

**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 Hydro Ottawa
Limited for an Order or Orders approving or fixing just and
reasonable rates and other charges for the distribution of
electricity commencing May 1, 2008.**

WRITTEN ARGUMENT OF THE CONSUMERS COUNCIL OF CANADA

RE: Issues 4.2 and 8.4

By application dated, September 19, 2007, Hydro Ottawa Limited (“Ottawa”) filed an Application with the Ontario Energy Board (“Board”) seeking approval for changes to the rates it charges for electricity distribution, to be effective May 1, 2008.

Ottawa and the intervenors participated in a Settlement Conference resulting in an agreement to settle all but three issues in the proceeding. Parties agreed that with respect to Issues 8.4 and 4.2 the use of written argument would be acceptable. The Board approved the use of written argument to deal with these issues as agreed to by the parties. Those outstanding issues are:

- 8.4 Is it appropriate that Hydro Ottawa implement a mechanism to recover revenues not recovered in the January to April 2008 “Deficiency Period”?
- 4.2 Are the proposed new variance and deferral accounts for the test year?

In essence, the Board is being asked to consider whether it is appropriate for Ottawa to recover revenues not recovered in the period January to April 2008 and if so, is the account proposed by Ottawa an appropriate mechanism with which to do so. These are the submissions of the Consumers Council of Canada (“Council”) with respect to the two remaining issues.

In addition to requesting new rates effective May 1, 2008, Ottawa requested that the Board declare the rates interim effective January 1, 2008, and consider, as part of this proceeding

whether to allow recovery from customers any revenue deficiency for the four-month period January 1, 2008 to April 30, 2008. The Council made submissions on the issue objecting both to Ottawa's request that its rates be set interim on January 1, 2008, and that it be permitted to recover any "deficiency" for the period January to April.

On January 10, 2008, the Board issued a Decision regarding the request for interim rates. From the Council's perspective that Decision has made it clear that Ottawa's request for interim rates was not appropriate, nor was its request to recover a "deficiency" for the first four calendar months of 2008. Specifically, the Board stated:

The Board has described its 2nd Generation IRM, which was used to set Hydro Ottawa's rates, as a "formulaic rate adjustment method." That rate-setting process, by design, did not require any information about forecast costs and revenue 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 the 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. (Decision on Request For Interim Rates, dated January 10, 2008, p. 4)

The Board acknowledged that there are circumstances, while exceptional, that would allow for an "off ramp" in the event the 2nd Generation IRM rate adjustments were insufficient for specific cost pressures. They further acknowledged that Ottawa's request for interim rates cannot be interpreted as such an off-ramp. (Decision, p. 5)

The Council submits that the Board's Decision on interim rates has effectively eliminated the need for a further decision on the remaining issues. The Board, in that Decision, did not approve Ottawa's request to recover what it viewed as a "revenue deficiency" for the period January 1, 2008. Accordingly, the answer to Issue 8.4 is "no". As acknowledged by Ottawa, in its Argument in Chief, if the answer to issue 8.4 is no, then there would be no need to establish a deferral account. The unsettled component of Issue 4.2 is therefore also decided.

From the Council's perspective for the Board to approve a deferral account to recover the "deficiency" as requested by Ottawa would constitute a reconsideration of an issue that has already been decided.

Ottawa's rates were set by the Board pursuant to the Board's 2nd Generation IRM. Ottawa had an opportunity to file, in the alternative, on a cost of service basis, but it did not. The Board made no provision to adjust rates during that period except through off ramps and Z-factors related to extraordinary events. From the Board's perspective, as set out in its Decision dated January 10, 2008, Ottawa has not met the appropriate tests for approval either an off-ramp or a Z-factor. (Decision, pp. 4-5)

The Council urges the Board to uphold its previous decision and not permit Ottawa to recover any projected "deficiency" for the period January to April 2008. The Council reiterates

the submission it made on December 21, 2007, that if the Board were to grant Ottawa's request for interim rates and recovery of the "deficiency" other distributors would apply for the same type of relief. This is not consistent with the Board's plans to implement the 2nd and 3rd Generation IRMs. This would also be unfair to ratepayers as rates may only be changed to reflect a deficiency, but not a sufficiency.