

ONTARIO ENERGY BOARD

EB-2019-0261

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

AND IN THE MATTER OF an application by Hydro Ottawa Limited for rates from January 1, 2021 to December 31, 2025.

Submissions of Environmental Defence

Re Hydro Ottawa's Fixed Rates Over 2021 to 2025

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Introduction

These submissions concern the fixed monthly charges that Hydro Ottawa is seeking to levy on its commercial and industrial customers in its over 50 kW rate classes. These charges are many, many times above the Board’s ceiling and inconsistent with cost causality and economic efficiency. For example, Hydro Ottawa proposes large user fixed charges that are **over 32 times** the Board’s ceiling. The variance for each rate class is detailed in the table below.

Hydro Ottawa’s Fixed Rates vs. the Board Ceiling (2021) ¹			
Rate Class	Board Ceiling	Proposed Rate	Variance vs. Board Ceiling
50-1,499 kW	\$76.46	\$200.00	162%
1,500-4,999 kW	\$370.17	\$4,193.93	1,033%
Large User	\$455.91	\$15,231.32	3,241%

¹ Hydro Ottawa Argument-In-Chief, October 13, 2020, pp. 8-9.

Environmental Defence asks the Board to direct Hydro Ottawa to begin lowering its fixed charges to better align with the principles of cost causality and economic efficiency. This would result in the following positive benefits to energy consumers:

1. **Increase Fairness:** Moving costs from fixed to variable rates will increase fairness and consistency with cost causality by preventing lower-demand customers from being overcharged and by linking charges to the actual drivers of distribution costs.
2. **Lower Energy Bills:** Moving costs from fixed to variable rates would also incentivize positive customer behaviour such as greater energy efficiency, shifting load off the peak, and pursuit of distributed energy resources. These will lower peak demand, which drives distribution, transmission, and generation capacity costs. Over time, this will lower total system costs and lower energy bills.
3. **Lower Carbon Emissions:** Greater efficiency and load shifting will lower carbon emissions by reducing Ontario's reliance on gas peaking plants.
4. **Increase Consistency with Board Directions:** A move from fixed to variable rates would increase consistency with the Board's cost allocation methodology.

Although the Board's guidelines do not direct utilities to come within the fixed rate ceiling immediately, that does not give utilities carte blanche to disregard the Board's cost allocation methodology and remain over 3,200% of the ceiling indefinitely. The Board's guidelines do not condone, authorize, or promote rates that are inconsistent with economic efficiency and cost causality. Hydro Ottawa should rationalize its fixed rates and ensure they are consistent with these fundamental principles.

Cost Causality and Fairness

Hydro Ottawa's current fixed charges are totally inconsistent with the principle of cost causality. When the Board developed the current cost allocation methodology, the "primary criterion" was "to follow sound cost causality."² This was the primary consideration when the Board set a lower and upper end for fixed rates.³ When Hydro Ottawa's rates are 32 times the Board's ceiling, they are 32 times the amount that the Board found is the reasonable upper bound for a fixed rate consistent with cost causation. Hydro Ottawa's rates are not only outside the reasonable band for rates consistent with cost causation, they are extremely far outside this band.

Hydro Ottawa argues that "[t]he modeled scenarios in the OEB Cost Allocation Model ... do not, in Hydro Ottawa's view, adequately account for all customer-related costs."⁴ Hydro Ottawa first made this assertion in argument and provided no evidence to either challenge the OEB model or support an alternative model. It makes bald assertions about cost allocation for the first time in

² EB-2005-0317, *Board Directions on Cost Allocation Methodology For Electricity Distributors*, Cost Allocation Review, September 29, 2006, p. 3 ([link](#)).

³ *Ibid.* p. 104-105.

⁴ Hydro Ottawa Argument-In-Chief, October 13, 2020, para. 24.

its submissions, which intervenors have had not opportunity to probe through interrogatories or a technical conference. These assertions should be disregarded.

However, even if the additional items suggested by Hydro Ottawa were included in the calculation of the fixed rate ceiling for large use customers, this would bring the ceiling to \$4,955.91,⁵ which is still far lower than its proposed rate of \$15,231.32. Even by Hydro Ottawa's own numbers, its proposed rates are inconsistent with cost causality.

As a result, the proposed rates are unfair to customers with lower electricity demand (compared to peers in their rate class). These customers are paying more than their fair share and are subsidizing higher-demand customers within the same rate class. In some cases they are subsidizing their competitors.

