PUBLIC INTEREST ADVOCACY CENTRE
LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC
ONE Nicholas Street, Suite 1204, Ottawa, Ontario, Canada K1N 7B7
Tel: (613) 562-4002. Fax: (613) 562-0007. e-mail: piac@piac.ca. http://www.piac.ca

Michael Buonaguro
Counsel for VECC
(416) 767-1666

May 15, 2008

VIA E-MAIL AND COURIER

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

Dear Ms. Walli:

Re: VECC Submission on Motion, Oshawa PUC Decision (EB-2007-0710)
Board File No. EB-2008-0099

Please find enclosed the submissions of VECC with respect to the above noted proceeding.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

EB-2008-0099

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 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);

AND IN THE MATTER OF Rules 42, 44.01 and 45.01 of the Board's Rules of Practice and Procedure;

Submissions of the Vulnerable Energy Consumers Coalition ("VECC")

Michael Buonaguro
Public Interest Advocacy Centre
34 King Street East, Suite 1102
Toronto, Ontario
M5C 2X8
(416) 767-1666 (office)
(416) 348-0641 (fax)
mbuonaguro@piac.ca

Introduction

1. VECC was an intervenor in the original application, and made submissions on the issue of the proposed R/C ratios.

2. VECC respectfully submits that there was no reviewable error in the Board's decision with respect to the issue of R/C ratios, and that accordingly the AMPCO motion for relief should be dismissed.

The Board Decision Makes No Inappropriate Deviation from Cost Causality Principles

3. VECC has had the benefit of reviewing the submissions of both Board Staff and the Consumers Council of Canada, and agrees with each of their submissions concerning the breadth of the Board's jurisdiction and discretion in ratemaking. VECC makes only the following additional specific comments on the principles applied by the Board.

4. In VECC's view there is no live issue with respect to the application of cost causality principles by the Board in approving rates for OPUC.

5. The issue identified by AMPCO in paragraph 2 of its submissions, based on Bonbright's "Principles of Public Utility Rates", is the apparent undue discrimination against large customers as a result of the failure of the Board to fully implement its cost allocation analysis to eliminate alleged subsidies to other customers.

6. VECC submits that, by examining the cost allocation methodology and the customer class R/C ratios, the Board is clearly engaged in the application of the principle of fairness with respect to the apportionment of total costs of service among the different customers, and in doing so seeking to avoid "undue discrimination" between customers.[1]

7. However the Board has the additional responsibility to be mindful of the many other basic principles that affect rate making decisions. In particular, VECC submits that the Board Decision, in adopting the "Application of Cost Allocation for Electricity Distributors: Report of the Board's"' (the "Report") minimum R/C ratios and in implementing a phased approach when moving rates to those ranges, is concerned also with maintaining public acceptability of the rate changes, and maintaining stability of the rates themselves.[2]

[1] Bonbright, Danielsen and Kamerschen, Principles of Public Utility Rates (2d) (PUR, Inc. 1988), p. 383-384.
[2] Bonbright, Danielsen and Kamerschen, Principles of Public Utility Rates (2d) (PUR, Inc. 1988), p. 383-384.

8. In VECC's view, whereas the Board's goals in reviewing cost allocation for electricity distributors are defined largely by cost allocation principles, the manner and timing within which the Board will implement those goals is further informed by the full suite of regulatory principles. In this context concerns about rate stability and rate shock have been appropriately considered by the Board in arriving at an implementation plan for OPUC's new R/C ratios.

Evidence of Cost Causality

9. A key issue before the Board in setting OPUC's rates (as it is in every other electricity distributor coming before the Board in a cost of service application) is the reliability of the submitted cost causality evidence.

10. The evidence before the Board with respect to cost causality as between OPUC's customers consisted of a cost allocation model run conducted by OPUC using 2006 OPUC EDR data in conjunction with the Board's Cost Allocation Informational Filing Guidelines for Electricity Distributors and Cost Allocation Model, both issued to distributors on November 15, 2006. OPUC originally filed the results of its Cost Allocation Study (the "Study") with the Board on January 15, 2007.[3]

11. Although there were requests from parties to OPUC to illustrate the effect of altering the R/C ratios that resulted from the Study, there was no other evidence offered by any party on the issue of cost causality.

