



VIA RESS, EMAIL AND COURIER

April 8, 2008

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Motion Record
Hydro One Networks Inc. Electricity Distribution Rate Changes
Board File No. EB-2007-0681**

Attached please find AMPCO's motion record regarding the above proceeding.

Please contact me if you require additional information.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Adam White", with a long horizontal flourish extending to the right.

Adam White
President

Copies to:
George Vegh, McCarthy Tetrault
Hydro One Networks Inc. and Intervenors in EB-2007-0681
Oshawa PUC and Intervenors in EB-2007-0710

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EB-2007-0681

ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act, 1998 (the "*OEB Act*");

AND IN THE MATTER OF Issue 7.1 of the Distribution Rates Application of Hydro One Networks Inc. (EB-2007-0681), addressing the appropriateness of cost allocation in that proceeding ("Hydro One Distribution Rates Application");

AND IN THE MATTER OF Subsection 21(5) of the *OEB Act* and s. 9.1 of the *Statutory Powers Procedure Act*;

AND IN THE MATTER OF an Order by the Ontario Energy Board (the "Board" or the "OEB") dated March 19, 2008 which approved rates and other charges to be charged by Oshawa PUC for electricity distribution (Board File No. EB-2007-0710) (the "Oshawa PUC Rates Decision");

AND IN THE MATTER OF Rule 42 of the Board's *Rules of Practice and Procedure*.

MOTION RECORD

AMPCO Motion for Consolidation of
Hearing of Cost Allocation Issues

April 8, 2008

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4.	<i>OEB Act</i> , s. 21(5).
5.	The Notice of Motion for a rehearing in EB-2007-0710.

IN THE MATTER OF the Ontario Energy Board Act, 1998 (the “*OEB Act*”);

AND IN THE MATTER OF Issue 7.1 of the Distribution Rates Application of Hydro One Networks Inc. (EB-2007-0681), addressing the appropriateness of cost allocation in that proceeding (“Hydro One Distribution Rates Application”);

AND IN THE MATTER OF Subsection 21(5) of the *OEB Act* and s. 9.1 of the *Statutory Powers Procedure Act*;

AND IN THE MATTER OF an Order by the Ontario Energy Board (the “Board” or the “OEB”) dated March 19, 2008 which approved rates and other charges to be charged by Oshawa PUC for electricity distribution (Board File No. EB-2007-0710) (the “Oshawa PUC Rates Decision”);

AND IN THE MATTER OF Rule 42 of the Board’s *Rules of Practice and Procedure*.

NOTICE OF MOTION

The Moving Party, the Association of Power Consumers in Ontario (“AMPCO”) will bring a motion to the Board at a time and place to be determined by the Board for an order:

- (1) That the hearing of s. 7.1 of the Issues List in the Hydro One Distribution Rates Application be combined with the rehearing (if ordered) of a similar issue in the Oshawa PUC Rates Decision that addresses the allocation of costs for distribution services between large volume other customer classes and specifically the Revenue to Cost Ratios that should apply to the different customer classes; and
- (2) Such further and other order that the Moving Party requests and that the Board considers appropriate.

The grounds for the orders are:

- (1) Issue 7.1 in this application addresses the appropriate revenue to cost ratios underlying distribution rates payable by Hydro One’s distribution customers. AMPCO will address this issue by submitting that the revenue to cost ratio should be as close to unity as

possible and that any departure from unity must be expressly justified. AMPCO will further submit that this principle is consistent with a legally appropriate interpretation of *Board Report on Application of Cost Allocation for Electricity Distributors* (the “*Cost Allocation Report*”).

- (2) AMPCO has applied to the OEB for an order reviewing the OEB’s decision in the Oshawa PUC Rates Decision. A copy of the Notice of Motion in that proceeding is attached as Schedule A (Tab 5).
- (3) If a review is granted in the Oshawa PUC Rates Decision, AMPCO will make submissions with respect to revenue to cost ratio that rely on the same principles as those it will rely upon in addressing issue 7.1 of this application. As a result, if a review is granted in the Oshawa PUC Rates Decision, AMPCO is requesting that the review is combined with the treatment of the s.7.1 issue in this Application.
- (4) The Board has the authority to consolidate proceedings, with or without the consent of parties, where two or more proceedings “involve the same or similar questions or fact, law or policy” (*Statutory Power Procedure Act*, s. 9.1; *OEB Act*, s. 21(5)).
- (5) One example of where the Board has exercised this power is in the area of applications for mergers, amalgamations, acquisitions and divestitures under s. 86 of the OEB Act. In that area, three separate applications raised issues of what considerations should be in scope under a s. 86 application; the Board consolidated the proceedings so that it could produce a binding result. Given that similar issues are raised in this review as will be raised in the Hydro One Distribution Rates Case, combining the review with the treatment of the issue in that case is an efficient way to address the issues (RP-2005-0018; EB-2005-0234; EB-2005-0235; EB-2005-0257).

