January 25, 2021

Christine E. Long
Registrar
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
Toronto ON
M4P 1E4

Dear Ms. Long,

RE: EB-2020-0133 Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency **-** Energy Probe Submission on the OEB Staff Proposal

Attached is the submission of Energy Probe Research Foundation (Energy Probe) on the OEB Staff Proposal - Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, dated December 16, 2020.

Respectfully submitted on behalf of Energy Probe by,

Tom Ladanyi Digitally signed by Tom Ladanyi Date: 2021.01.25 15:28:35 -05'00'

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

CC. Patricia Adams (Energy Probe)
Fiona O'Connell (OEB Staff)

EB-2020-0133

Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency

Energy Probe Submission on the OEB Staff Report

January 25, 2021

Background

On December 16, 2020, the OEB released a document, OEB Staff Proposal - Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency and invited the participants in the consultation to submit written comments by January 25. 2021. As a part of its consultation the OEB held a webinar on January 14, 2021 where the OEB Staff Proposal was presented and participants, including Energy Probe, were allowed to ask questions which were answered orally. At the end of the webinar, the participants were again invited to submit written comments by January 25, 2021. This document presents the submission of Energy Probe comments.

Energy Probe General Comments

When the COVID-19 pandemic hit, governments around the world chose different ways to respond. Some, like Sweden and several US states, never locked down, others like Ontario, experienced full lockdowns, while many others chose intermediate measures. Many of the lockdown jurisdictions fared very poorly, some that eschewed lockdowns fared relatively well. The question before the Board is who properly bears responsibility for the unavoidable costs involved: is it the government, which set the policy, the utilities, which followed government policies, or ratepayers, who are being asked to pay the utilities for any cost impacts.

Energy Probe submits that the responsibility and thus the accountability for lockdown related decisions should ultimately rest with the government. The utilities should be responsible only to the extent that they failed to respond to government dictates efficiently, and ratepayers should not be responsible at all, except as required by the OEB Act.

In response to the pandemic, the government of Ontario placed restrictions on commercial activities and the operations of the school system. These restrictions have impacted various sectors of the economy to a different degree. The impact on the utility sector has been modest when compared with many sectors in the competitive market[1]. However, there are demands by utilities on the OEB to lessen or even remove this modest impact of the pandemic.

The response by the OEB to these demands have ratepayers pay utility shareholders for the impact of the pandemic can aim to achieve the following four alternative outcomes:

1) ratepayers pay 0% of the cost impacts (no shareholder protection),

2) ratepayers pay the minimum amount of the cost impacts to keep a utility financially viable (minimum necessary shareholder protection to ensure financial viability),

3) ratepayers pay 50% of the cost impacts (50% shareholder protection), and

4) ratepayers pay 100% of the cost impacts (full shareholder protection).

[1] COVID-19 Impact Study, Prepared by London Economics International LLC (“LEI”) for the Ontario Energy Board, December 15th, 2020, Page 19, Figure 10, Real GDP change by industry for Q2-2020

Energy Probe believes that the response by the OEB to demands should adhere to Board Objectives under the OEB Act. Therefore, the appropriate aim should be to ensure financial viability of utilities as stated in Section 1 (1) of the OEB Act, *Board objectives, electricity*.

Board objectives, electricity

***1** (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:*

1. *To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.*

2. *To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.*

If the pandemic is affecting the adequacy, reliability, and quality of electricity service the Board's objective is to protect the interest of consumers, not utility shareholders. This it can do by facilitating and maintaining a financially viable electricity industry by ensuring that utility shareholders have adequate financial resources to allow utilities to provide adequate, reliable, quality electricity service to consumers. If utilities are financially viable, the OEB should not order any partial or full protection for utility shareholders.

Energy Probe Comments on Certain Sections of the OEB Staff Proposal

The following are comments by Energy Probe on certain sections of the OEB Staff Proposal. The sections where Energy Probe provided no comments the position of Energy Probe should be interpreted as "no comment". Direct quotes from the Staff Proposal are in italics.