This unfairness is particularly concerning because it negatively impacts customers who have made efforts to reduce their demand through energy efficiency or load shifting. These customers are not adequately compensated for the benefits they provide to the distribution system. This is not fair.

Economic Efficiency and Lower Energy Bills

Moving costs from fixed to variable rates would lower energy bills by incentivizing positive customer behaviour such as:

- Increasing energy efficiency;
- Shifting load off the peak; and
- Pursuing distributed energy resources.

Each of these items will lower peak demand, which will in turn lower electricity system costs driven by peak demand, including distribution, transmission, and generation capacity costs.

Hydro Ottawa may argue that the fixed/variable split is irrelevant to customer decisions relating to energy efficiency and load shifting because it relates only to a portion of a customer's overall electricity bill. However, bringing the fixed charges down to the ceiling would re-allocate over \$50 million from fixed to variable rates.⁶ Bringing them down to the floor would re-allocate over \$62 million.⁷ This is sufficient, on the margin, to impact decisions by savvy commercial and industrial customers.

⁵ Hydro Ottawa Argument-In-Chief, October 13, 2020, para. 25 (Hydro Ottawa identified \$4,700 in additional costs not captured by the OEB model. The ceiling according to the OEB model is \$455.91.).

⁶ Undertaking TC-JT 3.21 ([link](#)).

⁷ *Ibid.*

Forecast Revenue from Proposed Fixed Charges versus OEB Ceiling and Floor (2021-2025) ⁸					
	GS 50 to 1,499 kW	GS 1,500 to 4,999 kW	Large Use	Total	Variance from Proposed Rates
HOL Proposed	\$40,292,000	\$17,812,000	\$10,371,000	\$68,475,000	
Floor (Avoidable Cost)	\$5,343,000	\$300,000	\$20,000	\$5,663,000	\$62,812,000
Floor (Directly Related)	\$9,024,000	\$512,000	\$59,000	\$9,595,000	\$58,880,000
Ceiling (Min. System with PLCC Adj.)	\$15,785,000	\$1,639,000	\$334,000	\$17,758,000	\$50,717,000

Furthermore, the difference in rates will be multiplied over the lifetime of a proposed project. A relatively small change in variable rates could have a significant impact on an economic analysis of, say, a proposed new storage asset that might have a 20-year lifetime or more efficient construction methods, which could have an even longer lifetime.

On a practical level, every little bit has the potential to help. For example, a third party provider of storage or energy efficiency solutions can make a better case to prospective customers if the forecast savings from their proposed project will be higher due to higher variable rates.

On a principled level, rates should send economically efficient price signals linked to the drivers of distribution costs. It is always the case that price signals only change behaviour at the margin. The same is true in other cases, such as carbon pricing. Even though a carbon price is a small portion of overall energy costs and in many cases will not affect decision-making, it nevertheless has an overall impact. The fact that fixed distribution rates are only a portion of overall energy costs is no reason to disregard the principle of economic efficiency and allow distribution rates to diverge from distribution cost drivers.

Lower Carbon Emissions

As noted above, shifting costs from fixed to variable rates will incentivize energy efficiency and efforts to shift load off the peak. This will help to reduce carbon emissions, particularly when load is shifted from the times of peak demand when Ontario's gas-fired peaking plants operate.⁹

⁸ *Ibid.*

⁹ IESO, *Annual Planning Outlook*, January 2020 ([link](#)).

This is important now because the carbon intensity of electricity is slated to increase considerably in coming years due to increased gas-fired electricity generation.¹⁰

Appropriate rate design is the cheapest form of conservation and demand management (CDM). Ontario spends hundreds of millions of dollars to implement CDM programs to incentivize positive customer behaviour. Rate design can incentivize the same behaviour at zero cost by re-allocating costs from fixed to variable rates. Excessive fixed rates are a missed opportunity to pursue “free” CDM program and achieve carbon reductions at no net cost to ratepayers.

Rationalize Rate Design

In addition to being inconsistent with cost causality and economic efficiency, the proposed fixed rates are irrational as they are not based on any logical methodology. Environmental Defence made numerous attempts to discern the basis of these rates. In short, the current charges are best described as being based on historical values dating back prior to 2007, the basis of which is unknown.¹¹ Hydro Ottawa acknowledges that it prepared a Cost Allocation Study in 2006 but that it ultimately did not use it as the basis to establish the fixed portion of any of the commercial rates.¹²

This is not a case of competing cost allocation methodologies. The proposal is to set fixed rates without any rational methodological basis. That is not sound rate making.