THE FOLLOWING DOCUMENTARY EVIDENCE will be used as the hearing of the motion:

1. Pre-Filed Evidence of Hydro One Networks Inc. in EB-2007-0681 (G1, 3, 1).
2. *Statutory Power Procedure Act*, s. 9.1.
3. *OEB Act*, s. 21(5).
4. The Notice of Motion for a rehearing in EB-2007-0710.

Date: April 8, 2008

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AND TO: Hydro One Networks Inc. and Intervenors in EB-2007-0681

AND TO: Oshawa PUC and Intervenors in EB-2007-0710

COST ALLOCATION OF REVENUE REQUIREMENT

This exhibit presents an overview of the process to allocate Hydro One Distribution related revenue requirement costs to Legacy, Acquired, and Sub-Transmission customer groups (including current Embedded LV customers).

1.0 INTRODUCTION

The 2008 revenue requirement of \$1,067 million for Hydro One Distribution was derived in Exhibit E1, Tab 1, Schedule 1, and is attributed to the Retail, (Legacy and Acquired), and Sub-Transmission customers.

This revenue requirement is allocated to the proposed customer groups using the Cost Allocation methodology issued by the OEB on September 29, 2006 in the RP-2005-0317 proceeding. Hydro One modified the OEB methodology to reflect its unique circumstances related to the provision of an LV system and a very large number of rates. The modifications are detailed in Exhibit G2, Tab 1, Schedule 1, and are similar to the modifications applied in Hydro One's Cost Allocation Information Filing of January 15, 2007 as part of Proceeding RP-2007-0001.

2.0 APPORTIONMENT OF REVENUE REQUIREMENT

Hydro One used the OEB Cost Allocation Methodology to allocate the proposed \$1,067 million revenue requirement to customer classes. The allocated revenue requirement was compared to the revenues that would be collected from customers at adjusted 2007 Distribution rates. The adjustment consisted of increasing the 2007 approved rates proportionally to recover the 2008 Revenue Requirement of \$1,067 million. Revenue to cost ratios were then calculated. Revenue to cost ratios above 1 mean that the customer class is over-contributing and revenue to cost ratios below 1 mean that the customer class

1 is under-contributing. The results of the cost allocation study are summarized in the
2 Table below.

3
4 **Table 1**
5 **Hydro One Cost Allocation Study Results**
6

	UR	R1	R2	Seasonal	UGSe	UGSd	GS e	GS d	ST	DG	Street Light	Sent. Light	Total
Rev Req \$M	66.0	240.2	390.3	83.6	9.3	16.8	111.1	105.4	27.4	0.4	8.1	8.0	1,066.3
Revenue at current rates \$M	57.7	197.1	404.6	77.0	12.1	16.0	119.6	107.9	64.2	0.6	4.9	4.9	1,066.3
Rev/cost ratio	0.87	0.82	1.04	0.92	1.29	0.95	1.08	1.02	2.35	1.63	0.60	0.62	1.00

7
8 More details on the results of the cost allocation study can be found in Exhibit G2, Tab 1,
9 Schedule 1.

10
11 **3.0 TARGET REVENUE TO COST RATIO**
12

13 Hydro One is proposing to use the revenue to cost ratio ranges recommended in the
14 Board's report issued November 28, 2007 under proceeding EB-2007-0667, "Application
15 of Cost Allocation for Electricity Distributors". The Board recommended revenue to cost
16 ratios range from 0.7 for street lights to 1.8 for large commercial customers. Given that
17 this is the first time that the OEB's cost allocation methodology is being used as a basis
18 for determining distribution rates, the wider range of revenue to cost ratios proposed by
19 the Board will reduce the potential bill impacts on customers whose distribution rates
20 have to increase to closer reflect cost causality. The proposed range of revenue to cost
21 ratios will result in those customer classes with a revenue to cost ratio above 1 continuing
22 to cross-subsidize those customer classes with a revenue to cost ratio below 1.

1 Hydro One is proposing the following revenue to cost ratios for the various new proposed
2 customer classes.

3

4 For the R2 Residential, General Service energy billed, and General Service demand billed
5 customer classes, the current revenue to cost ratio is proposed to be maintained:

6

7 For the Distributed Generation customer class, the revenue to cost ratio is proposed to be
8 set at 1.0 rather than the current 1.63 in support of Government policy to promote
9 Distributed Generation in Ontario.

10

11 For Street Light and Sentinel Light classes it is proposed to increase the revenue to cost
12 ratio from about 0.6 to 0.7. This is the lower end of the revenue to cost ratio proposed by
13 the Board for this class of customers.