1.Executive Summary

The purpose of the Staff Proposal is to provide OEB staff's initial views on the scope of the Account and to facilitate and focus stakeholder comments. The Staff Proposal strives to strike a balance between utility and ratepayer interests while having regard to the nature of the COVID-19 pandemic, as well as the assessments provided by London Economics International LLC (LEI). [2]

[2] OEB Staff Proposal, Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency, EB-2020-0133, December 16, 2020, page 1

Energy Probe Comment

Energy Probe believes that striking a balance appears to be an attempt at sharing the pain. Many business owners in the competitive market have experienced pain too but do not have a friendly regulator that would force their customers to share it. Energy Probe is opposed to any share-the-pain initiatives.

2.2 The Purpose of the Staff Proposal

The intent of this Staff Proposal is not to pre-determine the outcome of the issues that are subject to the Consultation. Rather, this Staff Proposal reflects OEB staff's view of what the OEB's regulatory guidance should be with respect to the nature, purpose, and operation of the Account. It is generally intended to be a starting point for rules surrounding the Account, with justification, but is also intended to elicit stakeholder comments and perspectives. Final guidance is anticipated to be issued by the OEB to assist utilities in assessing the need for, and if necessary, properly submitting applications for review and disposition of the Account balance in due course.[3]

Energy Probe Comment

OEB Staff provided a further clarification in response to questions at the Webinar. The Staff Proposal will at the end of the consultation process result in the OEB issuing a "guidance" document. It is not clear if a guidance document is similar to a filing guideline or not. Energy Probe recommends that final document to be issued should be a filing guideline. The filing guideline should specify what information a utility must file if it is applying for disposition of balances in COVID sub-accounts. From a response to an oral question from Energy Probe, OEB Staff indicated the OEB is expecting utilities to file applications in 2021 for the disposition of balances in 2022 rates.

4.2 OEB's Role and Principles

The principle of necessity, which underpins the Staff Proposal, can be described as follows: Recovery of any balances recorded in the Account should be subject to evidence that the costs are not only reasonable, but also necessary to the maintenance of the utility's financial viability.[4]

Energy Probe Comment

Energy Probe believes that the above principle of necessity should be the guiding principle for this initiative. Electricity utilities provide an essential service. Should an electrical utility become financially un-viable it is likely that the provision of essential electricity service could be disrupted or cease altogether. The OEB has a duty to ensure that does not happen. If financial viability of a utility is threatened, the utility can apply to the OEB for help at any time. It should be noted that based on the information in the LEI report the pandemic has not resulted in impairment of financial viability of any utility in Ontario.

[3] *Ibid.*, page 6
[4] *Ibid.*, page 11

4.3 Examination of Existing OEB Policy

4.31 Z-factor

Due to the unique nature of the event, the economic impacts on all customers, and the expectation of continuing impacts, OEB staff recommends that the pandemic should not be considered directly comparable with other unforeseeable events, such as Z-factor events.[5]

Energy Probe Comment
Energy Probe agrees.

4.3.2 Means Tests – ACM/ICM, Inflationary Increases, Off-Ramps

OEB staff suggests that a means test based on the lower end of the OEB's dead band of approved ROE ensures that utilities who make recovery claims are doing so to ameliorate the fact that their earnings have been reduced below the point of reasonably expected fluctuations, as opposed to restoration of their full profitability margins[6].

To access ACM and ICM funding, the applicant must pass a means test. If a utility's regulated return exceeds 300 bps above the approved ROE embedded in the utility's rates, that utility does not qualify for funding for an incremental capital project. Exceeding the 300 bps dead band is an indication that funding in advance of the next rebasing is likely not required from a cash flow perspective. The application of the upper boundary of the OEB's dead band (achieved ROE >300 bps over approved) is a sign of over-earnings when assessing the need for an increase. While the ACM/ICM means test is applied for a different purpose, it is, in OEB staff's view, an indication that the utility's earnings have exceeded the range of fluctuations that can be reasonably expected year over year.[7]

A regulatory review by the OEB may be triggered if a distributor's earnings fall outside of a dead band of +/- 300 bps from the OEB-approved ROE. This review is performed to assess whether a utility's costs and its revenue stream require realignment, for the sake of maintaining financial viability and/or reasonable rates. In OEB staff's view, the lower end of this dead band is an important indicator for putting the necessity principle into quantifiable terms.[8]

Energy Probe Comment
Energy Probe disagrees with this proposal because it conflicts with the Principle of Necessity. Energy Probe submits that a recovery from ratepayers should only take place if a utility is unable to maintain its "financial viability". A utility that is earning an ROE which is below the lower end of the 300 bps band but above 0% is financially stable.

