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October 31, 2008

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-2008-0150**  
**Energy Issues Relating to Low Income Consumers**  
**Comments of Energy Probe**

Pursuant to the letter from the Board, dated October 20, 2008, extending the due date for written comments, Energy Probe Research Foundation (Energy Probe) is hereby submitting two hard copies of its Comments in the EB-2008-0150 consultation for the Board's consideration. An electronic copy of this communication in PDF format is being forwarded to your attention.

Should you have any questions or require additional information, please contact me.

Yours truly,

David S. MacIntosh  
Case Manager

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# **Ontario Energy Board**

## **CONSULTATION ON ENERGY ISSUES RELATING TO LOW INCOME CONSUMERS**

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**COMMENTS OF  
ENERGY PROBE RESEARCH FOUNDATION  
("ENERGY PROBE")**

**October 31, 2008**

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# **CONSULTATION ON ENERGY ISSUES RELATING TO LOW INCOME CONSUMERS**

**Comments of Energy Probe Research Foundation**

**EB-2008-0150**

## **Background**

By its July 2, 2008 letter to Ontario licensed gas and electricity distributors, and other interested parties, the Ontario Energy Board (“Board”) initiated a broad consultation process to examine the issues associated with low income consumers in relation to their use of natural gas and electricity. The stated intent of the consultation was to consider the need for policies and measures that could address those issues once the Board gained a better understanding through the examination of potential regulatory policies. Input was to be sought from participants about whether and how the Board should consider implementation.

The Board proceeded on its consultation in great part due to the recent decision of the Divisional Court in *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board* on May 16, 2008, referred to as the *LIEN Decision*. The Court ruled that the Board has the jurisdiction to consider “ability to pay” when setting rates that are just and reasonable as part of exercising its legislative mandate.

Energy Probe Research Foundation (“Energy Probe”) submits that in considering the Court’s Decision it is of utmost importance to note that the Court did not rule on whether or not such jurisdictional power should be exercised, or if exercised, how it should be implemented. The Court did state that the Board is not engaged in setting social policy, but rather in rate-setting.

## **The Stakeholder Conference**

**Some 50 parties registered to participate in the Consultation and it appeared that most of them took part in the September 22<sup>nd</sup> to 25<sup>th</sup> Stakeholder Conference at the Board offices. The over 40 presentations made to the Conference over those four days demonstrated the wide range of positions held by the participants. It has become obvious that the Board would not be able to satisfy all parties, nor does it need to, in carrying out its mandate as the power sector regulator for Ontario.**

**One theme heard a number of times during the presentations to the Conference was that it was up to the Board to implement policies, programs and other measures to assist low income consumers, to create rates for low income customers based upon the ability to pay, because it is all in the public interest and therefore consistent with the Board's mandate.**

**On the other hand, there were a number of policy suggestions made by presenters which the Board will need to explore further in providing assistance to low income gas and electricity customers in Ontario.**

**Upon review of the presentations to the Stakeholder Conference, it appears to Energy Probe that the vast majority of participants, if not all, believe that the Board and power distribution utilities within Ontario should assist low income customers to cope with the rising cost of gas and electricity. Where there is disagreement lies within the submissions of some parties that the assistance rendered by the Board and power distribution utilities should take the form of rate subsidies.**

**Examples of rate subsidies were put forward that have been utilized in other jurisdictions, both within Canada and in other English speaking countries.**

## **Submissions of Energy Probe**

**The issue that some participants in this consultation seem to be addressing is whether or not there is a societal right in Ontario to receive gas and electricity billing based upon the “ability to pay”. It is the submission of Energy Probe that if such a right exists, it does not exist against the gas and electricity distribution companies of the province, nor does it exist against the other customers served by those distributors.**

**If such a right exists, it is a societal right against our provincial society as a whole and thus a matter of direct provincial government jurisdiction. Had the provincial government wished the Board to carry out responsibility for distributive justice through the setting of just and reasonable rates, the Minister responsible for Energy would have issued a policy direction to the Board. Yet, under Conservative, Liberal and New Democratic Party administrations in Ontario during a century of power oversight, this has not occurred.**

**Some parties to this consultation would have the Board believe that the current government expects it to take responsibility for devising cross subsidies in rates to alleviate cost of power problems for low income customers, as it is all in the public interest and within the mandate of the Board. Energy Probe submits that the current government is not reluctant to provide direction to the Board and other entities in the power sector, even during Board proceedings, as we have seen in the Integrated Power System Plan review this year. Had the elected government wished the Board to undertake such initiatives, it would have directed it to do so.**

**It is the submission of Energy Probe that the mandate of the Board is best carried out through its continued focus on cost-based ratemaking principles. Energy Probe opposes rate cross subsidization both between rate classes and between groups of customers within rates classes based upon “ability to pay”.**

**Energy Probe continues to support the principle of cost causality in the regulatory setting of just and reasonable rates. That said, it is the submission of Energy Probe that there are initiatives that the Board could take to assist low income customers without abandoning its guiding principles.**

**Reviewing the programs and measures undertaken by utilities in the United States to address the problems faced by low income energy customers appears to Energy Probe to be of limited value in assessing initiatives which will be appropriate in Ontario. The social and welfare services and programs available in Ontario differ substantially from those available in most American state jurisdictions.**

**Energy Probe did take the opportunity to review the submissions of the London Property Management Association (“LPMA”) and the Building Owners and Managers Association of the Greater Toronto Area (“BOMA”) dated October 27, 2008, and supports the variety of suggestions which were put forward in that filing as practical solutions – how the Board and energy distribution utilities could assist low income customers.**

**Energy Probe does not in any way oppose Winter Warmth Fund type of programs which provide assistance to low income customers experiencing temporary energy payment distress. As well, Energy Probe submits that the Board should investigate the practicality of providing a way that customers could donate to Winter Warmth Fund type of programs as part of the payment of their energy bill. This would provide voluntary charity to low income customers as opposed to involuntary charity through rate setting.**

**Respectfully submitted at Toronto, Ontario this 31<sup>st</sup> day of October 2008.**

**Energy Probe Research Foundation**