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June 29, 2019

Ms Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
Toronto, ON  
M4P 1E4

Dear Ms. Walli,

**RE: EB-2019-0018 Energy Probe Submission on Preliminary Questions**

The following is the submission of Energy Probe.

In Procedural Order No.1, the OEB provided an opportunity for intervenors to file submissions on the following questions:

*Does Alectra Utilities' request to reverse the outcome of the OEB's decision to create the capitalization related deferral accounts for the Enersource, Brampton and Horizon rate zones, constitute a motion to vary pursuant to Rule 40.02 of the OEB Rules?*

*If Alectra Utilities' request constitutes a motion to vary, has the threshold test been met such that the request should be reviewed on the merits?*

Rule 40.02 is clear (underlined for emphasis).

*40.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under Rule 40.01.*

Alectra was a party to the EB-2017-0024 proceeding so Rule 40.02 does not apply to it. Alectra does not need to obtain leave of the Board to file a motion to vary the EB-2017-0024 decision pursuant to Rule 40.02.

However, Alectra's request does constitute a motion to vary the EB-2017-0024 decision under Rule 40.01.

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*40.01 Subject to Rule 40.02, any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.*

The threshold test as posed by the Board refers to Rule 43.01.

*43.01 In respect of a motion brought under Rule 40.01, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.*

Energy Probe believes that the threshold test has not been met based on the evidence filed by Alectra Utilities.

Respectfully submitted on behalf of Energy Probe.

*Original signed by*

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Tom Ladanyi  
Consultant to Energy Probe