Consistency with Board Directions

Lowering the fixed charges would be more consistent with the Board’s directions. The 2006 *Board Directions on Cost Allocation Methodology for Electricity Distributors* clearly states that “[t]he reasonable upper end unit cost per customer per month will be determined by the customer-related costs allocated using the generic stratified minimum system results and adjusted for PLCC.”¹³ Lower fixed rates would better accord with this direction.

A November 28, 2007 Board report noted that utilities would not be required at that time to bring their rates down to the ceiling. However, the Board did not intend to give utilities carte blanche to disregard the Board’s cost allocation methodology and remain over 3,200% of the ceiling indefinitely. The full excerpt of this comment makes this clear:

The Methodology set a ceiling for the MSC based on the avoided costs plus the allocated customer costs. The Discussion Paper proposed that the ceiling for the MSC be 120% of

¹⁰ *Ibid.* at p. 32.

¹¹ IRR ED-5(i) ([link](#)); Technical Conference Transcript, July 17, 2020, p. 126, lns. 14-24 ([link](#)).

¹² Hydro Ottawa Argument-In-Chief, October 13, 2020, paras. 15-16.

¹³ EB-2005-0317, *Board Directions on Cost Allocation Methodology For Electricity Distributors*, Cost Allocation Review, September 29, 2006, p. 105 ([link](#)).

this level. Some participants believed that the results of the sensitivity analysis were not an appropriate basis for setting an upper bound.

The Board considers it to be inappropriate to make significant changes to the ceiling for the MSC at this time, given the number of issues that remain to be examined. The appropriateness of the methodologies cited above, used to set the MSC is an issue that will be examined within the scope of the Rate Review. The Rate Review will also examine the role of rate design in achieving various objectives, including conservation of energy. Both of these undertakings will have determinative impacts on the fixed/variable ratio policy.

In the interim, the Board does not expect distributors to make changes to the MSC that result in a charge that is greater than the ceiling as defined in the Methodology for the MSC. Distributors that are currently above this value are not required to make changes to their current MSC to bring it to or below this level *at this time*.¹⁴

There are two important implications. First, the question for the Board was whether to agree with the recommendation by Board Staff that “the upper end of the range should be 20% above the ceiling.”¹⁵ There was no question that a rate that is over 3,200% higher than the ceiling is inappropriate.

Second, the Board merely said back in 2007 that distributors would not be required to bring fixed rates all the way down to the ceiling. It *did not* condone the indefinite continuation of fixed rates that are extremely far out of line with cost causality, economic efficiency, and its cost allocation methodology.¹⁶ Hydro Ottawa is correct in saying that “no further direction has been issued by the OEB” since this time.¹⁷ However, it has misinterpreted that direction as approval of status quo fixed rates regardless of how high they are and for an indefinite period. It is very different to say (a) the Board will not require utilities to come down to the ceiling versus (b) the Board will allow unreasonably high fixed rates to be maintained indefinitely.

Hydro Ottawa is also correct in noting that the direction from the 2007 report is reflected in the latest *Filing Requirements for Electricity Distribution Rate Applications*.¹⁸ But again, this direction does not condone the kinds of unreasonable fixed rates proposed in this case. Also, the filing requirements are not issued by a Board panel in a proceeding and there is no evidence that this specific issue was actually considered in preparing the latest filing requirements.

¹⁴ EB-2007-0667, Application of Cost Allocation for Electricity Distributors, Report of the Board, November 28, 2007, p. 12-13 (emphasis added) ([link](#)).

¹⁵ EB-2007-0667, Board Staff Discussion Paper, On the implications arising from a review of the electricity distributors’ cost allocation filings, June 28, 2007, p. 29 ([link](#)).

¹⁶ EB-2007-0667, Application of Cost Allocation for Electricity Distributors, Report of the Board, November 28, 2007, p. 13 ([link](#)).

¹⁷ Hydro Ottawa Argument-In-Chief, October 13, 2020, para. 17.

¹⁸ Filing Requirements For Electricity Distribution Rate Applications - 2020 Edition for 2021 Rate Applications - Chapter 2, Cost of Service, May 14, 2020, p. 54.

Regardless, even if there were a guideline or Board report stating that utilities can maintain fixed costs at over 3,200% of the Board ceiling (which is disputed), the Divisional Court has ruled that “guidelines are not binding on any party, as they are not orders of the Board.”¹⁹ The Board has also issued orders in proceedings that overrule past guidelines where it has been shown on the evidence to be warranted.²⁰ That is not necessary here, but if it were, it would be warranted.