AMPCO Misconstrues the Role of Minimum Ranges in the Report

12. The thrust of AMPCO's argument, it appears to VECC, is that the Board should rely on OPUC's Study as perfect evidence of cost causality, such that in the absence of competing policy directives or "exceptional circumstances" the results of the Study should be strictly applied to rates (i.e., R/C ratios should be brought to unity).[4]

13. In paragraph 24-28 on its submissions, AMPCO alleges that the Board Panel misinterpreted the Report in terms of how it treated the minimum requirements. AMPCO suggests, particularly in paragraphs 26 and 27, that in the absence of any specific finding that OPUC's data quality was lacking or inherently less reliable than the other evidence used in rate setting that the Report requires rates to move to unity. Specifically, AMPCO argues in

[3] EB-2007-0710, Appendix E to the Application.
[4] VECC notes that SEC, in supporting the AMPCO motion, appears only to advocate for a move to the minimum range of ratios, rather then unity. As SEC notes in its argument, this position is consistent with its position in the hearing.

paragraph 31 that "the decision under review does not identify any deficiency in evidence that would prevent the attainment of unity in this case".[5]

14. With respect, VECC submits that the Report does not indicate that in the absence of any deficiencies in the evidence particular to the utility that the Board should attain unity in the approved cost allocation; in fact, the opposite is true.

15. The Report, in identifying the problems in the Cost Allocation Studies that have been run by electricity distributors (including OPUC's Study) sets out the influencing factors prevalent in the utility runs which caused the Board to implement the minimum R/C ratio ranges rather then require movement to a R/C ratio of unity.[6]

16. The Report cited several reasons for reaching the conclusion that the Cost Allocation Study could not be strictly applied, including:

a) the quality of the data (both accounting and load data),
b) limited modeling experience, and
c) the status of current rate classes.

17. It is clear, VECC respectfully submits, that these issues directly contribute to the conclusion that there is a level of uncertainty in the Cost Allocation Study that prevents the Board from strictly applying the results. Other factors, including the management of the movement of rates closer to allocated costs, combined with the uncertainty in the underlying results, inform the level of caution the Board should use when attempting to employ a cost causality framework that it knows is inaccurate.

18. By way of example, VECC, in its submissions on the application, pointed out that the incomplete treatment of transformer allowances resulted in a R/C ratio for Large Users of 2.57; accounting for the incomplete treatment results in a R/C ratio of 2.14.[7] Correcting the same problem for Residential Customers moved their R/C ratio from a ratio of .88 to a ratio of .96.[8] AMPCO agreed, in its final submissions, with the existence of an issue related to a transformer allowance, but argued that no adjustment should be made without further evidence.[9]

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[5] In its Notice of Motion filed April 8, 2008, EB-2008-0099, at page 2, AMPCO asserts that "the Report thus sets a target of unity and requires justification of departures from that target up to a maximum allowable departure from unity."
[6] Report, s. 2.3.
[7] Response to VECC IR#27 a), Amended Responses to VECC, page 84. Although the problem was acknowledged by OPUC (and AMPCO), it is unclear to VECC whether a correction was made in the final draft order and whether such correction, if made, affects the resulting R/C ratios.
[8] Response to VECC IR # 27 a). Amended Responses to VECC, page 84.
[9] AMPCO Final Submissions dated January 14, 2008, EB-2007-0710, paragraphs 4.1 to 4.9.

19. The Report then goes on to allow 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."[10]

20. VECC respectfully submits that the Report, while it does acknowledge that particular distributors may be in a position to provide evidence (such as improved data quality) that distinguishes their 2008 forecasted cost allocation as materially improved from the 2006 Cost Allocation Study[11], presumes that movement from outside the ranges towards unity will otherwise be to the minimum ranges, and that other values will not move away from unity.

