EB-2014-0073

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act 1998*, Schedule B to the *Energy Competition Act*, 1998, S.O. 1998, c.15;

AND IN THE MATTER OF an Application by Festival Hydro Inc. for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of January 1, 2015.

FINAL ARGUMENT
OF THE
SCHOOL ENERGY COALITION

November 26, 2014

Jay Shepherd P.C.
2300 Yonge Street, Suite 806
Toronto, Ontario M4P 1E4

Mark Rubenstein
Tel: 416-483-3300
Fax: 416-483-3305

Counsel to the School Energy Coalition

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1 OVERVIEW

1.1 *Introduction*

1.1.1 On July 15, 2013, Festival Hydro Inc. ("Festival") filed an Application for new distribution rates, effective January 1, 2015. The process included interrogatories, a technical conference, and a settlement conference that was successful in reaching settlement on a number of issues.

1.1.2 This is the Final Argument of the School Energy Coalition.

1.1.3 The ratepayer groups who intervened in this proceeding have followed their normal practice of working together throughout the hearing to avoid duplication, including discussing issues, and exchanging drafts or partial drafts of their final arguments. We have been assisted in preparing this Final Argument by that co-operation amongst parties.

1.2 *Summary*

1.2.1 This Final Argument contains an analysis of the unsettled issues. The following are SEC's recommendations.

1.2.2 ***Capital Expenditures***. SEC recommends that the Board should reduce Festival's capital expenditures in the test year, specifically its wood pole replacement program of $162,500.

1.2.3 ***Working Capital.*** Festival's sole reliance on the Board's default value of 13% as set out in the Filing Requirements is not appropriate. The Board should set the test year working capital allowance based on an average of distributors who have recently filed lead/lag studies.

1.2.4 ***Bypass Compensation Treatment.*** SEC does not believe it is appropriate to treat the bypass compensation costs payable to Hydro One as an intangible asset that can be capitalized. Further, since the expense was incurred during the IRM period, and there is no deferral account to capture the amount, it would be retroactive ratemaking to recover any amount from ratepayers.

1.2.5 ***OM&A.*** Festival's forecasted OM&A budget is not reasonable. The Board should reduce the amount sought by at least $162,500.

1.2.6 ***ICM True-up.*** While SEC accepts the Festival's true-up calculations are reasonable, it should not be allowed to recover O&M costs associated with the new Transformer Station ("TS"). Since there was no deferral account or other approvals associated with non-capital costs, allowing recovery would constitute retroactive ratemaking.

1.2.7 ***GS>50.*** Festival should be required to lower the GS>50 fixed charge to the Board approved ceiling.

2 CAPITAL EXPENDITURES AND RATE BASE

2.1 *Capital Expenditures*

2.1.1 Festival is seeking approval of a capital expenditure budget of $2.574M per year. While the proposed budget is decreasing in the test year, and over the horizon of the 5 year Distribution System Plan (as compared to 2010-2013), it should still be reduced to account for Festival's unreasonable pole replacement program.

2.1.2 Festival is seeking to replace 100 wood poles a year over the next ten years to ensure that the number of poles over the age of 40 years remains constant. This pole replacement program of $650,000 represents approximately 25% of its entire capital budget. Festival is essentially using the 40 year wood age as the equivalent to its useful life. When asked why its use of 40 years, instead of Hydro One's 62 years for a wood pole was more appropriate, Festival did not have any specific rationale. Mr. Semsedini stated that, "[Festival] had to say, look, over 40 you're going to start having problems, and we are just looking at it as an age demographic."[1] Yet, despite 25% of Festival's wood pole population being over the age of 40, evidence shows that, over the past five years, not a single one failed for reasons other than events unrelated to age or condition (i.e. motor vehicle accidents, lightning strikes, or trees falling).[2]

2.1.3 While a distributor who has not conducted an asset condition assessment study has to make a judgment call on the useful life of any given asset, it must be determined based on reasonable evidence. SEC submits that Festival has not done so. The evidence shows that the actual useful life of its wood poles is significantly greater than 40 years. The replacement rate for poles should correspondingly reflect maintaining in its system the same level of poles that are at some more appropriate age greater than 40 years. SEC recommends that the pole replacement budget be reduced by 25% to reflect a more appropriate wood pole replacement program. This would result in a reduction of $162,500.