14

15 For the Urban General Service energy billed class it is proposed to reduce the revenue to
16 cost ratio from 1.29 to 1.2. This is the higher end of the revenue to cost ratio proposed by
17 the Board for small commercial customers.

18

19 For the Sub-Transmission class it is proposed to reduce the revenue to cost ratio from
20 2.35 to 1.15. This is the higher end of the revenue to cost ratio proposed by the Board for
21 large users.

22

23 In order to recover almost all of the 2008 Revenue Requirement based on the revenue to
24 cost ratios described above, the revenue to cost ratio for Urban Residential, R1
25 Residential, Seasonal Residential and Urban General Service demand billed customer
26 classes will have to increase. The revenue to cost ratios for the Urban Residential,
27 Seasonal Residential, and Urban General Service demand billed customer classes are
28 proposed to be set to 1.0. For the R1 Residential customer class, the proposed revenue to

cost ratio is 0.88, which results in bill impacts that are considered to be the maximum that Acquired residential customers being harmonized to this customer class can sustain.

The proposed revenue to cost ratios result in Hydro One not being able to fully recover its 2008 proposed Revenue Requirement. The shortfall is estimated to be \$2.5 million per year, which is the difference in the total proposed revenue requirement shown in Table 2 as compared to Table 1. Hydro One proposes to establish a variance account, as described in Exhibit F1, Tab 3, Schedule 1 to record this revenue shortfall for recovery at a future date from all customers.

Table 2
Proposed Revenue/Cost Ratio by Customer Class

	UR	R1	R2	Seasonal	UGSe	UGSd	GS e	GS d	ST	DG	Street Light	Sent. Light	Total
Proposed Revenue Requirement \$M	66.0	211.4	404.6	83.6	11.2	16.8	119.6	107.9	31.5	0.4	5.7	5.6	1,064.0
Proposed revenue to cost ratio	1.0	0.88	1.04	1.0	1.2	1.0	1.08	1.02	1.15	1.00	0.7	0.7	1.0

*Revenue to cost ratios in bold show the proposed change

4.0 REVENUE TO COST RATIO EQUAL TO ONE

In response to feedback received during the stakeholdering process, Hydro One explored the impact of moving all customer classes to a revenue to cost ratio of 1. Table 3 shows the average impacts that would result from making this change. As shown in Table 3, the resulting average total bill impacts under a revenue to cost ratio of 1 is generally greater and could be as much as three times the impact under the proposed revenue to cost ratios. As a result, using a revenue to cost ratio of 1 for all customer classes would result in either unacceptable bill impacts or the need for an excessively long impact mitigation period.

Table 3
Impact to Customer Classes of Revenue/Cost Ratios

	Proposed R/C	Average impact %	R/C = 1	Average impact %
UR	1.0	3.4	1	3.4
R1	0.88	3.0	1	8.3
R2	1.04	1.0	1	(0.8)
Seasonal	1.0	9.7	1	9.7
UGe	1.2	(2.3)	1	(6.3)
UGd	1.0	0.3	1	0.3
GSe	1.08	0.5	1	(2.2)
GSd	1.02	(2.1)	1	(2.7)
DG	1	(29.0)	1	(29.0)
Street Light	0.7	5.0	1	21.7
Sentinel Light	0.7	25.0	1	118.1
ST	1.15	(4.7)	1	(5.0)

Statutory Powers Procedure Act, s. 9.1

R.S.O. 1990, CHAPTER S.22

Proceedings involving similar questions

9.1(1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,

- (a) combine the proceedings or any part of them, with the consent of the parties;
- (b) hear the proceedings at the same time, with the consent of the parties;
- (c) hear the proceedings one immediately after the other; or
- (d) stay one or more of the proceedings until after the determination of another one of them.

Exception

(2) Subsection (1) does not apply to proceedings to which the *Consolidated Hearings Act* applies. 1994, c. 27, s. 56 (19).

Same

(3) Clauses (1) (a) and (b) do not apply to a proceeding if,

- (a) any other Act or regulation that applies to the proceeding requires that it be heard in private;
- (b) the tribunal is of the opinion that clause 9 (1) (a) or (b) applies to the proceeding. 1994, c. 27, s. 56 (19); 1997, c. 23, s. 13 (15).

Conflict, consent requirements

(4) The consent requirements of clauses (1) (a) and (b) do not apply if another Act or a regulation that applies to the proceedings allows the tribunal to combine them or hear them at the same time without the consent of the parties. 1997, c. 23, s. 13 (16).

Use of same evidence

(5) If the parties to the second-named proceeding consent, the tribunal may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time under clause (1) (b). 1994, c. 27, s. 56 (19).

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15
SCHEDULE B

Consolidation Period: From August 20, 2007 to the e-Laws currency date.

Last amendment: 2007, c. 8, s. 222.