21. Consistent with this view of the Report, VECC notes while AMPCO argued in final submissions that the R/C Ratios for all large users should be brought closer to unity than the ranges in the Report, it did so only "based on the more highly differentiated rates and rate analysis of OPUCN and the better quality of information available in this case, as compared to that available from many Ontario LDCs".[12] AMPCO did not challenge the underlying rationale and conclusions of the Report, particularly with respect to the need for bands of acceptable R/C ratios. Likewise SEC supported a move to the minimum ranges as a "good first step".[13]

22. AMPCO did not argue that in the absence of justification for departures from a target of unity that the Report requires R/C ratios to be set at unity.[14] The Board specifically noted AMPCO's assertion that OPUC's evidence was superior that the evidence of most LDC's, but did not agree that evidence existed such that a move closer to unity then the minimum was warranted. VECC notes that OPUC's view of its own Study was that it would be inappropriate to move R/C ratios even to within the minimum ranges based on its results.[15]

23. Accordingly, VECC submits, absent specific evidence improving the validity of OPUC's Study, the Report sets out the range of ratios within which a proxy for R/C unity is deemed to exist.

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[10] Report, s. 2.1.
[11] VECC notes that different utilities used different methods for translating their 2006 Study into 2008 rates, an implementation problem that VECC has asserted in several similar applications.
[12] AMPCO Final Submissions dated January 14, 2008, EB-2007-0710, paragraphs 4.1 to 4.9.
[13] SEC Final Submissions dated January 15, 2008, page 5. SEC noted that the move to the minimum ranges provided for in IR response number 62 had the GS >50 class move away, rather then towards a R/C ratio of 1.0, and presumably did not support that anomaly.
[14] AMPCO Final Submissions dated January 14, 2008, EB-2007-0710, paragraphs 4.1 to 4.9.
[15] OPUC Final Submissions dated January 25, 2008, page 30. OPUC goes on to suggest that if the Board decides to implement the minimum ranges, it should mitigate the impact of doing so by phasing the changes in over three or more years.

Mitigation

24. In VECC's view the issue of mitigation only arises in this proceeding with respect to the phasing in of ratio movement towards the minimum ranges.

25. There is Board precedent for phasing is what might be considered a subsidy between classes.

26. In RP-2002-0130 (paragraphs 252-270) the Board determined that the Delivery Commitment Credit (the "DCC"), a rebate from Union Gas to direct purchasers of natural gas (a rebate funded by all other ratepayers) should be discontinued as an unnecessary subsidy payment. However, in recognition of the impacts resulting from the sudden increase in rates through the elimination of the subsidy, the Board required the utility the phase the elimination of the subsidy over the course of 5 years.[16] To VECC's knowledge, some of the direct purchasers that benefited from the phased approach to the DCC are also "large users" of electricity.

27. VECC respectfully submits that the decision in RP-2002-0130 is analogous to the present proceeding. In the case of the DCC, the Board identified an unwarranted subsidy between direct purchasers and all other ratepayers, and consistent with the principle of cost causality (the policy driven justification for the DCC having been found to no longer exist) the Board was faced with adjusting rates to correct the subsidy. In doing so, however, the Board, in order to establish rates that were both just and reasonable, determined that the elimination of the subsidy had to be phased in over a reasonable period of time to allow direct purchasers to adjust to their increased rate burden. There was no provision for deferring and later charging "subsidy" amounts to direct purchasers.

28. VECC respectfully submits, as illustrated by the example in RP-2002-0130, that in determining rates that are both just and reasonable, it is and has always been appropriate for the Board to consider not only the principle of cost causality with respect to establishing just rates, but also the reasonableness of the impact caused by transitioning to new rates. While rates based strictly on the basis of cost causality principles may be just, it is not necessarily reasonable to fully implement such rates within a test year period given the impact such implementation may have.

29. Similarly OPUC, in the present case, and the Board more generally, is engaged in allocating costs as between ratepayers and implementing new rates to accommodate the new allocation. However, in moving from the existing rate regime, which OPUC asserts in its evidence has never been

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[16] Similarly, in RP 2005-0020/EB-2005-0350, the Board approved the rate harmonization plan of Chatham-Kent Hydro Inc., allowing a cross-subsidy to continue beyond the test year between customers within the same customer class.

based on costs[17], to cost based rates, the Board is faced with significant impacts were it to suddenly and strictly apply the cost allocation model, even at the minimum range levels.