2.2 *Working Capital*

2.2.1 Festival is seeking a Working Capital Allowance ("WCA") of 13% based entirely on the Board's *Filing Requirements for Electricity Distribution Rate Application* ("Filing Requirements").[3] The Filing Requirements, which are non-binding guidelines, provide that a distributor may seek a WCA amount by either filing a lead/lag study, or by using the default value of 13%. Festival confirmed that while it monitors its cash flow requirements, they do not determine an actual working

[1] Tr.1, p.78
[2] Ex.2-2-1-Attach 1, p9
[3] Ontario Energy Board, *Filing Requirements For Electricity Distribution Rate Applications*, section 2.5.1

capital requirement.[4] It has simply relied on the 13% set out in the Board's Filing Requirements.[5]

2.2.2 The Board can no longer allow a distributor to discharge its onus for demonstrating the reasonableness of its working capital costs to be included in rates, solely based on the Filing Requirements. The methodology behind the 13% value in the section 2.5.1 of the Filing Guidelines is incorrect, and inflates the actual working capital that a distributor requires to fund its on-going operations.

2.2.3 Since Festival provided no evidence that 13% is the appropriate WCA for its operation, the Board must look elsewhere to determine a reasonable amount of working capital costs that ratepayers should bear.

2.2.4 ***Default Value Based on Incorrect and "Obsolete" Methodology.*** The genesis of the 13% default WCA amount in the Filing Requirements is a letter from the Board, dated April 12, 2012, in which the Board stated "[b]ased on the results of the WCA studies filed with the Board in the past few years, the Board has determined that the default value going forward will be 13% of the sum of the cost of power and controllable expenses."[6]

2.2.5 While the letter did not list the specific studies that on which it was basing its decision, the studies were those filed in proceedings by Toronto Hydro, Hydro One, Ottawa Hydro and Horizon Utilities. This is because as far as SEC is aware, those were the only lead/lag studies filed by an electricity distributor in the 5 years preceding the issuance of the Board's April 12, 2012 letter. Further, as shown on p.2 of the K1.1, the average of the Board approved WCA in those proceedings is 13.03%.

2.2.6 The primary problem with the Board's default WCA is that those four studies that are the basis of the 13% value, have a significant methodological error that has now been corrected in subsequent proceedings. In those four lead/lag studies, in calculating the revenue lag[7], specifically the service lag, the difference in bi-monthly vs. monthly billing is weighted by the number of customers. The correct methodology is to weigh the service lag by revenue, since the aim of the calculation is to determine how much money a distributor needs in capital to cover the lag.

2.2.7 This methodological error has been accepted by Navigant itself, who were the authors, or provided an independent review, of <u>all</u> four lead/lag studies which

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[4] Tr.1, p.31-32
[5] Tr.2, p.13
[6] K1.1, p. 3
[7] WCA Allowance is calculated by determining the net lag (days), by subtracting the expense lead (days) from the revenue lag (days) and dividing by 365. The revenue lag is made up of four components: service lag, billing lag, collection lag, and payment processing lag.

formed the basis of the 13% default value.[8] As Navigant explained in its lead/lag study filed for Hydro One in EB-2013-0416:

> Navigant has prepared a table comparing the components of lead-lag studies that have been filed and is public. The results are showing in Table 19 below. <u>Note that prior studies are based on data of an older vintage are mostly based on customer weight method for revenue lags. This is an obsolete methodology and HONI's current study is based upon the revenue weighting method for revenue lags.</u> [emphasis added] [9]

2.2.8 The methodological error is significant. A change to just the service lag component of revenue lag, which unlike billing lags, would not be affected by an upgrade to any Customer Information Systems, can have a significant effect.