Board's powers, miscellaneous

Consolidation of proceedings

21. (5) Despite subsection 9.1 (1) of the *Statutory Powers Procedure Act*, the Board may combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties. 2003, c. 3, s. 20 (2).

Schedule A:

**Notice of Motion for a
Rehearing in EB-2007-0710**

IN THE MATTER OF the Ontario Energy Board Act, 1998 (the “*OEB Act*”);

AND IN THE MATTER OF an Order by the Ontario Energy Board (the “Board” or the “OEB”) dated March 19, 2008 which approved rates and other charges to be charged by Oshawa PUC for electricity distribution (Board File No. EB-2007-0710) (the “Oshawa PUC Rates Decision”);

AND IN THE MATTER OF Rule 42 of the Board’s *Rules of Practice and Procedure*;

AND IN THE MATTER OF Issue 7.1 of the Distribution Rates Application of Hydro One Networks Inc. (EB-2007-0681), addressing the appropriateness of cost allocation in that proceeding (“Hydro One Distribution Rates Application”).

AND IN THE MATTER OF Subsection 21(5) of the *OEB Act* and s. 9.1 of the *Statutory Powers Procedure Act*.

NOTICE OF MOTION

The Moving Party, the Association of Power Consumers of Ontario (“AMPCO”) will bring a motion to the Board at a time and place to be determined by the Board for an order:

- (1) reviewing and directing a rehearing of the portion of the Oshawa PUC Rates Decision that allocates costs for distribution services between the customers of Oshawa PUC and specifically the Revenue to Cost Ratios approved by the Board;
- (2) that the rehearing of the decision directed in accordance with (1) be combined with the revenue to cost ratios portion of the hearing respecting distribution rates proposed in s. 7.1 of the Issues List in the Hydro One Distribution Rates Application; and
- (3) Such further and other order that the Moving Party requests and that the Board considers appropriate.

The grounds for the orders are:

- (1) The Decision sets Oshawa PUC’s distribution rates on the basis of revenue to cost ratios that systematically allows Oshawa PUC, at its discretion, to charge large volume general service and large user customer classes an amount greater than the cost of serving those classes. The Decision establishes two periods in which this over payment is allowed. The first period, ending in 2011, requires a reduction in this over payment from the range

up to 334% of the cost of service for the large volume general service class and from 257% for the Large User class. The second period, which starts in 2011, maintains the overpayment at up to the 180% and 115% ranges indefinitely. The result is that large volume customers must overpay for their services on an open-ended time frame. While these customers are over-paying, other customers are underpaying and receiving a subsidy. One of the beneficiaries of this subsidiary is Oshawa PUC's shareholder, who will contribute only 46% of the costs of serving street lighting.

- (2) The Decision states that the Board may authorize Oshawa PUC to continue to overcharge large volume customers at its discretion as a result of the *Board Report on Application of Cost Allocation for Electricity Distributors*, November 28, 2007 (the "*Cost Allocation Report*").
- (3) This Decision contains errors that are identifiable, material and relevant to the outcome of the proceeding. They are as follows:
 - i. The Decision misinterpreted the *Cost Allocation Report*. Specifically, the Decision stated that the policy expressed by that *Report* is that, to support just and reasonable rates, revenue to cost ratios need only fall within a range of permissible departures from unity. In fact, the *Cost Allocation Report* states that, "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 [than contemplated in the ranges]". The *Report* thus sets a target of unity and requires justification of departures from that target up to a maximum allowable departure from unity – it does not allow utilities to have the option of whether or not to overcharge within an approved range. The Decision misinterpreted the *Cost Allocation Report* and erroneously relied upon that misinterpretation to both relieve Oshawa PUC from seeking to achieve a revenue to cost ratio of unity and to relieve the Board from the duty of setting rates based on unity. In doing so, the Board purported to give both Oshawa PUC and the Board a discretion to depart from cost causation within an approved range. This was not the intention or the direction of the *Cost Allocation Report*.

