EB-2008-0227

ONTARIO ENERGY BOARD

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**.

REPLY ARGUMENT OF ENWIN UTILITIES LTD.

This Reply Argument is advanced by *ENWIN* Utilities Ltd. ("EWU") pursuant to Procedural Order NO. 3, which was issued by the Ontario Energy Board (the "Board") on February 23, 2009 in respect of the above noted matter. On February 27, 2009, EWU filed its Argument-in-Chief. On or about March 6, 2009, Board Staff, AMPCO, CCC, SEC, and VECC each filed Response Arguments.

As set out in Procedural Order No. 3, the scope of this Reply Argument is limited to Issue 7.2, as provided for in the Board's Procedural Order No. 2, which was issued on November 28, 2008. Issue 7.2 reads: "Are the proposed revenue to cost ratios appropriate?" EWU notes that various Intervenors made submissions in respect to costs within the Response Arguments. EWU will address the issue of costs at a time and in a manner prescribed by the Board.

EWU replies to the Responses of Board Staff and the Intervenors in 2 parts below. Part A addresses the Responses that support the proposal set out in EWU's Argument-in-Chief. Part B addresses the Response in opposition to the proposal set out in EWU's Argument-in-Chief.

PART A: Responses in Support of the Proposal

EWU acknowledges that the Responses of Board Staff, CCC, SEC, and VECC support the proposed revenue-to-cost ratios set out in the Argument-in-Chief. Though not all these parties necessarily agree with the Board's cost allocation policy and precedents, there was implicit or explicit agreement that the policy and precedents ought to apply to EWU and that EWU's proposal appropriately applies the policy and precedents.

<u>Board Staff Inquiries</u>
In its Response, Board Staff supported EWU's proposal, but invited EWU to explain:

1. "In Table 6, the total bill impacts appear not to be consistent with those in the Appendix F of the Settlement Proposal. The Streetlighting results are reasonably consistent. But for the Intermediate class Appendix F shows 3.2% impact whereas Table 6 and the discussion in argument say 5.2%. USL the same: 26.8% versus 40.2%"

2. "The adjustment to the new rates and R/C ratio for the Intermediate class appears to be unintuitive. For instance, in the Application, an increase in distribution rates of 311% took the R/C ratio from 40% to 62% in 2009. In the settlement documentation, an increase in distribution rates of 254% takes the R/C ratio from -4% all the way to 80%."

<u>Reply to Board Staff Inquiries</u>

1. ***Total bill impacts in Argument-in-Chief vs. Settlement Proposal***
   Based on the total bill impacts cited, it appears that Board Staff may have inadvertently referred to "USL" in place of "Sentinel Lighting".

   In preparing the Settlement Proposal, EWU calculated the total bill impacts in a manner that attempted to reflect the impact to customers resulting from the settled provisions. The parties to the Settlement Proposal were aware that the total bill impacts would change once EWU reconsidered Issue 7.2 (revenue-to-cost ratios) and incorporated its position into the rate model. This awareness was confirmed to the Board at the Presentation of the Settlement Proposal and is reflected in the transcript of that proceeding in the responses by Mr. Keizer to a question from Ms. Sebalj and a follow-up by Ms. Spoel (p. 14, line 21). The full exchange is over one page in length. The focal portion of the Mr. Keizer's response follows:

   > "I think it just simply means that as 7.2 gets resolved, then that flows through to the rates accordingly. It's not that these issues [8.2, 8.3 and 8.4] have been settled, you know, contingent upon people being happy with 7.2 and the Board's determination. It is that 7.2 gets determined and that flows through to rates." (p.15, line 11)

   Issues 8.2, 8.3 and 8.4 pertain to the appropriateness of rates, bill impacts and rate mitigation, respectively.

   As part of reconsidering Issue 7.2, EWU thoroughly examined the interaction between the Board's principles for revenue-to-cost ratios and the Issue 7.1 cost allocation methodology adjustment. EWU incorporated of those elements into its approach and its rate model. This was an important process because the settled-upon terms for Issue 7.1 significantly altered the "starting point" data for Issue 7.2. This "flow through to rates" was anticipated and is correct.