[5] *Ibid.*, page 12
[6] *Ibid.*, page 3
[7] *Ibid.*, pages 3 and 4
[8] *Ibid.*, page 13

The ”reasonably expected fluctuations” are defined to be within the +/ 300 bps band. According to the OEB Staff proposal there could be recovery if utility's ROE falls more than 300 bps below OEB approved ROE. In Energy Probe's view this is protection of shareholders at the expense of ratepayers. The OEB has no responsibility to ensure that utility shareholders make a profit; its responsibility is only to provide the shareholders to have an opportunity to make a profit. This shareholders can accomplish by mitigation of spending by utilities.

5.1 Criteria for Recording Amounts

OEB staff recommends that the long-standing regulatory concepts for deferral and variance accounts (DVAs) of causation, prudence and materiality should apply to the amounts recorded in the Account. As such, any material and prudently incurred incremental impacts, directly attributable to the pandemic, should be eligible for recording in the Account.[9]

However, given the diversity in size, operations, and customer bases in Ontario's utility landscape, OEB staff also believes that narrowing the list of impacts at this time may be too restrictive and may lead to overlooking the unique impacts being experienced by different utilities. For those reasons, OEB staff's view is that at this time, it is appropriate for the OEB to allow for flexibility, providing utilities the latitude to record what they assess as incremental and attributable to the pandemic, given their own circumstances.[10]

Energy Probe Comment

Energy Probe agrees that there should be flexibility on what should be recorded in the account. A further advantage of flexibility is that it is a signal to the utilities that there is no certainty about recovery of the balances from ratepayers. Utilities should have the flexibility to record any cost that may be threatening their financial viability.

5.1.2 Causation, Prudence, and Materiality Criteria

Causation

OEB staff suggests that the impacts recorded must be determined to have only been incurred as a result of the pandemic. A utility should demonstrate that when it records amounts in the Account, an appropriate baseline and incremental impact measurement can be established.[11]

Energy Probe Comment

Energy Probe agrees. There must be a baseline. For example, a utility claiming greater cleaning costs must provide evidence of the baseline, such average cleaning costs over the past 5 years. In that regard granularity of evidence is important. A utility should record costs and savings at the level of granularity that would allow the OEB to decide on their reasonableness.

[9] *Ibid.*, page 14
[10] *Ibid.*, page 14
[11] *Ibid.*, page 15

Prudence
OEB staff recommends that final amounts should be recorded in the Account when the utility can demonstrate that it has acted prudently to minimize those impacts and has fully exploited all available cost-reductions and savings, including those that have become available in light of the pandemic.[12]

Energy Probe Comment
Energy Probe agrees. Utility must be required to demonstrate its mitigation of COVID impacts by hiring freeze, salary freeze, cuts to discretionary expenses etc. It must also not pay dividends or executive bonuses. If it does, shareholder dividends and executive bonus payments should be deducted from any amounts claimed.

Materiality
OEB staff recommends that the materiality threshold should be applied to the total amount recorded in the Account (i.e., overall Account basis versus on an individual sub-account basis), inclusive of any savings (i.e., net total incremental costs that are offset by any savings). OEB staff's view is that the pandemic impacts must be assessed on the whole of the entity's business, and with many offsetting or overlapping impacts, it is more insightful to assess materiality at the control account level.[13]

Energy Probe Comment
Energy Probe agrees with the proposal.