30. As Board Staff points out at page 10 of its submissions, the implementation of a new Cost Allocation Model does not suddenly make the pre-existing rate unjust and unreasonable. With respect to customers who are considered to be "over-contributing" to rates under the new Model, the application of the new Model has not resulted in any hardship, and in fact will ultimately benefit such customers. This is seen, for example, in the fact that under the phased approach in the Board's decision, large users in the GS>1000 kW < 5000 kW are benefitting from an approximately 20% net reduction in distribution rates.[18] However, conferring the benefit of the new regime comes at a cost to other ratepayer groups, and it is entirely appropriate for the Board to consider that cost when transitioning to the new regime.

31. It is for these reasons, VECC submits, that when the Board directed that the new Cost Allocation Model be created, tested, and implemented, it specifically recognized that "before any adjustments or changes are implemented in rates following this review, the Board will consider transition and mitigation measures."[19]

32. SEC submits at pages 3 and 4 of its argument that the total bill impact on residential customers, were the Board to fully implement the Report's minimum ranges, would not be excessive.

33. In VECC's view it is inappropriate to measure the reasonableness of a distribution rate increase within the context of the total bill. VECC notes that in EB-2007-0680, the Toronto Hydro-Electric System Limited ("THESL") 2008 rates application, it appeared that SEC agreed with VECC that the relevant measure of impact was the distribution increase, not the total bill increase. SEC argued, and VECC agrees, in the context of both the THESL and OPUC rate proceedings, that:

> "When viewed from a "total bill" perspective, the percentage increases appear to be lower. That, however, is only due to the fact that we happen to be looking at the distribution impacts in isolation from other factors impacting customers' electricity bills.
>
> In any event, if the other items on customers' electricity bills increased at the same rate as THESL's [or OPUC's] distribution

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[17] Appendix E page 7.
[18] EB-2007-0710, Amended Draft Order, page 20.
[19] Letter from John Zych to all licensed distributors dated June 24, 2005, page 2, Re: EB-2005-0317.

costs, then customers would be faced with total bill impacts that resemble the large increases in distribution costs...[20]

34. In the present case, the distribution rate increase for residential customers, in accordance with the amended draft order submitted by OPUC on April 17, 2008, is already approximately 11.2% inclusive of the phase in of new R/C ratios as directed by the Board.[21] Were the Board to eliminate the phase-in the distribution cost for residential consumers would increase beyond what is already a significant increase.

Applicability of the Report

35. AMPCO raised the issue of the applicability of the Report in its notice of motion. VECC respectfully submits that the Board was entitled, in the OPUC proceeding as it was in every other proceeding, to rely on (or possibly ignore) the Report's analysis of the Cost Allocation Model when determining OPUC rates. It was open to the applicant and the intervenors (as it always is open to parties in relation to Board policy) to challenge the conclusions of the Report through evidence and argument. VECC has reviewed and adopts the Board Staff submissions on this issue.

Conclusion and Request for Costs

36. VECC respectfully submits that AMPCO has not demonstrated that the Board has made any reviewable error in its decision with respect to OPUC's 2008 rates. Specifically, VECC submits that the Board acted within its discretion when it considered and applied the Report minimum ranges with respect to OPUC's R/C ratios, and when it required OPUC to phase in changes to OPUC R/C ratios to meet those minimum ranges. Accordingly VECC submits that the AMPCO motion should be dismissed.

37. VECC submits that it has acted responsibly and efficiently in its participation in this motion, and that its' intervention has been of assistance to the Board. Accordingly VECC requests that it recover 100% of its costs related to participation in this motion.

ALL OF WHICH IS SUBMITTED THIS 15th DAY OF MAY, 2008

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Michael Buonaguro
Counsel for VECC

[20] Submissions of SEC, February 2, 2008, EB-2007-0680, page 1.
[21] EB-2007-0710, Amended Draft Order, page 19.