Distributor	Service Lag		Utility	Updated Service Lag		Change in Service Lag	Change in WCA
Toronto 2009	27.1	(1)	Toronto 2014	18.72	(5)	-8.38	-2.30%
Hydro One 2009	21	(2)	Hydro One 2014	16.04	(6)	-4.96	-1.36%
Horizon 2010	30.27	(3)	Horizon 2014	25.01	(7)	-5.26	-1.44%
Ottawa 2011	30.24	(4)	Ottawa 2011	22.13	(8)	-8.11	-2.22%
Average	***27.15***			***20.48***		***-6.68***	***-1.83%***

(1) EB-2010-0142 utalized the lead-lag study from EB-2007-0680 (for the purposes of service lag days, only just change was costs. D1-16-1, p.8 (K1.4, p.13)
(2) EB-2009-0096 D1-1-4-Attach 1, p.6 (K1.1, p.38)
(3) EB-2010-0131 Ex.2-4-1-App 2-3, p.4 (K1.1, p.69)
(4) EB-2011-0054 Ex.B4-2-1, p.5 (K1.1, p.93)
(5) EB-2014-0116 Ex.2A-3-2, p.6 (K1.1, p.200)
(6) EB-2013-0416 D1-1-3-Att 1, p.6 (K1.1, p.138)
(7) EB-2014-0002 2-Staff-23(a)-Attach 1, p.8 (K1.1, p.164)
(8) EB-2011-0054 Ex.K2-2.2-5, p.2 (K1.1, p.118)

2.2.9 Utilizing the best available information which, in all cases but Hydro Ottawa[10], is the service lag stated in the distributors' more recent lead/lag studies (which were done utilizing the correct methodology), shows that the average WCA of the studies should have been 1.83% lower. This is a material amount. As confirmed by Festival, a 1% reduction in the WCA yields a reduction of $55,762 in the revenue equipment.[11] A 1.83% change would result in a $102,045 reduction in the revenue requirement.

2.2.10 The intent of the above analysis is to show the material impact of the methodological change. SEC recognizes that the updated service lag information (with the exception of Hydro Ottawa) may have been influenced by changing of bi-monthly/monthly billing mix over time. With that said, SEC is not aware of any major change in billing mix for any of the distributors over the past few years.

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[8] See 1) Toronto Hydro (EB-2007-0680) at K1.1, p.6; 2) Hydro One Distribution (EB-2009-0096) at K1.1, p.29;. 3) Horizon Utilities (EB-2010-0131), at K1.1, p.60; 4) Hydro Ottawa (EB-2011-0054) at K1.1, p.110)
[9] K1.1, p.151
[10] For Hydro Ottawa, the dollar weighted calculation was provided in an interrogatory response in that very proceeding. See EB-2011-0054. Ex.K2-2-5,p.2 (K1.1, p.118)
[11] SEC notes that this just the rate base impact of a change in the WCA. The actual amount will be higher when the PILS impact is included.

2.2.11 ***Inherent Unfairness in Festival's Interpretation.*** In its Argument-in-Chief, Festival summarized its interpretation of the Board's policy on the WCA as set out in the Filing Requirement:

> And really, I think what the Board is saying is we have a guideline, but if somebody brings better evidence through a lead-lag study that there is a more appropriate working capital, the Board would listen to that. And where that is the best and most appropriate evidence that would work its way into the decision.[12]

2.2.12 SEC submits that Festival's interpretation, which may be common among other distributors, leads to a wholly unbalanced situation. Since only a distributor can conduct lead/lag studies on its own operations, intervenors are put in the position of being completely unable to dislodge the 13% default value set out in the Filing Requirements. Compounding the unfairness is that a distributor, knowing that there is no expectation that they conduct a lead/lag study (which is the case for smaller utilities), has no incentive to conduct one unless they know that the results would somehow be higher than the default value.

2.2.13 ***Benchmarking To Set Appropriate Working Capital Allowance.*** SEC submits because of this error in the underlying methodology for the Board's 13% default value, it is not appropriate for the Board to allow distributors, including Festival, to rely on it for the purposes of determining its WCA. If the Board does allow Festival to rely on the default value, in absence of any evidence specific to it, it would not be setting "just and reasonable" rates, since the methodology set out in the non-binding Filing Requirements has been shown to be incorrect and obsolete. If Festival is allowed to rely on the 13% default value still, then the Board will be treating the Filing Requirements as binding, and will be fettering its own discretion.