Hydro Ottawa seems to suggest that the Board’s hands are tied and that it must allow fixed rates over 32 times the Board’s ceiling because of previous comments reflected in *Filing Requirements*. That is not the case. On the contrary, the Board’s obligation is to make a decision based on the evidence that furthers its statutory objectives, including the protection of electricity consumer interests. Those interests would be furthered by affirming the principles of cost causality and economic efficiency through a reduction in Hydro Ottawa’s fixed rates.

Increasing Unfairness and Inefficiency

As noted above, the Board has held that utilities cannot increase fixed charges that are above the ceiling.²¹ However, Hydro Ottawa has already done that and intends to do so again over 2021-2025. For example, its GS 1,500 to 4,999 kW rates have increased from \$3,979.63 to \$4,193.93 between 2007 and 2020 and its large user rates have increased from \$14,448.42 to \$15,231.32 over the same period.²² Hydro Ottawa also intends to increase its fixed rates through the IRM process from 2022 to 2025.

Furthermore, the *gap* between its fixed rates and the board ceiling is growing considerably from 2020 to 2021 because of decreases in the customer-related costs included in the Board-mandated calculation of the ceiling.

Increasing Variance Between Hydro Ottawa Fixed Rates and the Board Ceiling²³			
Rate Class	Variance from Board Ceiling (2020)	Variance from Board Ceiling (2021)	Increase in % Variance 2020 to 2021
50-1,499 kW	101%	162%	61%
1,500-4,999 kW	672%	1,033%	361%
Large User	2,929%	3,241%	312%

¹⁹ *Pollution Probe Foundation v. Ontario Energy Board*, 2012 ONSC 3206, at para. 4 ([link](#)).

²⁰ EB-2015-0029 / EB-2015-0049, Decision and Order, January 20, 2016, pp. 48-52 ([link](#)).

²¹ EB-2007-0667, Application of Cost Allocation for Electricity Distributors, Report of the Board, November 28, 2007, p. 12-13 ([link](#)).

²² Undertaking TC-JT 3.20 ([link](#)).

²³ Hydro Ottawa Argument-In-Chief, October 13, 2020, pp. 8-9.

Therefore, the proposed rates bring customers even farther from cost causality and economic efficiency, resulting in greater levels of unfairness and inefficiency.

Residential Rate Design: It Is Different

Hydro Ottawa argues that the Board’s decision to move to fully fixed rates for residential customers is an implicit approval of high or full fixed rates for commercial and industrial customers. This is not a valid comparison. In its residential rate design report, the Board rejected demand charges for residential customers because they “have little understanding of how electricity is measured” and “do not yet have a good understanding of what is meant by a kilowatt hour.”²⁴ Therefore, distribution rates do not act as a clear price signal for residential customers. In contrast, commercial and industrial customers are charged based on demand and many actively manage their demand to reduce electricity costs.²⁵

Furthermore, the Board is currently undergoing a renewal process. The Board’s views should not be presupposed while this process is ongoing.

Commercial and Industrial Rate Design Proceeding: No Need to Wait

Hydro Ottawa argues that the issue of high fixed rates exists across the sector and should be addressed in a generic proceeding as part of the Commercial and Industrial Rate Design consultation.²⁶ However, there is no need to wait. Hydro Ottawa’s customers should not be locked into another five years of excessive fixed rates which misallocate over \$50 million of costs and unfairly burden lower-demand customers. The Board created a cost allocation methodology 14 years ago.²⁷ Hydro Ottawa should begin to lower its fixed rates now, not wait for another generic hearing.

Furthermore, the fixed charge issue is no longer included in the commercial and industrial rate design proceeding. This issue was raised in the March 31, 2016 Staff Discussion Paper in that process.²⁸ Many consumers supported reining in fixed rates as initially proposed.²⁹ LDCs did not. Unfortunately, the topic appears to have been removed from the consultation and is completely absent from the 2019 Staff Report to the Board.³⁰ If this issue is deferred to a generic proceeding, it may fall by the wayside again or not be addressed for a very long time.

²⁴ EB-2012-0410, Board Policy, *A New Distribution Rate Design for Residential Electricity Customers*, April 2, 2015, p. 22.

²⁵ EB-2015-0043, Staff Discussion Paper, Rate Design for Commercial and Industrial Electricity Customers: Aligning the Interests of Customers and Distributors, March 31, 2016.

²⁶ Hydro Ottawa Argument-In-Chief, October 13, 2020, para. 38.