- ii. In the alternative to (i), if the intention of the *Cost Allocation Report* is to effectively authorize either distributors or the Board to depart from cost causality and, instead, to achieve a range only, then the *Cost Allocation Report* contains an unlawful direction to depart from setting just and reasonable rates and cannot be followed by the Board in making orders that set rates. As a result, the Decision erred to the extent that it relied upon the *Report*, instead of evidence of cost causation, to set rates.
- (4) The errors outlined above (and discussed in greater detail below) are material and relevant to the outcome of the Decision. If they are corrected, they would almost certainly change the outcome of the Decision in that a reviewing panel could decide that the Decision should be varied, cancelled or suspended. Specifically, a reviewing panel could produce a range of lawful orders with respect to revenue to cost ratios; for example, lawful orders could include:
- i. That Oshawa PUC's revenue to cost ratio used for setting rates for 2008 be brought to unity or as close to unity as possible given current data;
 - ii. That, in the event that current data does not permit unity, then Oshawa PUC shall identify the data requirements necessary to achieve unity and collect and file such data in its next rates case so that the Board may rely upon it to set rates based on unity when adjusting rates for 2009; and
 - iii. If, for whatever reason and for whatever period, the Board determines that a revenue to cost ratio of unity should be transitioned for the benefit of customer classes that would otherwise experience "rate shock", then the Board can phase in any rate adjustments provided that any under-recovery from these customer classes is ultimately collected from these customers over time, and not from other classes of customers. The point here would be to track the cost of deferring the rate increase to those customer classes that benefit from deferring the rate increase.
- (5) The issue of appropriate revenue to cost ratios for distribution rates is also being considered by the Board in the Hydro One Distribution Rates Application. It would therefore be appropriate for the Board to combine the hearing of this issue in both proceedings so that the results of the two cases are consistent.

The grounds for review are set out in further detail below.

The Rates Applied for and Approved

1. Oshawa PUC proposed distribution rates in this application that would have resulted in large customers over contributing to the cost of distribution services up to 334%. This would result in a collective subsidy from a small group of larger customers (less than 11) to other customers in the amount of over \$1 million. Oshawa Hydro offered no reason why larger customers should be required to provide this subsidy.
2. Oshawa PUC's evidence was that the information from which these ratios were derived was "consistent with the cost data that supports the current approved distribution rates for OPUCN." (Pre-Filed Evidence Appendix E, p.2). Nothing in its evidence suggested that the data in relation to cost allocation was any less reliable than the data supporting the remainder of its evidence. In other words, the data in this case was sufficient for Oshawa PUC to have proposed, and for the Board to have set, a rate based on cost causality. However, the Board chose not to do so.
3. The Board's Decision in this case reduced, but did not eliminate the subsidy; a subsidy of approximately \$750 thousand will be in place for 2008. Like Oshawa PUC, the Decision did not identify any deficiency in cost data that would necessitate a departure from cost causality. Further, the Decision did not even suggest that Oshawa PUC should be trying to achieve unity in allocating costs. It suggested that the only requirement was for Oshawa PUC to meet maximum allowable departures from unity as identified in the *Cost Allocation Report*. Further, it said that achieving these maximum allowable departures could be achieved over a three year period. At the end of the three year period, the rates charged by Oshawa PUC would not have to eliminate cross-subsidies; instead, they would only have to meet the maximum allowable departure. Oshawa PUC could continue to overcharge large customers by approximately \$283 thousand for whatever

reason it wanted to in its discretion, provided that the overcharging did not exceed the permissible range.

4. Apart from stating that “cost causality is a fundamental principle in setting rates”, the Decision did not propose any schedule or meaningful requirement that this principle would actually be met other than the statement that the maximum ranges would continue to be in place “until such time as data is refined and experience is gained.” The Decision contained no further direction on:
 - What data was to be refined;
 - What steps Oshawa PUC is required to take to collect and refine this data;
 - The level of refinement that was necessary;
 - The schedule for this refinement;
 - What experience was to be gained;
 - What lessons would sought to be learned from this experience;
 - Why the customer classes who benefitted from under paying during this period should not ultimately have to pay for the under collected costs; and
 - When this experience would be completed.
5. The only clear direction from the Decision was that large customers would continue to subsidize other customers indefinitely, and at the discretion of Oshawa PUC.

The Reasons for the Decision

Misinterpreting the Cost Allocation Report

6. The Decision authorized Oshawa PUC to continue over charging large customers on the premise that revenue to cost ratios should seek to achieve a range of contributions to cost rather than unity. The rationale for this conclusion was said to be based on the *Cost Allocation Report*. The Decision addressed this as follows:

“As the Board has noted in its Cost Allocation Report regarding revenue to cost ratios, cost causality is a fundamental principle in setting rates, however, observed limitations in data affect the ability or desirability currently of moving immediately to revenue to cost framework around unity, which is considered ideal. The Board’s ranges are a compromise until such time as data is refined and experience is gained.” (p. 13)

7. With respect, this conclusion is both a misreading of the *Cost Allocation Report* and is inconsistent with the Board’s rate setting jurisdiction.

8. It is a misreading of the *Cost Allocation Report* because the *Report* does not say that moving towards unity is an unattainable ideal. It says that the ranges are “minimum requirements” that do not replace the need to achieve unity if practical in light of data quality:

“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.” (at p. 4, Emphasis Added)

9. Also:

“Distributors should endeavour to move their revenue-to-cost ratios closer to one if this is supported by improved cost allocations.” (at p. 7, Emphasis Added)

10. The Decision thus erred to the extent that it treated the movement to revenue to cost ratios towards unity as some distant ideal; according to the *Cost Allocation Report*, unity is to be achieved if supported by data quality. There was no suggestion that data quality was lacking in this case.