2.2.14 Since Festival has not provided any evidence related to its actual working capital needs, the Board has no evidence on the record about what an appropriate WCA amount is. This is problematic since Festival, not the intervenors, has the onus to justify its proposed WCA.[13] SEC submits that because of the absence of evidence, the Board should look at other utilities that have filed lead/lag studies based on correct methodology, to determine a reasonable WCA for Festival. The studies, detailed below, show WCA amounts significantly lower than the 13% adopted by the Board as the default value in the non-binding Filing Requirements.

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[12] Tr.2, p.91

[13] Section 78(8) of the *Ontario Energy Board* provides that "Subject to subsection (9), in an application made under this section, the burden of proof is on the applicant." [emphasis added]

Distributor	WCA	
Toronto 2014	7.47%	(1)
Hydro One 2014	7.91%	(2)
Horizon 2014	12.00%	(3)
London 2012	11.42%	(4)
Average	***9.70%***	

(1) EB-2014-0116 Ex.2A-3-2, p.3 (K1.1, p.197)
(2) EB-2013-0416 D1-1-3-Att 1, p.2 (K1.1, p.133)
(3) EB-2014-0002 2-Staff-23(a)-Attach 1, p.3 (K1.1, p.159)
(4) EB-2012-0146 Ex.2-App 2J, p.1

2.2.15 This approach is no different than any other benchmarking activity that the Board undertakes and is consistent with the *Renewed Regulatory Framework for Electricity*.[14] The default value was set by taking the average of lead/lag studies that were filed in previous proceedings. None of those studies were filed by Festival. But just as Festival can rely on the Board's default value which is an average of other distributors' lead/lag studies, the Board can rely on an average of more recent lead/lag studies, 75% of which are the same distributors.

2.2.16 Using recent lead/lag studies as a benchmark of reasonableness has been an approach adopted by the Board before, in EB-2010-0131, where the Board was faced with a study that it found to be deficient with regards to the billing lag. The Board reduced the applied WCA based on an amount that is "more consistent with the results of working capital studies undertaken by Hydro One [omit] and Toronto Hydro-Electric System Limited [omit]."[15]

2.2.17 SEC realizes this is an imperfect approach in determining Festival's WCA, but with no evidence on the record, this is both reasonable and appropriate. At the very least, it is clear that since the 13% default value is premised on obsolete methodology, the correct amount would be a material amount less.

2.2.18 In addition, since all of Festival's customers are only monthly billing, their actual working capital amount would be significantly less than the 13% as the service lag would be 15.21 days. SEC has reviewed the submissions of Energy Probe and agrees with its detailed analysis. Festival resisted the idea that whether a utility is on monthly or bimonthly billing was a major driver of the WCA, and claimed that the individual circumstances of an individual distributor are more important. While Festival CEO, Mr. Semsedini, was able to provide a list of potential drivers, when asked, he could not provide a single example of a factor that would affect service

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[14] See *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach*, dated October 18, 2012, p.13, 56
[15] *Decision and Order* (EB-2010-0131), at p.16 (K2.1 at p.88)

lag in which Festival's practice was materially different than any other distributor.[16]

2.2.19 Based on the absence of any evidence provided by Festival, and the fact that the 13% default value set out in the Filing Requirements is methodologically flawed and cannot be relied upon, SEC submits the Board should apply a value of 9.7%, being the average of recently filed lead/lag studies.

2.3 ***Bypass Compensation Treatment***

2.3.1 Festival seeks to add to rate base, through capitalization to its new TS which was approved in EB-2013-0214, a $1.2M payment it was required to make to Hydro One. This payment, classified as a bypass payment, was required to be paid pursuant to the Transmission System Code. The payment was required because by the time the TS was to enter into service in December 2013, the forecasted incremental load had not materialized. With that information, Festival still made the determination that transferring load from Hydro One's TS that serves its service territory, to its own new TS, was in its customers' best interest due to the resultant reduction in Retail Transmission Service Rates ("RTSRs").

