate any further impacts of the error until the Board determined the appropriate remedy.

In the Partial Decision and Procedural Order No. 3 dated March 25, 2015, the Board stated that it would not require Essex Powerlines' non-RPP customers to repay the under-collected amounts from 2011 and 2012. The Board further recognized that RPP customers paid for the error made by Essex Powerlines and that these customers were innocent third parties. The Board indicated that there was precedent for requiring a utility to repay money to customers if negligent or if the utility would profit on account of its own errors.

Energy Probe is making submissions only with respect to the disposition of Accounts 1588 and 1589 and takes no position on the disposal of the other accounts.

## **B. Submissions**

Essex Powerlines is requesting that the Board approve the disposition of Account 1588 in the amount of (\$4,567,591) over a period of two years and the disposition of Account 1589 in the amount of \$6,908,196 over a period of four years (Submissions in Chief dated April 23, 2015). These balances are broken out into amounts related to the May 1, 2014 to January 31, 2015 misallocation already recovered in rates, the February 1, 2015 to April 30, 2015 residual not yet collected along with the correction to the misallocation of this amount over this period, and the 2013 balance. These separate amounts are shown in Table 5 (Account 1588) and Table 6 (Account 1589) in the Submissions in Chief.

#### a) Residual Balances

The corrected Essex Powerlines show the recovery from customers in the amount of \$2,762,600 for the 2011/2012 residual period, partially offset by a reduction of \$1,563,971 to correct for the misallocation in the residual amount.

Similarly, in Account 1589, the corrected figures reflect a rebate to customers in the amount of \$2,653,477, partially offset by an increase related to the misallocation in the residual amount.

Essex Powerlines has adopted the Board Staff analysis that ensures that it does not profit from the error. This has been accomplished by setting the misallocation of the residual amount to equal amounts in both accounts. As shown in Figure 1 in the Submissions in Chief, Essex Powerlines estimated the misallocation in the February through April, 2015 period as \$1,489,709 for Account 1588 and (\$1,563,971) in Account 1589.

Energy Probe submits that the amounts proposed to be disposed of related to the residual balances is appropriate. It ensures that the Essex Powerlines does not profit from the error it made and assigns the appropriate corrected amounts for this period to each of the RPP and non-RPP customer groups. Energy Probe submits that the Board should approve this component of the disposition of the Accounts 1588 and 1589 as proposed by Essex Powerlines.

#### b) 2013 Balances

Essex Powerlines has provided corrected figures for disposition in Accounts 1588 and 1589 in Tables 5 and 6 of the Submissions in Chief, based on the corrected figures filed on April 7, 2015. Energy Probe submits that there was no evidence to suggest that these corrected figures were misallocated and therefore submits that they should be accepted by the Board.

#### c) May, 2014 through January, 2015 Misallocation

Essex Powerlines proposes to correct the misallocation error of \$3,614,779 in Accounts 1588 and 1589. This is shown in Tables 5 and 6 in the Submissions in Chief and would result in a reduction in the Account 1588 balance and an increase of the same amount in the Account 1589 balance.

This proposal is despite the Board's finding in the March 25, 2015 Partial Decision that (page 7): *"The Board therefore rejects Essex Powerlines' proposal to adjust the 2011 and 2012 DVA balances which were disposed on a final basis. The Board will not require Essex Powerlines' non-RPP customers to repay the under-collected amounts from 2011 and 2012. The non-RPP customers would have had no way of knowing that a future adjustment would be made to rates that were declared final over a year ago."*

Energy Probe continues to support the correction of the error. The Board has ruled that when an error is made, the utility cannot benefit at the expense of its ratepayers. Energy Probe submits that an error that results in one group of ratepayers benefitting at the expense of another group is also not appropriate and certainly does not reflect an appropriate outcome.

#### d) Recovery Period

Energy Probe submits that the disposition period may be impacted on whether or not the Board allows the adjustment for the misallocation already recovered through rates (part (c) above).

Essex Powerlines proposes to dispose of the credit balance in Account 1588 to customers over a two year period and recover the balance in Account 1598 from customers over a four year period.

Given that RPP customers have overpaid by more than \$3.6 million during the May 1, 2014 through January 31, 2015 period due the allocation error, Energy Probe submits it is not appropriate to make those customers wait over a two year period to receive their credit from Account 1588. Energy Probe submits that a fairer approach would be rebate the credit customers over a one year period. This would apply to the total net credit of \$952,812 associated with the 2013 balance and the corrected residual amount.