11. The Decision also erred to the extent that it treated the *Cost Allocation Report* as relieving the Board from the duty to set rates based on cost allocation to the extent practical. In other words, even if the *Cost Allocation Report* did purport to authorize a range of ratios without reference to underlying cost information – which it did not – that goal would have been unlawful. The Board is still required to comply with the legal restrictions on its rate making authority – including the restrictions against undue discrimination between customer classes.

Inconsistency with the Legal Requirements for Just and Reasonable Rates

12. The Decision did not treat cost causation as a meaningful constraint on the discretion of the Board or of Oshawa PUC in charging rates to customers. The Decision thus departs from the Board's previous unequivocal statements respecting the fundamental legal requirements of cost causality as an inherent part of a just and reasonable rate. These statements are set out below; none of them were explicitly addressed by the Decision.

13. The Board recently had the opportunity to present its understanding of its jurisdiction respecting cost allocation to the Divisional Court as follows:

"It has always been the Board's practice to allocate the revenue requirement to the different rate classes on the basis of how much of that cost the rate class actually causes. Put simply, rates are designed such that each rate class pays for the actual costs it imposes on the utility. To the greatest extent possible, the Board strives to avoid inter class subsidies." (Emphasis Added, Factum of the Ontario Energy Board dated September 12, 2007 filed with Divisional Court in Court File No. 273/07 "OEB Factum").

14. This representation to the Court was specifically based on limitations to the Board's jurisdiction to depart from principles of cost causality. The Board stated:

"The Courts have specifically noted that treating customers equally includes charging consumers with similar cost profiles the same rate. Although the legislature is entitled to override the common law through statute if it chooses to do so, it must do so through clear and unambiguous language" (Emphasis Added, OEB Factum, paragraphs 23 and 24).

15. The Board also stated that cross-subsidies between customer classes would be inconsistent with its statutory objective to "protect the interests of consumers with respect to prices and the reliability and quality of ...service". According to the Board, that objective would be offended by a rate design that involved "conferring benefits of one set of consumers at the expense of another." (Emphasis Added, OEB Factum, paragraph 40).

16. Finally, the Board represented to the Divisional Court that, although it engages in balancing between consumer and utility shareholders, it cannot engage in “balancing of interests between groups of customers.” (OEB Factum, paragraph 44).
17. As a result, the Board has made legal representations to the Divisional Court that it does not have the legal authority to approve rates that systematically contain subsidies imposed on one class of customers for the benefit of other customer classes. In light of the Board’s legal responsibilities to the Court, those representations were not made lightly. If those representations are accurate, the Decision is incorrect.
18. Further, the representations by the Board to the Divisional Court are consistent with a long line of cases from the OEB. Specifically, the Board has made the following rulings with respect to undue discrimination between customer classes:

“Economic regulation is rooted in the achievement of economic efficiencies, the establishment of fair returns for natural monopolies and the development of appropriate cost allocation methodologies...The Board’s rate setting activities that currently have the effect of transferring benefits do so to accommodate either regulatory efficiency, the removal of financial barriers in support of government policy initiatives or so support a mitigation policy to overcome cost differential such as in rural rate subsidies...The Board also notes that to the extent that any of the current benefit transfers are material, such as in the rural rate subsidy and conservation initiatives, they are supported by the objectives of the Act, specific sections of the Act or by Ministerial Directives under section 27 of the Act.” (Emphasis Added, EB-2006-0034, (2006) pp. 4-6).

Similarly:

“Over the years, the Board has had many requests for special status for a customer group or a customer. The Board has been consistent in its response to such requests by adhering to its established principles in dealing with cost allocation and rate setting. Principled ratemaking involves the creation of a unified and theoretically consistent set of rates for all participants within the system. It begins with the establishment of a revenue requirement for the regulated utility and proceeds to design rates for the respective classes according to well-recognized and consistent theory respecting such elements as cost allocation. This is an objective and dispassionate process, which is driven by system integrity and consistent treatment between consumers on the system. Principled ratemaking typically does not involve a ranking of interests according to a subjective view of the societal value of any given

participant or group of participants. This approach is not unique to Ontario. A departure from these principles should only be undertaken where the evidence and all other circumstances outweigh the inherent virtue of an objective process. (RP-2003-0063 (2005), p. 5)

19. Another example:

“The Board is required by its legislation to “fix just and reasonable rates”, and in doing so attempts to ensure that no undue discrimination occurs between rate classes, and that the principles of cost causality are followed in allocating the underlying rates.” (Emphasis Added, EBRO 493 (1997), p. 316-7)

20. Finally, the Board’s commitment to cost causality as a component of just and reasonable rates is so firm that it would not allow a departure from that principle through incentive regulation. The Board dismissed a request by Union Gas to set rates based on a range of revenue to cost ratios between rates classes in its performance based regulation proposal:

“The Board is also not prepared to accept the argument that there is no need to provide revenue and cost information on a rate class basis. The Board has generally relied on the revenue-to-cost ratio in determining that there is no unfair assignment of cost responsibility among rate classes. Evidence in this proceeding established no other basis upon which to check for cross-subsidization other than to use cost information.