2.3.2 ***Capitalization Proposal.*** Festival is seeking to capitalize the bypass payment as an intangible asset, and depreciate it alongside its new TS over 45 years. SEC has reviewed the detailed submissions of Board Staff and agrees that the bypass compensation should not be treated as an intangible asset and be capitalized. There is simply no evidence to support the conclusion that such treatment is appropriate. It is Festival who has the onus to show why the amount should be included in rates.

2.3.3 The bypass compensation payment was incurred only because Festival made a decision to transfer load between the Hydro One TS and its new TS. There is nothing inherent to the new TS that required Festival to do that. It made that *operational* decision because it believed it was in the best interest of ratepayers, as the reduced RTSRs would offset the cost of the bypass payment. This may very well be true but from a ratemaking perspective it is irrelevant to the determination if that bypass payment is an intangible asset.

2.3.4 Where SEC differs from Board Staff is on how the bypass compensation should be treated if not capitalized. Board Staff appears to take the position that the bypass compensation may be recoverable from ratepayers through an amortization of expenses over a three year period. SEC submits that such an approach would constitute prohibited retroactive ratemaking.[17] This is because the expense was incurred when Festival had the obligation to pay Hydro One the bypass compensation. This obligation was incurred when the bypass physical occurred

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[16] Tr.1, p.80
[17] *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2. S.C.R. 762 at 791-792

when the new TS was energized in December 2013. The expense for ratemaking purposes is not incurred when the payment is made, or even when the invoice is received (which is forecasted to happen before the test year).[18] There is often a delay between when a distributor's cost is incurred, and when it is ultimately paid. If that amount is not considered a capital cost, and since there is no deferral account to capture non-capital costs incurred before rebasing, the amount cannot be recovered from the ratepayers' perspective, regardless of the amortization period.

2.3.5 SEC directly asked Festival's auditor from KMPG, Mr. Jeffrey, if the proposed treatment was appropriate, which Festival noted in minutes from its September 26th 2013 Board of Directors meeting had "directed" the accounting treatment.[19] He declined to provide a response stating that "we do not provide opinions on single, standalone transactions".[20] SEC submits that the Board should deny recover of the bypass compensation.

2.3.6 ***Terms of Agreement.*** The terms of the bypass compensation agreement entered into between Festival and Hydro One are not prudent. The agreement does not allow for Festival to claw back any portion of the $1.2M permanent bypass if load grows on the Hydro One TS that serves Festival.[21] The policy rationale for bypass payments are to ensure that transmission customers are not harmed by a distributor building its own TS and transferring load, and consequentially stranding capacity on the transmitter's own TS. If new or increasing load on Festival in the future utilizes that now stranded capacity on the Hydro One TS, it will no longer be stranded, and there will be no ability for Festival's ratepayers to be credited with a proportion of the bypass compensation that was paid.

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[18] Tr.1, p.47
[19]See J2.3, "It was moved by F. Mark, that Management enter into negotiations with Hydro One to permanently by-pass approximately 200 MW with the estimated cost of 1.2M, <u>and include this amount in the overall TS Capital cost as directed by KMPG</u> and was seconded by D. Delamere". [emphasis added]
[20] Tr.2, p.64
[21] Tr.2, p.67

3 OM&A

3.1 *OM&A Budget*

3.1.1 Festival is seeking approval of $5,156,282 in OM&A expense to be included in rates. This amount reflects an approximately 29% increase, since the Festival's last Board approved amount in 2010, or a 5.8% increase per year, an amount significantly above any reasonable metric such as inflation or inflation plus growth.[22]

3.1.2 SEC has reviewed a draft of Energy Probe's detailed submission on various approaches that the Board can use to determine a reasonable OM&A envelope amount for the test year. Any one of the approaches would be appropriate and would lead to "just and reasonable rates". An envelope approach is consistent with the outcomes based approach set out in the RRFE. SEC supports a reduction of $188,000 in the test year, which represents the midpoint between the two envelope approaches proposed by Energy Probe.

