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December 28, 2016

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-2016-0089
Lakefront Utilities Inc. - 2017 COS Application
Energy Probe – Costs Objection Response

Pursuant to the Decision and Order, issued December 8, 2016, this is the Costs Objection Response of Energy Probe Research Foundation (Energy Probe) in the EB-2016-0089 Lakefront Utilities 2017 COS Rates Application for the consideration of the Board.

Costs Objection Response of Energy Probe Research Foundation

Lakefront Utilities Inc. (“LUI”) has objected to the cost claims of both Energy Probe Research Foundation (“Energy Probe”) and the Vulnerable Energy Consumers Coalition (“VECC”) related to the time associated with the written hearing. These costs were related to the interest rate on affiliate debt, the only issue that was not settled as part of the Settlement Proposal that was accepted by the Ontario Energy Board (“OEB”).

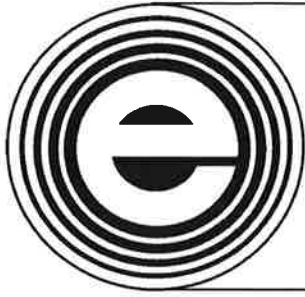
LUI’s objections to recovery of these costs are based on three principles. Energy Probe deals with each of them in turn.

1. Ratepayers ought not to be required to fund activities or interventions that do not materially contribute to the Board panel’s understanding and resolution of the issues in any given case.

Energy Probe submits that the issue in this case was whether or not the Board’s guidelines with respect to the use of the deemed rate for long term debt should be applicable to the affiliate promissory note. OEB staff submitted that it is unclear whether the debt instrument is a demand note, whereby only the lender can demand repayment of the

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principal outside of default; or whether it is a promissory note, where either party can initiate repayment of principal or can negotiate an agreement for repayment.

The submissions of Energy Probe and VECC were that LUI could pay off the affiliate debt, while LUI argued that it could not. Energy Probe submits that these submissions contributed to the Board's understanding and resolution of the issue.

In addition, Energy Probe made submissions with respect to the impact of the payments of interest costs that far exceed that amount recovered in rates through the revenue requirement and the adverse impact that this could have on the financial viability of LUI through the weakening of its balance sheet. As far as Energy Probe is aware, this impact of the unsettled issue had not been raised elsewhere and was therefore a unique contribution to the Board's understanding of the issue.

2. Ratepayers ought not to be required to fund activities or interventions that become the basis for an intervenor to conduct a broad public campaign, the intent of which may be to influence the outcome of the Board's processes. The Board's processes are well defined and prescribed by law. Intervenors who attempt to influence or circumvent those processes ought not to be rewarded by ratepayers for costs that they incur.

First of all, there clearly was no broad public campaign. A broad public campaign would have included an oral hearing in Cobourg so that the public could attend and make their own determination of whether or not the affiliate debt was appropriate. Energy Probe in no way sought to influence the Board's process by taking an issue to hearing on which it had a fundamental disagreement with LUI. Energy Probe's submission on the unsettled issue was made to influence the outcome of the Board's decision. This is the role of intervenors.

Intervenors do try to influence Board processes in generic and policy type application, such as the return on capital proceeding (EB-2009-0084). Energy Probe notes that distributors pay annual fees to the Electricity Distributors Association ("EDA"), which are paid for by ratepayers. The EDA also tries to influence Board processes in generic and policy type applications. The Board has always considered it useful to have the views of many parties, often with different viewpoints.



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3. Costs should be awarded for, and should encourage, responsible participation in Board proceedings.

Energy Probe submits that the intervenors participated responsibly in this proceeding. The intervenors worked with one another on the unsettled issue (as well as on the settled issues). Intervenors agreed that that unsettled issue could be dealt with through written submissions, without the need for an oral hearing, which would have increased the costs substantially.

Energy Probe has further comments on the Cost Objection of LUI.

First, LUI has inflated the cost of the written hearing for both Energy Probe and VECC by including the HST in the total reductions. AS the Board is aware, the HST is not a cost for the distributor (and therefore not a cost for its ratepayers) because the HST paid is an input tax credit.

Second, LUI makes the completely inaccurate and totally disingenuous statement that Lakefront's customers should not have to pay for intervenor costs related to a sixth attempt to circumvent the OEB's policy on affiliate debt.

As noted earlier, the intervenors were not trying to circumvent policy, they were arguing the applicability of the policy to the specific circumstances of LUI.

In any event, as LUI should know, their customers are not the beneficiaries of any cost award reduction determined by the OEB. It is the shareholder that will benefit. The costs that will be paid for by ratepayers are based on the LUI forecast of intervenor costs, not the actual costs. The forecasted costs, included in the approved OM&A envelope, as forecast by LUI, total \$80,000 (response to 4-Staff-48) as compared to the total intervenor costs of less than half of that amount, or approximately \$38,750.

In addition, it was LUI that ignored the rules of the process when they updated the intervenor costs during the proceeding from \$70,000 to \$80,000. This \$10,000 increase was clearly not material. The OEB filing requirements clearly state that when these changes or updates are contemplated in later stages of a proceeding, updates should only be done if there is a material change to the evidence already before the OEB.

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Finally, Energy Probe notes that in the EB-2009-0084 Report of the Board, the Board was of the view that the electricity distribution utility bears the burden of establishing the need for and prudence of the amount and cost of long-term debt, both embedded and new.

In the LUI decision the OEB found that "It is not clear that the terms and conditions of the promissory note would permit Lakefront Utilities to either renegotiate the rate or pay off the debt at will. The sole reference to repayment in the note is not specific." (page 7)

Energy Probe submits that this was the reason this issue proceeded to a written hearing rather than being settled. LUI failed to provide clear and unambiguous evidence that its promissory note was a demand note. It is the responsibility of intervenors to pursue areas of concern where there is a disagreement and that have a material impact on the revenue requirement.

For all of the above reasons, Energy Probe submits that the OEB should find the cost claim as filed by Energy Probe to be reasonable and order LUI to pay the full amount.

Respectfully submitted,

David S. MacIntosh
Case Manager

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