5.2 Measuring Incremental Impacts

To define incrementality, OEB staff recommends that, for each discretely identifiable cost driver, the amounts recorded in the Account should be calculated using a baseline comparison to the greater of:
1. The amount embedded in base rates (adjusted for inflationary increases less productivity)
2. The highest actual annual amount over the past five years (2015 to 2019)

A greater-of baseline test ensures that utilities only record amounts that are both:
1. In excess of what is already provided for in rates (adjusted for inflationary increases less productivity), and
2. In excess of what the utility has experienced in the past during non-pandemic years (i.e. evidence that the cost increase is beyond that of a typical fluctuation, supporting its attribution to the pandemic)

Likewise, when measuring discretely identifiable incremental savings to be recorded in the Account, OEB staff suggests that the baseline be established as the lower of:
1. The amount embedded in base rates (adjusted for inflationary increases less productivity)
2. The lowest actual annual amount over the past five years (2015 to 2019).[14]

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[12] *Ibid.*, page 15
[13] *Ibid.*, page 16
[14] *Ibid.*, page 17

Energy Probe Comment
Energy Probe agrees with the proposal.

OEB staff has also considered the five-year average of historical actuals instead of a five-year high/low.29 OEB staff is receptive to stakeholder views on whether this baselining approach is appropriately reflecting causation to the pandemic, in a manner that is practical to administer.[15]

Energy Probe Comment
Energy Probe believes that it should be 5-year high/low.

OEB staff recommends that any emergency-related funding already included in a utility's revenue requirement should be factored into the calculation of incrementality.[16]

Energy Probe Comment
Energy Probe agrees with the proposal.

5.3.1 Recovery Rate of Eligible Amounts

Subject to the means test explained further below, OEB staff proposes that 50% of incremental impacts should be eligible for recovery, for both utility operations impacts and customer-driven impacts.[17]

Energy Probe Comment
Energy Probe does not agree. This is an attempt at sharing the pain which Energy Probe does not support. If a certain utility's financial viability is threatened, then it should be free to claim full costs so that the OEB can restore its financial viability.

OEB staff suggests an exception to the 50% recovery rate for the costs necessary to comply with government or OEB actions aimed at providing relief to ratepayers in response to the pandemic. These include:
- *Implementation costs of emergency time-of-use (TOU) rates and deferred global adjustment charges for electricity distributors*
- *Implementation and administration costs of CEAP and CEAP-SB*
- *Increased LEAP EFA funding*
- *Lost revenues from certain reduced/waived specific service charges*
- *Incremental bad debt directly attributable to the extension of the winter disconnection ban.*

For these types of costs, OEB staff recommends full cost recoverability with a means test applied (but not the same means test as applicable to the rest of the Account). OEB staff's position is that

[15] *Ibid.*, page 18
[16] *Ibid.*, page 18
[17] *Ibid.*, page 18

the recovery of these amounts should be based on a means test whereby the utility's achieved ROE does not exceed the upper end of the dead band of 300 bps from a utility's approved ROE.[18]

<u>Energy Probe Comment</u>
Energy Probe is opposed to ratepayers paying 100% of any cost impacts so that shareholders are fully protected from government decisions. These measures were implemented by the government to provide relief to ratepayers. The recovery of the costs of these measures from ratepayers would reduce the amount of intended relief. If any costs were incurred implementing government directives, they should be recovered from the government not from ratepayers. In this regard the utilities should not be treated differently than other sectors of the economy which implemented government directives, such as the commercial retail sector.

5.3.2 Additional Considerations for Customer-Driven Impacts
In the case of bad debt, and lost revenue associated with load, OEB staff supports the notion that on a case-by-case basis and in rare circumstances, early rebasing may be a more fitting solution than recoveries through the Account.[19]

<u>Energy Probe Comment</u>
Energy Probe supports the position of Board Staff.

5.4.2 Earnings-based Means Test

OEB staff suggests that limiting any recoveries up to the lower end of the dead band is an important element to avoid the potential that utilities that under-earn end up in a better financial position, after having their claims approved, than those operating within the dead band, all else equal.[20]

<u>Energy Probe Comment</u>
Energy Probe agrees with the suggestion to limit recoveries by the lower band.

5.5.2 Revenue Impacts
OEB staff recommends that the impact of gains and losses from differences in load and production should be eligible for recovery, provided they are incremental and attributable to the pandemic.[21]

<u>Energy Probe Comment</u>
Energy Probe is opposed to the proposal as worded. There may be gains in some rate classes which should be credited to customers to customers in those classes.

