

August 27, 2004

DELIVERED BY E-MAIL AND COURIER

Mr. John Zych  
Board Secretary  
Ontario Energy Board  
26<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario  
M4P 1E4

Dear Mr. Zych:

Re: 2006 EDR File RP-2004-0188 – Pollution Probe Request for Participant Funding

I am writing as legal counsel for Pollution Probe to apply for Participant Funding for Pollution Probe to participate in the 2006 Electricity Distribution Rates consultation process, in accordance with the Board's Notice dated August 12, 2004.

#### INTEREST REPRESENTED

Pollution Probe is one of Canada's largest and most longstanding public interest environmental advocacy groups, with a large membership and donor base throughout Ontario and beyond (including approximately 4,000 individual direct financial contributors in Ontario alone). Pollution Probe's goal is to serve the need of both our present generation and future generations for a clean and healthy environment, by finding environmental solutions that are practical and that will produce tangible results. Pollution Probe is also a registered charity. Attached is an excerpt from Pollution Probe's web site (<http://www.pollutionprobe.org/Whoweare/Index.htm>), which provides additional information about the organization and its Board of Directors and other advisors.

In the context of the Ontario Energy Board's issues and processes, Pollution Probe sets out to represent the interest of Pollution Probe's members and donors, the broader general public, and natural gas and electricity customers in achieving gains in energy conservation and energy efficiency – including, especially, doing so in ways that reduce customers' bills. Such energy conservation and energy efficiency goals are part of other important goals, such as working for sustainable development and environmental protection generally, and reducing the negative effects of climate change and the harm to public health from air pollution.

For many years, Pollution Probe has been an aggressive advocate at the Ontario Energy Board for effective and sensible Demand Side Management (DSM) in the natural gas sector, and has been one of the key parties in bringing about efficiency programmes which, the evidence shows, are saving Ontario customers over a billion dollars, while helping Canada meet its climate change goals and commitments. Pollution Probe would expect to bring its broad, deep and practical experience in natural gas DSM regulation to the unfolding electricity sector in this EDR process.

In Ontario Energy Board processes, Pollution Probe acts through its most senior staff member, Ken Ogilvie (Executive Director), who oversees Energy Board cases and is personally briefed by and gives direction to Pollution Probe's consultant Jack Gibbons.

## ISSUES AND POSITIONS

Pollution Probe has well over a decade of experience in advocating energy efficiency and conservation at the Ontario Energy Board in the natural gas sector, and thus is well positioned to help the Board consider to what extent DSM strategies can work in the electricity sector, and how they might be structured most effectively. Some ten years of DSM in the natural gas sector are saving Ontario customers over a billion dollars in energy costs, and Pollution Probe believes that the characteristics of the electricity sector are such that the savings to customers can be even greater in electricity - if DSM is done right and done early. In Pollution Probe's view, this means that LDC profits must be linked to their success in achieving real bill reductions (i.e., costs savings) for their customers through the LDCs' energy conservation and energy efficiency programmes.

The August 12, 2004 Board outline of the present Electricity Distribution Rates process recognizes that this rate setting process is interconnected with demand side management (DSM) programmes, particularly since the programmes can affect cost and rates. Pollution Probe believes that that interconnection works in both directions, and that this present rate setting process must give considerable consideration to DSM programmes. This is particularly so since the present government has made energy conservation one of its top priorities, and has indicated that energy conservation is now integral to the electricity LDCs. Pollution Probe believes that "hiving off" DSM at this stage, or giving it a minor role, and later "tacking it on" after the core rate processes are completed, would restrict DSM options and thus frustrate an important government objection. It is important that fundamental DSM issues be considered early and seriously - and should be integrated into electricity rates in a major way as soon as possible, not only for 2006 but, in an interim way, for March 1, 2005.

Pollution Probe has expertise and an interest in many aspects of distribution companies' operations which interconnect with and affect (and are affected by) DSM. Pollution Probe would therefore intend to participate in all four of the proposed steps in the process: Issues Discussion, Working Groups, ADR. and Hearing.