“The Board does not accept Union’s arguments that “using a cost based measure, such as cross-subsidy is not meaningful in PBR because rates are judged just and reasonable by not being escalated beyond the restrictions approved by the Board” nor that “the approval by the Board of a level of pricing flexibility means that if Union makes rate changes anywhere within the boundaries of the flexibility constraints approved by the Board, then the result will be just and reasonable rates”. The Board can not automatically assume that the resulting rates will remain just and reasonable among classes.” (Emphasis Added, RP- 1999-0017, paragraphs 2.458-2.459 (2001).

21. As a result, the Board has identified cost causality as fundamental to its jurisdiction to set just and reasonable rates. This principle has been endorsed by many panels over many years. It is submitted that the Board cannot relieve itself from this duty by writing a Report.

Consequences of Departing From Principled Rate Making

22. The key consequence of a conclusion that the Board does not have to approve rates based on cost causality is that the Board is granting a discretionary authority to a distributor to impose costs on some customers for the benefit of others, for any reason that a distributor considers desirable. In other words, by taking this approach, the Board would be giving a utility a taxing power, that is, the power to redistribute among its customers. (for a demonstration of how the rate setting power may be distorted and used as a taxing power, see: Richard Posner, "Taxation by Regulation", *Bell Journal of Economics and Management Science* 2 (Spring 1971) 22-50).
23. This risk is not at all theoretical. In this case, the OEB did not seek, and Oshawa PUC did not offer, a principled or practical reason why large customers should be paying more than their costs.
24. As indicated, the Decision does not identify any deficiency in evidence that would prevent the attainment of unity in this case. Further, there was no basis in evidence for the Board to conclude that even the maximum ranges could not be achieved in this case. All it said was that bringing rates to within the range would have an "unacceptable impact for customers in the remaining classes." The decision offered no principled reason why it is unacceptable for customers to pay *their* cost of service but it was acceptable for larger customers to pay *more than* their cost of service.
25. This suggests a dangerous pattern where the Board or a utility can, at its discretion, determine who should be paying what based, not on cost causality, but on an explicit or implicit set of non-economic preferences. Signs of this pattern are already emerging. For example, in Hydro One's distribution rates case, Hydro One is proposing to change cost allocation to pursue various political goals. Thus, it is proposing that large customers continue to over-contribute to the cost of serving them, because to do otherwise "would result in either unacceptable bill impacts or the need for an excessively long impact mitigation period." (EB-2007-0681, G1, 3, 1, p.4). However, according to Hydro One,

distributed generation customers should no longer provide any subsidies “in support of Government policy to promote Distributed Generation in Ontario.” (EB-2007-0681, G1, 3, 1, p.3).

26. In other words, under an approach which allows utilities to over and undercharge customers at their discretion, utilities are given the opportunity to allocate the cost of distribution services by reference to political objectives: they get to choose winners and losers. Although this approach has no basis in principled rate making, it is entirely consistent with the discretionary taxing policy approach allowed by the Decision.

Impact of Error

27. The Decision stands out as a departure from long history of principled and jurisdictional approaches to rate making. If the Decision was reconsidered, a reviewing panel would almost certainly not repeat this anomaly. Instead, it could, on the basis of evidence already provided, issue a range of orders that would comply with the Board’s legal requirements. Examples of lawful orders could include:
- i. That Oshawa PUC’s revenue to cost ratio used for setting rates for 2008 be brought to unity or as close to unity as possible given current data;
 - ii. That, in the event that current data does not permit unity, then Oshawa PUC shall identify the data requirements necessary to achieve unity and collect and file such data in its next rates case so that the Board may rely upon it to set rates based on unity when adjusting rates for 2009; and
 - iii. If, for whatever reason and for whatever period, the Board determines that a revenue to cost ratio of unity should be transitioned for the benefit of customer classes that would otherwise experience “rate shock”, then the Board can phase in any rate adjustments provided that any under-recovery from these customer classes is ultimately collected from these customers over time, and not from other classes of customers. The point here would

be to track the cost of deferring the rate increase to those customer classes that benefit from deferring the rate increase.