²⁷ EB-2005-0317, *Board Directions on Cost Allocation Methodology For Electricity Distributors*, Cost Allocation Review, September 29, 2006 ([link](#)).

²⁸ EB-2015-0043, Staff Discussion Paper, March 31, 2016, p. 8.

²⁹ E.g. EB-2015-0043, AMPCO Comments, May 27, 2016, pp. 7-8.

³⁰ EB-2015-0043, Staff Report to the Board, February 21, 2019.

Hydro Ottawa's current comments are reminiscent of the justification it used in 2007 to decline to follow its own Cost Allocation Study with respect to fixed rates. It said that the "determination of the fixed charges is a rate design issue that is best reviewed as part of the Board's proceeding EB-2007-0031."³¹ That did not occur and Hydro Ottawa's fixed rates today remain far above the ceiling and somewhat higher than they were in 2007.³² If progress does not begin now in this proceeding, we could see another 14 years of unjust and unreasonable fixed rates.

Support from Consumers

Consumer groups consistently support efforts to limit fixed rates in accordance with cost causality and economic efficiency.³³ Take for example, the following comments made by the Association of Major Power Consumers of Ontario:

"Over the last few years, for many distributors and classes, the current fixed charge has been set to the OEB's Cost Allocation Model Minimum System with Peak Load Carrying Capacity (PLCC) adjustment. However, for Large customers, the fixed rate was in most cases set significantly higher than the Cost Allocation Model Minimum System with PLCC adjustment, based on limited analysis. In AMPCO's view, the large spread in fixed costs for Large customers is indicative of inconsistencies between distributors in determining fixed costs."³⁴

AMPCO supports reducing fixed charges as this "appropriately reflects direct customer costs and better aligns with the principle that the rate design should match the cost drivers."³⁵

It is only LDCs that oppose lower fixed charges. However, the OEB's mandate is to protect the interests of consumers. Furthermore, LDC concerns can be adequately addressed.

LDC Risk and Cost Recovery

LDC's have long opposed lowering their fixed rates because "a low Monthly Fixed Service Charge for larger customers can leave the distributor open to increased risk if the expected load does not materialize."³⁶ If costs are moved from fixed to variable rates they become open to forecast variance risk. That may be true. However, utilities are compensated for this risk through their rate of return. Furthermore, the utilities are currently being overcompensated for demand forecasting risk because their rate of return has not been updated to reflect the fact that they face

³¹ EB-2007-0713, Exhibit H1, Tab 1, Schedule 1, Filed: 2007-09-18, Page 2.

³² Undertaking TC-JT 3.20 ([link](#)).

³³ See for example, the comments in EB-2015-0043 ([link](#)).

³⁴ EB-2015-0043, AMPCO Comments, May 27, 2016, pp. 7-8 ([link](#)).

³⁵ *Ibid.*, p. 8.

³⁶ EB-2007-0713, Exhibit H1, Tab 1, Schedule 1, Attachment, p. 7.

less forecasting risk with the shift to fully fixed rates for residential customers.³⁷ Requiring lower fixed rates for commercial and industrial customers is not at all unfair to LDCs.

Even if we are wrong and there is an element of unfairness associated with forecasting risk, that is best dealt with through other means, such as a true-up. A report commissioned by the Board noted a number of important benefits of a true-up over fixed rates as methods to address demand forecasting risk.³⁸ In short, there are better ways to address forecasting risks that do not involve excessive fixed rates that contradict the principles of cost causality and economic efficiency. Regardless, as noted above, the cost recovery issue is a non-issue at present because utilities are already being overcompensated for the risks they are currently incurring.

Request

As noted above, Environmental Defence asks the Board to direct Hydro Ottawa to begin lowering its fixed charges to bring them more in line with the principles of cost causality and economic efficiency. We have not specifically asked that these rates be brought to the ceiling. Nor have we suggested specific rates. At this stage, Environmental Defence is simply asking that the rates begin moving in the right direction: downwards, and closer to a level that is consistent with cost causality, economic efficiency, and sound rate-making.

³⁷ EB-2012-0410, Board Policy, *A New Distribution Rate Design for Residential Electricity Customers*, April 2, 2015, p. 21.

³⁸ EB-2010-0060, Pacific Economics Group Research LLC, *Review Of Distribution Revenue Decoupling Mechanisms*, March 19, 2010, prepared for the OEB, pp. 4-6, & 30 (In comparison to a true-up, the fixed rate option “can raise bills for small volume customers and limits the opportunity for the design of base rates to support broader energy efficiency, peak load management, and distributed generation goals.”) ([link](#)).