IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by **ENWIN Utilities Ltd.** for an order approving just and reasonable rates and other charges for electricity distribution to be effective **May 1, 2009.**

ARGUMENT OF THE ASSOCIATION OF MAJOR POWER CONSUMERS IN ONTARIO ("AMPCO")

March 6, 2009

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I. Introduction

1. ENWIN Utilities Ltd. (ENWIN or the Applicant) filed an application with the Ontario Energy Board on September 18, 2008 under section 78 of the Ontario Energy Board Act, 1998 seeking approval for changes to the rates that ENWIN charges for electricity distribution to be effective May 1, 2009.

2. A Settlement Conference was held on February 2, 2009 to February 4, 2009. Settlement was achieved on all issues except Cost Allocation, Issue 7.2 – Are the proposed revenue to cost ("R/C") ratios appropriate? ENWIN filed a Settlement Agreement with the Board on February 13, 2009.

3. ENWIN filed Argument-in-Chief on Issue 7.2 on February 27, 2009.

4. AMPCO's submissions in response to those of ENWIN which were filed on February 27, 2009 are set out below.

II. Issues to be Argued - Cost Allocation - Issue 7.2 - Are the proposed revenue to cost ratios proposed by ENWIN appropriate?

5. ENWIN proposed in response to VECC interrogatory 29 (b) the R/C ratio set out in the following table:

Rate Class	2008 R/C Ratios per CA Model as filed	2008 R/C Ratios as per Settlement Agreement	2009 R/C Ratios (Test Year)	2010	2011	Range
Residential	88%	90%				85-115%
GS< 50 kW	103%	105%				80-120%
GS> 50kW	137%	144%	138%			80-180%
Intermediate	41%	-4%	80%			80-180%
Large Use - Regular	173%	121%	115%			85-115%
Large Use - 3TS	122%	102%				85-115%
Large Use - FA	95%	94%				85-115%
Street Lighting	24%	26%	59%	59%	70%	70-120%
Sentinel Lighting	57%	62%	70%	70%		70-120%
USL	241%	258%	145%	120%		80-120%

ENWIN's Proposal

6. After the settlement conference described above and in its argument-in-chief, ENWIN proposed the following:

- to decrease the R/C ratios for all rate classes above the Ontario Energy Board ("OEB") ranges;
- to increase the R/C ratios for all rate classes below the OEB ranges; and,
- to maintain the R/C ratios for all other rate classifications to maintain a total R/C ratio of 100%.

7. ENWIN's proposal is to move the R/C ratios which are presently outside the OEB ranges by at least half of the distance towards the range in the test year, and at least half of the remaining distance in the following year, and the remaining distance in the year thereafter.

AMPCO's Position

<u>The Large Use class has historically over contributed to revenue requirement</u>

8. Customers in Large User rate classes across Ontario have historically tended to over contribute to the revenue requirement of their respective distributors. This trend is documented in a Board Staff Discussion Paper on the implications arising from a review of the electricity distributors' cost allocation filings dated June 28, 2007 (the "Discussion Paper").

9. In the Discussion Paper, Board Staff summarized the results of a statistical assessment of the revenue to cost ratios from the outputs of the cost allocation filings from all distributors (Discussion Paper, section 3.3). With respect to the Large User class, Board Staff observed that there was an "asymmetric bias to the right of 100% [i.e., greater than one]. Most of the observations are to the right of 100%, and some are well beyond 200%" (Discussion Paper, page 17).

10. Based on these observations, Board Staff concluded that Large User customers "are, generally, over contributing."

11. This general conclusion holds true for ENWIN customers in the Large Use - Regular class. In 2007, the revenue generated from Large Use - Regular customers was 173% of the costs incurred to serve them (ENWIN Application, Exhibit 10, Tab 1, Schedule 9, Table 10-1-9-A).

12. The conclusion will continue to hold true if the proposed revenue to cost ratio of 115% is approved for the Large Use - General class.

13. The Discussion Paper is the foundation for the revenue to cost ratio ranges established in the report of the Board regarding the Application of Cost Allocation for Electricity Distributors dated November 28, 2007 (the "Cost Allocation Report"). The approach to revenue to cost ratios described in the Cost Allocation Report is therefore both a reflection of historical inequity and an attempt to correct it.

Moving revenue to cost ratios to one is consistent with the Board's mandate

14. By moving revenue to cost ratios closer to one, the Board will act consistently with the principle of cost causality and with its own policy regarding cost allocation. In so doing, the Board will engage in just and reasonable rate making.

15. The Board may only approve rates that are "just and reasonable" (*Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B, s. 78(3)).