Procedural Issues

28. This Motion has two procedural components that it is helpful to highlight. First, it requests that, if a review is held, that it be consolidated and heard together with the cost allocation issue in Hydro One's Distribution Rates Application. Second, it involves a request to have a hearing on the appropriate interpretation of a Board policy document – the *Cost Allocation Report*. Both of these procedural components are consistent with previous approaches of the Board to address similar types of issues. They are addressed in turn.

Consolidating Hearings

29. The Board has the authority to consolidate proceedings, with or without the consent of parties, where two or more proceedings “involve the same or similar questions or fact, law or policy” (*Statutory Power Procedure Act*, s. 9.1; *OEB Act*, s. 21(5)).
30. One example of where the Board has exercised this power is in the area of applications for mergers, amalgamations, acquisitions and divestitures under s. 86 of the OEB Act. In that area, three separate applications raised issues of what considerations should be in scope under a s. 86 application; the Board consolidated the proceedings so that it could produce a binding result. Given that similar issues are raised in this review as will be raised in the Hydro One Distribution Rates Case, combining the review with the treatment of the issue in that case is an efficient way to address the issues (RP-2005-0018; EB-2005-0234; EB-2005-0235; EB-2005-0257).

Applying the *Cost Allocation Report*

31. One of the issues in this review is how the Board should apply the *Cost Allocation Report*. As indicated, AMPCO's submission is that the panel in this Decision misinterpreted the *Report*. However, the *Report* itself is not legally binding. Further, the *Report*, because it is not an order or rule of the Board, cannot be appealed to the Courts. As a result, it would be helpful to bring about greater legal certainty to hold a hearing on this matter. Holding a hearing to review the Decision provides an opportunity for the Board to make a clear legal ruling on how the *Report* should be applied.
32. One example of where the Board ordered a proceeding to determine how a non-binding report should be applied is in the area of Conservation and Demand Management ("CDM"; see: RP-2005-0020; EB-2005-0523). The Board's Report on CDM addressed a number of conservation issues on a generic non-binding manner. In order to provide certainty on some contested matters, the Board held a hearing to ensure that its resolution was both binding (i.e., through an order), and generic (i.e., would not just apply to the party before it). Similarly, in this case, it is helpful to have both a generic and binding ruling on the interpretation of the *Cost Allocation Report*.

Conclusion

33. AMPCO respectfully requests that the Board review and direct a rehearing of the Decision on the grounds that the Decision contains errors that are identifiable, material and relevant to the outcome of the proceeding.
34. Specifically, the Decision misinterpreted the *Cost Allocation Report* in concluding that, to support just and reasonable rates, revenue to cost ratios need only fall within a range of permissible departures from unity. The Decision erroneously relied upon that misinterpretation to both relieve Oshawa PUC from seeking to achieve a revenue to cost ratio of unity and to relieve the Board from the duty of setting rates based on unity. In doing so, the Board purported to give both Oshawa PUC and the Board a discretion to depart from cost causation within an approved range. This was not the intention or the direction of the *Cost Allocation Report*.

35. In the alternative, if the intention of the *Cost Allocation Report* is to effectively authorize either distributors or the Board to depart from cost causality and, instead, to achieve a range only, then the *Cost Allocation Report* contains an unlawful direction to depart from setting just and reasonable rates and cannot be followed by the Board in making orders that set rates. As a result, the Decision erred to the extent that it relied upon the *Report*, instead of evidence of cost causation, to set rates.
36. These errors are material and relevant to the outcome of the Decision. If they are corrected, they would almost certainly change the outcome of the Decision in that a reviewing panel could decide that the Decision should be varied, cancelled or suspended.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used as the hearing of the motion:

1. The PUC Rates Decision.
2. Rule 42 of the Board's *Rules of Practice and Procedure*.
3. Excerpts from OEB Decisions respecting Test for Motion to Review:
 - EB-2007-0797 (pp. 7-9)
 - EB-2006-0322/EB-2006-0338/EB-2006-0340 (pp. 17-18).
4. Board Report on *Application of Cost Allocation for Electricity Distributors*.
5. The Factum of the Ontario Energy Board dated September 12, 2007 filed with Divisional Court in Court File No. 273/07.
6. Excerpts from the following OEB Decisions respecting Rate Making Jurisdiction:
 - EB-2006-0034, (2006) (pp. 4-6)
 - RP-2003-0063 (2005) (p. 5)
 - EBRO 493 (1997) (p. 316-7)
 - RP- 1999-0017, paragraphs 2.458-2.459 (2001).
7. Richard Posner, "Taxation by Regulation", *Bell Journal of Economics and Management Science* 2 (Spring 1971) 22-50.
8. Pre-Filed Evidence of Hydro One Networks Inc. in EB-2007-0681 (G1, 3, 1).
9. *Statutory Power Procedure Act*, s. 9.1.
10. *OEB Act*, s. 21(5).

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AND TO: Hydro One Networks Inc. and Intervenors in EB-2007-0681