[18] *Ibid.*, page 19
[19] *Ibid.*, page 22
[20] *Ibid.*, page 23
[21] *Ibid.*, page 25

Responsibility, including any Rate Class Cross-Subsidization
OEB staff recommends that utilities should be able to identify net load by customer class. The recovery of amounts associated with net load impacts should be from the customer class in which it occurred, unless it is not practical or reasonable to do so. In such a case, utilities should propose an alternative allocation methodology. When utilities record amounts in the Account, OEB staff suggests that these amounts should be recorded by customer class.[22]

Energy Probe Comment
Energy Probe agrees.

Treatment of Net Gains
Therefore, to the extent that any revenue gains attributable to the pandemic exceed the incremental costs, OEB staff submits that utilities should not be obliged to bring those amounts forward for disposition. [23]

Energy Probe Comment
Energy Probe disagrees because this is unfair. Gains and cost should be treated the same.

5.5.3 Other Costs and Savings (including Financing Amounts)
OEB staff recommends that interest expense related to incremental borrowing costs, beyond calculated baseline levels, should be eligible for recovery. If additional financing was required to address short-term cash shortfalls, the onus should be on utilities to trace causality directly to the pandemic and not to either corporate debt/equity structure fluctuations or normal operating cash flow requirements.[24]

Energy Probe Comment
Energy Probe believes that there are fundamental problems with this proposal. It is difficult to see how financing costs can be traced to specific financing needs.

OEB staff recommends that, provided the utility qualifies to file a claim and intends to do so, finance savings should be recorded in the Account, even if no incremental financing costs were incurred. If a utility realizes net finance cost savings, OEB staff recommends that this amount be tracked in the Other Costs sub-account, so that it can be considered in relation to all other amounts recorded in the Account.[25]

Energy Probe Comment
Although Energy Probe supports this proposal in principle, it may not be workable in practice as causes and uses of borrowing are difficult to trace.

[22] *Ibid.*, page 26
[23] *Ibid.*, page 27
[24] *Ibid.*, page 27
[25] *Ibid.*, page 28

5.5.4 Bad Debt

The OEB's bad debt accounting order also referred to discrete bad debt which has arisen during the period of the pandemic, but due to reasons not relating to this pandemic. OEB staff recommends that such discrete bad debt should not be recorded in the Account and is not eligible for recovery.[26]

Energy Probe Comment

Energy Probe agrees.

As noted earlier, OEB staff recommends that any pass-through amounts themselves relating to bad debt should be eligible for recovery, subject to the same rules regarding the Means Test and the 50% recovery rate.[27]

Energy Probe Comment

Energy Probe is opposed to recovery of bad debt because it is strictly for shareholder protection.

5.5.5 Potential Need for a Capital-Related Sub-account

OEB staff suggests that any capital-related incremental impacts should be subject to the earnings-based means test and 50% cost-sharing mechanism underpinning this Staff Proposal.[28]

Energy Probe Comment

Energy Probe is opposed to this proposal. If financial viability of a utility is threatened, the utility should not be proceeding with capital projects and would not need a capital-related sub-account.

5.6.1 Period of the Account

If a utility incurred material costs related to the pandemic prior to March 24, 2020, OEB staff suggests that it should record these costs in the Account, provided that they are separately identified, and the utility brings forward an argument for recovery when it seeks disposition. OEB staff recommends that amounts should be recorded in the Account until the utility's subsequent rebasing application, assuming that the utility is able to support costs in future years (post-2020) as directly attributable to the pandemic.[29]

[26] *Ibid.*, page 28
[27] *Ibid.*, pages 28-29
[28] *Ibid.*, page 29
[29] *Ibid.*, page 30

Energy Probe Comment

Energy Probe believes that there should not be any disposition of the balances in the account until the Government lifts all restrictions on commercial activity and fully re-opens schools. The account should remain in operation until then.

5.6.2 Offsets – Cost Reductions from Government Assistance

If a utility receives sources of funds, grants, or government assistance to assist with the financial impacts of the pandemic, OEB staff recommends that the amounts that qualify as not repayable should be credited to the Account.[30]

Energy Probe Comment

Energy Probe agrees. Any amounts received from the government must be deducted from the amounts claimed.