16. To set just and reasonable rates, the Board should adhere to the principle of cost causality. The Board has consistently described cost causality as a "fundamental" rate-making principle and a "central tenet of rate making" (see Cost Allocation Report at page 2; EB-2007-0698, Decision re rates application by Brantford Power Inc. (P. Vlahos, B. Rupert) at page 18; and EB-2008-0014, Decision re rates application by Atikokan Hydro Inc. (P. Sommerville, K. Quesnelle) at page 17).

17. Cost causality requires that customers pay rates in proportion only to those costs that they cause. Just and reasonable rates should never result in one class of customer paying for some of the costs caused by other classes of customer. The continued over contribution of the Large Use class to the revenue requirement of ENWIN would violate the principle of cost causality and constitute unjust and unreasonable rate making.

18. Moving revenue to cost ratios to one would be consistent with the principle of cost causality. The Board's Cost Allocation Report establishes that a revenue to cost ratio of one is the appropriate target. While the Cost Allocation Report establishes ranges for revenue to cost ratios, it characterizes these ranges as "minimum requirements" and states as follows:

> "To the extent that distributors can address influencing factors that are within their control (such as data quality), they should attempt to do so and to move revenue-to-cost ratios nearer to one."

And further:

> "Distributors should endeavour to move their revenue-to-cost ratios closer to one if this is supported by improved cost allocations." (Cost Allocation Report at 7)

19. Moving the revenue to cost ratio of the Large User class closer to one is therefore within the Board's mandate to set just and reasonable rates consistent with the principle of cost causality.

Failing to move to one would be unfair and improvident

20. As reflected in the Discussion Paper, over contribution by customers in the Large Use class is not a new phenomenon. Rather it has resulted in an unfair and material drain on their financial resources for years. Setting a revenue to cost ratio greater than one would not only fail to redress this historical unfairness, but would also perpetuate it through the coming years.

21. Failing to correct this historical unfairness would be improvident in light of the current economic times. The cost of electricity and the unfairness of historical rate making are significant and well understood by customers in the Large Use class. Faced with significant economic pressures, such customers may be forced to cease operations or to relocate to communities that adhere more fairly to the central and fundamental rate making principle of cost causality.

<u>Uncertainty in the underlying data favours setting the revenue to cost ratio to one</u>

22. As discussed above, there is no uncertainty that the most appropriate revenue to cost ratio is one. The ranges established in the Cost Allocation Report primarily reflect the historical distribution of revenue to cost ratios observed by Board Staff in the Discussion Paper. The ranges therefore do not suggest that unity is an inappropriate or uncertain target, but that it is a target that likely has been missed for many rate classes, including Large Use, in the past.

23. There is uncertainty in the revenue to cost ratios calculated by distributors, including those calculated by ENWIN in this application. The Cost Allocation Report identifies issues with accounting and load data as the primary sources of this uncertainty. This uncertainty means that rates based on a calculated revenue to cost ratio of, for example, 115% could result in an allocation of revenues to actual costs that is above or below that figure.

24. Where a calculated revenue to cost ratio is within the Board’s range, it is therefore possible that the resultant allocation of revenues to actual costs could fall outside of the range. This is particularly true where the calculated revenue to cost ratio lies at the margin of the applicable range. Conversely, the closer the calculated revenue to cost ratio is to unity, the more likely it is that the allocation of revenues to actual costs will fall within the Board’s range.

25. Wherever possible, the Board should therefore set revenue to cost ratios at or very close to unity.

26. The proposed revenue to cost ratio for the Large Use class in this application is 115%, which is the upper bound for the applicable Board range. There is therefore a significant risk that the Large Use class will over contribute to ENWIN’s revenue requirement.

27. Adjusting the revenue to cost ratio for the Large Use class to one would significantly mitigate this risk of over contribution.

III. Order Requested

28. AMPCO requests with respect that the revenue to cost ratio for the Large Use - Regular class be adjusted down from the proposed value of 115% to 100%, or as close thereto as the Board considers just and reasonable;

29. That the revenue to cost ratio for the Large Use - 3TS remain at the proposed value of 102%;

30. That the revenue to cost ratio for the Large Use - FA remain at the proposed value of 94%.

IV. Costs

31. The Board confirmed that AMPCO is eligible to apply for an award of costs under the Board's Direction on Cost Awards.

32. This proceeding is of great importance to electricity distribution customers in Windsor, Ontario including members of AMPCO who are among the largest electricity consumers in the franchise area.

33. AMPCO submits that it has participated responsibly in this proceeding and sought to minimize costs by limiting its involvement to matters that are relevant to AMPCO and to issues identified by the Board. AMPCO cooperated with other intervenors of like interests where appropriate in order to avoid duplication on submissions before the Board.

34. AMPCO respectfully requests that it be permitted to recover 100% of its reasonably incurred costs in this proceeding in accordance with the Board's Practice Direction on Cost Awards.

ALL OF WHICH IS RESPECTFULLY submitted this 6th day of March, 2009.

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