3.1.3 ***Efficiency Getting Worse***. Based on the Board's own stretch factor econometric benchmarking between 2010 and 2013, Festival was one of the more efficient distributors in the province, which measures actual to projected costs.[23] However, the Renewed Regulatory Framework for Electricity ("RRFE") demands that a distributor not just maintain an appropriate level of efficiency but that there be continuous improvement.[24]

3.1.4 Festival's past performance is contrasted with the Board's most recent econometric benchmarking analysis conducted by PEG in support of setting the stretch factor assignments for 4th Generation IRM. Under the new approach, Festival is the 7th least efficient distributor in Ontario.[25] While Festival is correct that the Board cannot compare directly the old method where it was always in the top cohort (OM&A only), to the new method (total cost), the Board can draw a conclusion that there is some drop in OM&A efficiency. It is unlikely that the entire change is a result of just the addition of capital costs.

3.1.5 Even if Festival's reasoning is correct, what the evidence demonstrates is that Festival's overall efficiency is very poor. The Board moved to total cost benchmarking so as to include all aspects of distributors' operations. Ratepayers are less interested in the specific line item increases in cost, but the overall level of costs which is what determines the rates they pay. Festival's evidence is that it expects it will take in the range of 10 years to get to the benchmark total cost. While SEC does agree with Festival that it will take longer to get to the benchmark

[22] *Ibid*
[23] K1.2, p.2-13
[24] *Ibid*
[25] K1.2, p.15

if the cause of the inefficiency as measured by actual versus predicted costs is based primarily on capital spending versus OM&A spending, the answer is not to do anything to resolve this problem through a reduction in OM&A spending. Since the Board is concerned with setting rates as a whole, it is not reasonable for ratepayers to wait 10 years for Festival to get to the benchmark[26], which would move up only one cohort.[27] Since the Board looks at efficiency on a total cost basis, Festival's growth in OM&A spending must be lower than may otherwise be appropriate to ensure that total costs, which are the basis of rates, are reasonable.

3.1.6 Further, the evidence does now show that Festival is not doing much to become *more* efficient. When asked, the only initiative Festival cited as an example of ways it was or is increasing efficiency was that it has not added to its headcount over the last five years.[28] While it was able to mention a number of ways it believed it demonstrated that it was efficient, such as benchmarking with other utilities in geographic proximity, it did not demonstrate actual initiatives to become more efficient.[29] Ratepayers and the Board expect their local distribution company to undertake productivity initiatives that are sustainable and can lead to long-term cost benefits. The evidence does not show that Festival has done so in the past, or will do so.

3.1.7 ***Compensation.*** SEC notes that the reliance on no growth in headcount as an efficiency or productivity initiative is misleading. As shown in the Appendix 2-K in response to 4-Staff-40, there has been a significant decrease in the level of compensation capitalized since 2013, and this continues into 2015. This suggests to SEC that while the headcount may have remained constant, it appears that with the continued decrease in capital expenditures in the test year and beyond, Festival in fact may have too many current employees, as the employees working on capital expenditures is greatly reduced.

3.1.8 Staffing levels are only part of the compensation cost equation. Average annual compensation per FTE has increased by 4.75% a year, three times the Ontario benchmark of 1.5% per year, determined by the Board.[30] SEC submits that some reduction is warranted to offset this. It is not reasonable for ratepayers to pay for Festival's compensation costs when growth is significantly above the Board's own benchmark.

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[26] Tr.1, p.66
[27] Festival is currently in the Group IV cohort. Group IV is defined as "Actual costs are within +/-10% of predicted costs 0.30%." See *Report of the Board: Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors* (EB-2010-0379), dated December 21 2013, p.2
[28] Tr.1, p.68
[29] Tr.1, p.68
[30] The Board adopted the benchmark labour input as the average weekly earnings for workers in Ontario. (See *Report of the Board: Rate Setting Parameters and Benchmarking under the Renewed Regulatory Framework for Ontario's Electricity Distributors* (EB-2010-0379), dated November 21 2013, p.7). For 2015 rates effective January 1st, 2015, the Board has calculated that amount to be 1.5%. (See http://www.ontarioenergyboard.ca/OEB/_images/images/2015_input_price_index_lg.gif)

4 ICM TRUE-UP

4.1.1 SEC agrees with Festival's approach true-up of its ICM Transformer Station as proposed, with the exception of recovery for any amount for O&M expense.