Although Pollution Probe has a keen interest in all aspects of DSM, and their relevance to this EDR process, Pollution Probe is notable as being the most aggressive advocate in Board processes of financial shareholder incentives for energy companies, as a means of motivating utilities (including electrical LDCs) to develop and implement innovative, aggressive and cost effective DSM programmes which will provide the maximum possible bill reductions to customers per dollar of utility expenditures. Such a regulatory strategy is important in the new electrical LDC context because it will ensure that electrical DSM provides huge and multiple social and economic benefits to Ontario, in the form of energy bill reductions to customers, increased competitiveness on the part of Ontario's industrial companies, more jobs in Ontario, and better protection for public health and the environment. Thus, Pollution Probe has been the leading proponent of Shared Savings Mechanisms, in which the regulated companies and their shareholders have the opportunity to be given back a small share of bill savings that they earn for their customers through smart DSM. The companies and their shareholders can in effect earn some extra profits through benefitting their customers, the economy, public health and the environment. This would be one of the perspectives that Pollution Probe would wish to bring forward.

## BUDGET

### Budget for Consultant (Jack Gibbons)

Review materials	10 hours
Consultation with legal counsel	5 hours
Prepare Interrogatories	5 hours
Respond to Interrogatories	20 hours
Attend Issues Conference and Issues Day (2 days x 7 hours/day + 1 day x 7 hours)	21 hours
Attend working groups (split with legal counsel) (5 groups x 5 days x 7 hours/day)/2	87.5 hours
Attend handbook review meetings (4 days x 7 hours/day)	28 hours
Preparation for above attendances	20 hours
Attend hearing (5 days x 7 hours/day)	35 hours
Preparation for hearing	20 hours
Preparation of evidence	20 hours
Preparation of argument	20 hours
TOTAL FOR CONSULTANT	291.5 hours

$$\text{Rate} = \$150/\text{hour} \times 291.5 \text{ hours} = \$43,725.00$$

GST = \$3,060.75

Budget for Legal Counsel (Murray Klippenstein)

Review materials	10 hours
Client Consultation	5 hours
Attend Issues day	7 hours
Attend working groups (split with consultant)	87.5 hours
Preparation for above attendances	20 hours
Attend hearing	35 hours
Preparation for hearing	20 hours
Preparation of argument	15 hours
TOTAL FOR LEGAL COUNSEL	199.5 hours

Rate = \$150/hour x 199.5 hours = \$29,925.00  
GST = \$2,094.75

Disbursements (copying, couriers, etc.): \$200 + GST (\$14)

**TOTAL BUDGET: \$73,850.00 plus \$5,169.50 GST**

AMOUNT OF FUNDING REQUESTED

As set out above, \$73,850.00 plus \$5,169.50 GST.

POTENTIAL OTHER SOURCES OF FUNDING

Pollution Probe is a donor-based organization, and is successful in drawing on the financial support of a broad base of individuals and organizations. However, highly technical and abstract policy processes such as those at the Ontario Energy Board are exceptionally difficult to raise funds for through typical means. Pollution Probe has instead arranged financial contributions to the Energy Board process through *pro bono* contributions from its representatives (for example, Pollution Probe's legal counsel charges far below market rates, and indeed significantly less than the Energy Board's own tariff rate), and Pollution Probe contributes the time and expertise of its own internal staff (including its executive director), and some administrative support, without charge, so that while Pollution Probe has no cash payments to make to the process, its economic and financial contribution is quite significant.

## CO-ORDINATION WITH OTHER PARTIES

Some of Pollution Probe's positions, including its strong advocacy of harnessing market forces to create win-win outcomes for utility customers and shareholders, is incompatible with the priorities of other environmental groups and coalitions, and so Pollution Probe has not "joined" other parties as such. However, Pollution Probe has a great deal of experience in co-ordinating its interventions with other parties so as to come up with joint pragmatic policy solutions to put before the utility companies and the Board, and so as to avoid duplication in the hearing process, and reduce costs in other ways as well wherever possible. Thus, Pollution Probe avoids hiring experts whenever possible, as a cost reduction measure, and instead has a history of being able to rely on other parties' experts for the points that Pollution Probe wishes to put before the Board. In general, Pollution Probe has a track record of consistently being one of the lowest cost intervening parties, without, Pollution Probe believes, sacrificing the quality of its interventions.

I trust the above information is of assistance, and I would be pleased to answer any other questions the Board might have.

Sincerely,

Murray Klippenstein  
MK/mk

Encl.