2. ***Distribution line impacts in Application vs. Settlement Proposal***
   Based on the distribution line impacts cited, it appears that Board Staff may have inadvertently referred to "settlement documentation" in place of "Argument-in-Chief".

The request for clarification seems to assume that from the Application to the Settlement Proposal (or the Argument-in-Chief), the only changing variable with effect on the distribution line impact was revenue-to-cost ratios. However, probably the most significant change impacting rates in this process has been the settled upon decrease to the Revenue Requirement. Accordingly, it is not at all unintuitive for the proposed distribution line impact in the Settlement Proposal or the Argument-in-Chief to be lower than the Application, even though the proposed revenue-to-cost ratio is higher, because this third factor, Revenue Requirement, also decreased.

PART B: Response in Opposition to the Proposal

EWU acknowledges that AMPCO proposes to modify EWU's proposal as set out in the Argument-in-Chief by reducing the revenue-to-cost ratio for the Large Use – Regular class from 115% to 100%. It is not clear from the AMPCO Response whether AMPCO's proposal is for this to occur in the test year. It is also unclear which class or classes would absorb the offsetting increases to revenue-to-cost ratios to enable this reduction, though AMPCO has argued that Large Use – FA, which is under 100%, should not be the class to absorb the offsetting increase.

In this Reply, EWU is strongly but only briefly refuting the AMPCO Response because the Response proposes a departure from Board policy and precedent without distinguishing this case. Though the Board's policy and precedent may not be binding on this Panel, they are certainly compelling and EWU submits that, as a general rule, they ought to be followed unless there is a reasonable and justified basis to depart.

The Board's policy is set out in the Board's Application of Cost Allocation for Electricity Distributors Report (EB-2007-0667). The Board's precedent was developed in every, or nearly every, Cost of Service Decision issued during the 2008 calendar year. Sample citations are provided in the Argument-in-Chief and the Responses of CCC and VECC.

AMPCO's Response is simply another recitation of its opposition to the Board's policy and precedent for adopting a range approach to revenue-to-cost ratios. It is not a critique of EWU's adherence to the policy and precedent. SEC provided a clearer articulation of that distinction in opposing the policy and precedent, but endorsing EWU's implementation thereof.

Among the many reasons why the Board should not alter its precedent in this proceeding include the fact that no reasonable alternative has been advanced by AMPCO. AMPCO's proposal is inconsistent in that it proposes Large Use – Regular be decreased to 100% while Large Use – FA be maintained at 94%. That is not a principled or otherwise justified alternative. Further, there are no apparently distinguishing factors in this proceeding that would warrant revisiting the principles of cost allocation.

Conversely, this proceeding provides an excellent example of why it is important for the Board to utilize cost allocation ranges, just as the Board has set out in policy and precedent.

Table 4 of the Argument-in-Chief, replicated below, demonstrates that just making the adjustment for transformation ownership allowance, pursuant to the resolution of Issue 7.1, had a considerable impact on the calculation of EWU's revenue-to-cost ratios, especially for larger users.

Replicated Table 4: Starting Point R/C Ratios per Settlement Agreement

	R/C Ratios per CA Model as Filed	R/C Ratios per VECC 29(b)
Residential	88%	90%
GS<50	103%	105%
GS>50	137%	144%
Intermediate	41%	-4%
Large Use – Regular	173%	121%
Large Use – 3TS	122%	102%
Large Use – FA	95%	94%
USL	241%	258%
Sentinel Lighting	57%	62%
Street Lighting	24%	26%

Presumably there are other possible methodology changes to cost allocation and presumably they could also have significant impact (in either direction) on the revenue-to-cost ratios for any of the classes.

In conclusion, the Board's revenue-to-cost ratio policy and precedent are reasonable, they ought to apply to EWU in this case and EWU has appropriately applied them.

All of which is respectfully submitted this 12th day of March, 2009.

[*original signed*]
ENWIN Utilities Ltd.

Per: Andrew J. Sasso, Director, Regulatory Affairs