With respect to the recovery of the balance in Account 1589 from customers, Energy Probe notes that these customers have underpaid in aggregate more than \$3.6 million in the May 1, 2014 through January 31, 2015 period. Energy Probe submits that a two year recovery period would be more appropriate than a four year period if the Board allows the recovery of the 2013 balance and the residual amount (\$3,293,417), but not the amount associated with the misallocation already recovered. This amount is approximately 50% of the total proposed recovery which Essex Powerlines proposes to recover over four years. If the Board approves that amount as proposed by Essex Powerlines, then Energy Probe submits that a four year recovery period is appropriate.

#### e) Penalty and Other Recommendations

As noted above, Energy Probe supports the proposal by Essex Powerlines to correct for the misallocation of amounts recovered in the May 1, 2014 through January 31, 2015 period.

However, if the Board again rejects the Essex Powerlines proposal to correct the misallocation of the amounts recovered in rates over the May 1, 2014 through January 31, 2015 period, then the Board should impose a substantial penalty on the utility, the proceeds of which should be used to compensate those customers that overpaid due to the error.

RPP customers should not be expected to bear the cost of the utility error and the constraints imposed by retroactive ratemaking.

Energy Probe submits that the Board needs to impose a penalty on Essex Powerlines for being negligent. As the Board noted in the Partial Decision and Procedural Order No. 3 dated March 25, 2015, utilities *"have ultimate control of their books and records and therefore bear the responsibility of ensuring that there are no mistakes in their filings with the Board"* (page 7). The Board went on to indicate a number of financial or other consequences that it could impose on the utility, but that was also *"apprehensive that repayment, requiring the utility to bear all the cost of its errors, may have a material financial adverse effect on the viability of the utility"*.

Energy Probe submits that Essex Powerlines was clearly negligent in their accounting practices. While the witnesses emphasized the changes that were going on at the time of the error, the simple fact is that it did not have adequate checks and balances in place for this error to be detected at an earlier point in time than it was.

Energy Probe believes an appropriate analogy of the deferral and variance accounts is a cheque book. The cheque book was in balance and many people viewed the balances and concluded that it was balanced and, therefore, no problems. However, a cheque book can be in balance even if the cheques reflected payments of the right amounts, but to the wrong parties. This is what happened with Essex Powerlines. The deferral and variance accounts were appropriate, in total. However, no one checked to make sure that the individual components were being put in the right accounts. This clearly matters because different accounts are allocated differently to different customers. If Essex Powerlines had paid all of its bills, but got the payments between different suppliers mixed up, some of those suppliers would not be happy and would demand payment of the correct amount.

Energy Probe submits that the Board should impose a penalty on Essex Powerlines and refund all of the penalty amount to RPP customers.

Based on the response to VECC Supplemental Interrogatory #5, the value of 100 basis points in the return on equity averages about \$188,000 over the 2011 through 2015 period. This means the \$3.6 million error would represent about 1900 basis points of return on equity, or the equivalent total return on equity for two years.

Further, in the supplementary response to Undertaking J3, Essex Powerlines has indicated that the maximum annual amount the distributor could forgo without negatively impacting its debt service coverage ratios is \$380,000.

The amount to be returned to the RPP customers could be financed a number of ways. In fact, it may be appropriate to utilize a number of methods to finance the rebate to the RPP customers. Transferring any interest on deferral and variance accounts that are in a debit position to an account to be repaid to RPP customers, while requiring Essex Powerlines to continue to book interest on accounts that are in a credit position to ratepayers would be one such component. The major component, however, would be funded by the \$380,000

per year noted above. Energy Probe submits that this account should be in place until the full amount of the amount incorrectly allocated to RPP customers has been collected and returned to them.

Finally, Energy Probe submits that the Board should direct Board staff to complete a full and comprehensive audit of Essex Powerlines. This audit would not be simply to find other problems, should they exist, but also to educate the utility staff in proper techniques to ensure such problems do not occur again.

### **C. Costs**

Energy Probe requests that it be awarded 100% of its reasonably incurred costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**April 30, 2015**

**Randy Aiken  
Consultant to Energy Probe**