4.2 *O&M Costs*

4.2.1 Festival is seeking to recover a total of $244,815 incremental O&M costs related to the new TS that were incurred in 2013 and 2014. SEC submits that the Board should deny this request.

4.2.2 To allow recovery of these out of period expenses would amount to retroactive rate-making which is prohibited.[31] The O&M amounts that Festival recorded and seeks to recover were never meant to be included in the ICM variance account (Account 1508). Festival never mentioned incremental O&M costs during its original ICM application and never sought approval from the Board that such amounts could be recorded.[32]

4.2.3 The ICM and Account 1508 were never intended to include O&M costs. The purpose of the ICM is to allow a distributor, who has met certain criteria, to recover the incremental revenue requirement for capital that cannot be handled within its approved rates during the IRM term. It requires the capital expenditure to meet a threshold, which includes a dead band amount.[33] There is no such dead band amount for incremental O&M expenses or even an ability to include O&M costs in the Board's ICM work form. Further, the name Incremental Capital Module or the fact that no other distributors have recovered any non-capital related costs through one, should be a clear indication that such an approach is not appropriate.

4.2.4 Festival is relying on comments made in an email from Board Staff which unfortunately seems to leave the impression that the expectation is that incremental O&M should be recorded in Account 1508.[34] Ultimately, while Festival may have been relying on those comments in good faith, Board Staff's comments are not an order of the Board. It would be unfair for ratepayers to have to pay costs that would not have ordinarily been recoverable simply based on a mistake or, at the very least, a misunderstanding by Board Staff.

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[31] *Bell Canada v. Bell Aliant Regional Communications*, [2009] 2. S.C.R. 762 at 791-792
[32] Tr.1, p.86-87
[33] Supplemental Report of the Board on 3rd Generation Incentive Regulation for Ontario's Electricity Distributors (EB-2007-0673), dated September 17, 2008
[34] J1.5

5 RATE DESIGN

5.1 *GS>50*

5.1.1 Festival has proposed that the Monthly Service Charge be set at $227.57.[35] This amount is significantly above the Board's ceiling, the Customer unit cost per month – Minimum System with PLCC Adjustment Rate, for Festival at $64.55 per month.[36]

5.1.2 During questioning from the Board panel, Festival provided two central rationales for not lowering the GS>50 to the Board's ceiling, which it admits in/on its proposal, is significantly above that amount. [37]

5.1.3 First, Festival pointed to the issue of rate stability.[38] A large reduction in the fixed rate could cause large variations in year-over-year rates.[39] SEC accepts that this may be the case but should not be an absolute bar to ensuring customers that are on the lower end of the GS>50 demand spectrum, continually pay higher rates than they should. The answer is not to maintain the fixed charge, but to lower it to a level that balances the impacts with fairness to all GS>50 customers.

5.1.4 Second, Festival referenced the Board's consideration of revenue decoupling for residential and GS<50 customers and that, "it's out [sic] understanding that they may be looking at GS greater-than-50 sometime down the road."[40] SEC submits that the Board should not allow a distributor to set its fixed charge for one rate class, at a level higher than its own policy, on the basis that for other rate classes the Board is considering 100% fixed charges. While ultimately the Board may adopt one of the proposals in *Draft Report of the Board: Rate Design for Electricity Distributor* [41], it has not to date. And even if it does, it has to date, not proposed such an approach for other rate classes.

[35] Festival had originally proposed $253.49, but altered its proposal in response to 7-Staff-50.
[36] See Cost Allocation Study –Sheet 02, filed with the Proposed Partial Settlement Agreement.
[37] Tr.2, p.30
[38] Tr2, p.30
[39] Tr.2, p.30
[40] Tr.2, p.30
[41] *Draft Report of the Board: Rate Design for Electricity Distributors (EB-2012-0410)*, dated March 31, 2014

6 OTHER

6.1 *Costs*

6.1.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this proceeding. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible

All of which is respectfully submitted.

Original signed by

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Mark Rubenstein
Counsel for the School Energy Coalition