5.6.3 Carrying Charges

OEB staff suggests that carrying charges should apply to the Account, given that the impacts under consideration for recovery in the Account result in changes to a utility's cash flows. The carrying charge rate to be applied to the Account should continue to be derived using the long-standing prescribed interest rate methodology.[31]

Energy Probe Comment

Energy Probe agrees.

6.1.1 Timing and Process for Disposition Requests

OEB staff recommends that the Account should be treated as a Group 2 account, but unlike most Group 2 accounts, an application for disposition can be made outside of a rebasing application. In OEB staff's view, it is preferable if a utility leverages a cost- based application for the review of the Account which requires a prudence review. In particular, the Account also relates very closely to impacts that would be reflected in a future cost of service review for a utility operating under its new "normal".[32]

[30] *Ibid.*, page 30
[31] *Ibid.*, page 30
[32] *I Ibid.*, page 30*bid.*, page 32

Energy Probe Comment
Energy Probe agrees that it would be preferable if the disposition is at the COS rebasing. However, as stated previously, there should be no disposition until the government lifts all restrictions on commercial activities and schools are fully re-opened.

6.1.2 Interim Disposition

OEB staff recommends that interim disposition of a partial amount of the Account balance should be considered on a case-by-case basis (e.g. if a utility is facing financial viability concerns). In the event a utility seeks interim disposition in the near term, any amounts recovered may be subject to a clawback, for example, in the event that the utility does not pass the means test.[33]

Energy Probe Comment
Energy Probe believes that disposition of balances should only be allowed in cases where the utility has demonstrated that its financial viability is threatened. In that case the maximum amount of disposition should be no greater than the minimum amount required to preserve its financial viability.

6.1.3 Audited Account Balance

OEB staff is of the view that any interim disposition requests (which would be determined on a case-by-case basis) may be for either unaudited or audited Account balances. However, OEB staff recommends that final disposition requests should be for audited Account balances, following a utility's annual financial statement audit.[34]

Energy Probe Comment
As noted by Board Staff during the Webinar, the earliest opportunity for the Account balance to be brought forward for disposition will be in summer 2021, once the audited balance as at December 31, 2020 is available. Energy Probe agrees that the earliest applications for disposition can take place when 2020 audited balances are available. Such applications are likely to be highly controversial. In order to avoid perceptions of a cover-up of controversial applications, the notices for such applications must clearly state that the utility wants ratepayers to pay for its COVID costs and/or lost revenues. The utility should also be required to include it in a paper or electronic bill insert and to post it on its external website.

Energy Probe submits that no recoveries from ratepayers take place until the COVID pandemic is over and all restrictions on business activities are lifted. If that occurs prior to 2022, the recovery can take place in 2022. However, if business restrictions persist into 2022, no recoveries should take place until 2023 or later.

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[33] *Ibid.*, page 32
[34] *Ibid.*, page 32

6.2 Cost Allocation and Rate Design Mechanism

OEB staff recommends that utilities should propose any disposition based on accepted approaches to matters such as rate rider construction (including billing determinants, allocation methodologies and recovery periods), and bill mitigation. OEB staff recommends that appropriate rationale for any deviations proposed from that which have been previously approved for each utility should be provided. Where practicable, OEB staff suggests that utilities track incremental impacts based on their respective rate classes and rate zones, as applicable.[35]

Energy Probe Comment

Energy Probe agrees but stresses that cost allocation should follow cost causality principles by rate class and that rider construction should be based on rate class billing determinants.

Conclusion

The purpose of utility regulation is to provide monopoly utilities with a substitute for competition. It is not to isolate utilities from the world by the creation of an artificial environment for utilities where utility shareholders are protected from what is going on in the external world, such as the pandemic. Except in cases where the financial viability of a utility is jeopardized, Energy Probe is opposed to initiatives that would have the effect of protecting utility shareholders from cost impacts of the pandemic by transferring some or all of the cost impacts to ratepayers.

Submitted on behalf of Energy Probe by,

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

[35] *Ibid.*, page 33