



**PUBLIC INTEREST ADVOCACY CENTRE**  
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February 8, 2008

**VIA MAIL and E-MAIL**

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge St.  
Toronto, ON  
M4P 1E4

Dear Ms. Walli:

**Re: Vulnerable Energy Consumers Coalition (VECC)**  
**Notice of Intervention: EB-2007-0713**  
**Hydro Ottawa Limited – 2008 Electricity Distribution Rate Application**

Please find enclosed the Argument of the Vulnerable Energy Consumers Coalition (VECC) with respect to Hydro Ottawa Limited's request for a deferral account to track "revenue deficiency" from January 1, 2008.

Thank you.

Yours truly,

Michael Buonaguro  
Counsel for VECC  
Encl.

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B, as amended;**

**AND IN THE MATTER OF an Application by Hydro Ottawa Limited pursuant to section 78 of the *Ontario Energy Board Act* for an Order or Orders approving just and reasonable rates for the delivery and distribution of electricity.**

**SUBMISSIONS  
OF THE  
VULNERABLE ENERGY CONSUMERS COALITION (VECC)**

1. VECC objects to the creation of a deferral account to track a “revenue deficiency” from January 1, 2008 to April 30, 2008 for Hydro Ottawa Limited. (“HO”)

**THE ISSUE OF “REVENUE DEFICIENCY” RECOVERY FROM JANUARY 1, 2008 TO APRIL 30, 2008 HAS ALREADY BEEN DETERMINED**

2. VECC respectfully submits, before proceeding to argue specifically against the deferral account relief requested by HO, that this Board panel has already decided against the recovery of the so-called “revenue deficiency” from January to April 2008 for HO in this proceeding.
3. In its argument in chief HO describes issue 8.4 as having related to two different mechanisms proposed by HO, both designed to “recover revenues not recovered in the January to April 2008 “Deficiency Period””.<sup>1</sup>
4. HO goes on to describe the Board’s January 10, 2008 decision as having denied HO’s preferred mechanism (an interim rate order), leaving deferral account treatment as the alternative mechanism remaining at issue.

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<sup>1</sup> HO AIC, paragraphs 9, 10.

5. VECC respectfully submits that HO has mischaracterized the Board's January 10, 2008 decision as relating to the discrete issue of the appropriateness of interim rates. In VECC's view, the Board's January 10, 2008 decision did not simply rule that HO's proposal for interim rates was an inappropriate mechanism. VECC submits that the Board's decision clearly went further, deciding that the reason interim rates were an inappropriate mechanism was because HO was not entitled to recover revenues not recovered in the January to April 2008 "Deficiency Period" because, simply put, there is no "revenue deficiency".
6. VECC submits that the following extract from the Board's Findings in its January 10, 2008 decision makes it clear that there were only certain circumstances under which HO could seek to alter their recovery over the May 1, 2007 to April 30, 2008 rate period under the second generation IRM, whether the mechanism was interim rates or deferral account treatment, and that HO has not established that those circumstances existed:

The Board has described its 2<sup>nd</sup> Generation IRM, which was used to set Hydro Ottawa's current rates, as a "formulaic rate adjustment method." That rate setting process, by design, did not require any information about forecast costs and revenues for the year May 1, 2007 to April 30, 2008. It is a price (rate) cap form of incentive ratemaking that does not even require the calculation of a traditional revenue requirement. **Hydro Ottawa's contention that there will be a revenue deficiency for the four months ended April 30, 2008 is based on factors that were not part of the regulatory construct under which the existing rates were approved.** (Emphasis added)

The intervenors submitted that the Board's 2<sup>nd</sup> Generation IRM does not provide for the possibility that a distributor's rates can, in effect, be increased part way through the 12-month period ended April 30, 2008. While that is generally true, the Board's report on 2<sup>nd</sup> Generation IRM indicates there are circumstances in which it would be prepared to adjust rates or provide for deferral accounts to distributors for unusual costs.

- First, the 2<sup>nd</sup> Generation IRM framework allows a distributor to set up deferral accounts for changes in costs caused by extraordinary events outside the control of the distributor. Examples include changes in regulation, changes in accounting or tax rules, and natural disasters. The onus is on the distributor seeking such relief to justify any so-called Z-factor adjustments. Hydro Ottawa has not suggested that its

estimated “revenue deficiency” for the four months ended April 30, 2008 is related to any such extraordinary events.

- Second, the 2<sup>nd</sup> Generation IRM report provides for an “off-ramp” in the event the distributor can establish that the limited rate adjustments provided for in the 2<sup>nd</sup> Generation IRM model “are insufficient for specific cost pressures (e.g., additional capital investment).” Hydro Ottawa did not file a comprehensive cost-of-service rate application for the year beginning January 1, 2008 and the Board does not interpret the company’s request for interim rates to be a request for an “off ramp.”<sup>2</sup>

7. Specifically in the context of issue 8.4, the question is:

- Is it appropriate that Hydro Ottawa implement a mechanism to recover revenues not recovered in the January to April 2008 “Deficiency Period”?

8. The answer is no, VECC respectfully submits, because, in the Board’s own words:

- Hydro Ottawa’s contention that there will be a revenue deficiency for the four months ended April 30, 2008 is based on factors that were not part of the regulatory construct under which the existing rates were approved.<sup>3</sup>

9. Were the Board to now allow a deferral account as requested by HO, it would require the Board to reverse it’s previous decision that HO’s assertion of a “revenue deficiency” capable of recovery is illegitimate in the context of the regulatory construct which underpins the January to April 2008 rates.

**IT IS INAPPROPRIATE FOR HYDRO OTTAWA TO IMPLEMENT A MECHANISM TO RECOVER REVENUES BEYOND THE REVENUES COLLECTED IN EXISTING RATES BETWEEN JANUARY AND APRIL 2008**

10. The specific arguments (already made, in part, in the context of the Board’s previous proceeding concerning the interim rate application), are repeated and expanded below.

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<sup>2</sup> EB-2007-0713, Decision dated January 10, 2008

<sup>3</sup> Ibid.

11. HO's current rates were established by the Board pursuant to the 2<sup>nd</sup> generation incentive regulation mechanism. These rates were made effective May 1, 2007.
12. VECC respectfully submits that the current rates were explicitly designed to remain in place until April 30, 2008. Had HO believed that the current rates, calculated as they were under the incentive mechanism, were insufficient for the period between May 1, 2007 to April 30, 2008, HO had the option to apply for rates under a cost of service application.
13. HO did not apply for rates between May 1, 2007 and April 30, 2008 on a cost of service basis. Having relied upon the incentive mechanism to determine its rates, the issue of HO's rates up to April 30, 2008 has already been determined by the Board.
14. The current application has been made at the direction of the Board in accordance with its schedule for rebasing LDC's in preparation for 3<sup>rd</sup> generation incentive regulation. The Board, in selecting LDC's for rebasing for 2008, specifically stated in its letter dated May 4, 2007 that

The final list of 25 distributors whose rates will be rebased in 2008 is set out in Appendix A to this letter. All distributors named in Appendix A are requested to file a letter with the Board confirming that they will file a forward test year rate application by August 15, 2007 **for rates to become effective May 1, 2008**. The letter should be filed by May 16, 2007.<sup>4</sup>(Emphasis added)

15. Accordingly it is clear that the Board selected a few LDC's, including HO, for 2008 rebasing, and that the ability to rebase allowed those LDC's a rate change effective May 1, 2008. There is no provision for LDC's for a rate change effective earlier than May 1, 2008. (Except as noted in the Board January 10, 2008 decision)
16. The Board's letter of May 4, 2007 is consistent with The Report of the Board dated December 20, 2006 where, on page 23, the Board specifies that LDC's like HO, ". . . whose rates will be rebased in 2008, will have [the 2<sup>nd</sup> Generation Incentive] mechanism in place for **one year**. . .".<sup>5</sup>; the Report does not allow for the operation of the 2<sup>nd</sup> generation IRM for less than one year for any LDC.
17. VECC notes that every electricity distributor in Ontario is in essentially the same position as HO with respect to the period between January 1, 2008

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<sup>4</sup> Letter Dated May 4, 2007 from the Board to all LDC's and participants in EB-2006-0330, page 2.

<sup>5</sup> Report of the Board on Cost of Capital and 2nd Generation Incentive Regulation for Ontario's Electricity Distributors dated December 20, 2006, page 23.

and April 30, 2008; all were subject to the incentive mechanism (or had the option to file for cost of service), and it is probable that all will either over-collect or under collect relative to what a cost of service analysis of the months between January and April 2008 may produce. However, such over or under collection does not mean there is a “revenue deficiency” or “revenue sufficiency” in respect of that period that the utility is entitled to recover/required to refund. All it shows, with respect, is the extent to which, having opted to proceed under the incentive mechanism, the mechanism was able to adequately predict each utility’s revenue requirement through a price cap. The mechanism itself (as described in the Board’s January 10, 2008 decision) sets out the circumstances under which a utility can deviate from the rates established by the mechanism, circumstances this panel has ruled do not exist.

18. Just as interim rates were determined to be inappropriate because HO was unable to establish that the existing rates should be displaced, allowing a deferral account to track the alleged *effect* of the existing rates would be an indirect way of displacing existing rates and therefore equally inappropriate.
19. For all these reasons VECC respectfully submits that it would be inappropriate for the Board to allow HO to track in a deferral account and apply for recovery of any “revenue deficiency” between January 1, 2008 and April 30, 2008. HO’s current rates were established for the specific term of one year commencing May 1, 2007 to April 30, 2008, after which, in accordance with the Board’s direction, HO was permitted to apply for rebased rates effective May 1, 2008.

**SUBMITTED THIS 8<sup>th</sup> DAY OF FEBRUARY 2008**

Michael Buonaguro  
Counsel for VECC