

February 13, 2026

Registrar  
Ontario Energy Board  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4

**Re: Spending Pattern Analysis Consultation (EB-2025-0108)**

Dear Registrar,

I am pleased to submit comments on the Ontario Energy Board's Spending Pattern Analysis and its implications for distributor regulation.

My comments draw on extensive experience in electricity distribution, regulatory affairs, and cost of service processes. The observations in the Spending Pattern Analysis are significant and merit careful consideration. However, I believe the underlying drivers of observed spending patterns are more structural and process-based than the analysis may suggest.

The attached submission explores how regulatory design, organizational constraints, and governance evolution interact to shape distributor behaviour. My hope is that these perspectives contribute constructively to the Board's ongoing consideration of rate framework design and the Next Generation Rate Framework initiative.

I appreciate the opportunity to participate in this consultation and remain available should the Board require any clarification or additional information.

Respectfully submitted,

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**Ontario Energy Board**  
**Spending Pattern Analysis Consultation**  
**EB-2025-0108**  
**Stakeholder Submission**

*February 11, 2026*

## **1. Introduction**

This submission provides comments on the Ontario Energy Board's Spending Pattern Analysis Report (the "SPA Report") as prepared by Pacific Economics Group and its interpretation of observed distributor spending behaviours. The analysis raises important questions about how incentive regulation, cost of service processes, and organizational structures influence spending outcomes.

The observations identified in the SPA Report are real and worthy of examination. The report correctly identifies variations in capital and operating expenditure patterns across distributors, particularly in relation to rebasing cycles and organizational scale. However, this submission suggests that the underlying drivers of those patterns may be more structural and process-based than the analysis implies.

In particular, observed spending behaviour should be understood in the context of:

- the design and intensity of the cost of service process,
- organizational capacity constraints, particularly for smaller distributors,
- adversarial dynamics inherent in rate proceedings,
- the evolution of distributor governance models, and
  
- synchronized asset replacement cycles that create legitimate spending waves independent of strategic behaviour.

Recognizing these factors is essential to ensuring that SPA findings inform future regulatory frameworks constructively and do not result in unintended consequences for system performance, investment adequacy, or customer value.

## **2. Use of Actual Data and Interpretation Risk**

The Spending Pattern Analysis appropriately relies on actual, after-the-fact data reported through the OEB's Regulatory Reporting Requirements (RRR), rather than

applied-for or approved cost of service values. This provides a strong empirical foundation and avoids distortions associated with forecasting and settlement outcomes.

However, while the data reflects actual spending, those outcomes remain downstream of regulatory processes and incentives. Actual expenditures are shaped by regulatory workload cycles, risk management strategies, settlement patterns, and organizational constraints that originate well before spending decisions are executed. As a result, caution is warranted in attributing observed patterns solely to incentive regulation effects or strategic gaming behaviour.

The SPA Report acknowledges some of these complexities but may underestimate the extent to which process design and external constraints drive observed outcomes, particularly for smaller distributors with limited management and technical resources.

### **3. Cost of Service Cycles and Organizational Focus**

A full cost of service application represents a significant draw on distributor management and staff resources. Preparing a cost of service filing requires sustained focus across finance, engineering, operations, and executive leadership for periods extending twelve to eighteen months. As rebasing approaches, organizational attention necessarily shifts toward regulatory preparation, data validation, evidentiary support, and proceeding management.

In contrast, during intervening years between cost of service applications, distributors are more able to focus on day-to-day operations, system reliability, customer service, and execution of planned initiatives. This cyclical shift in organizational focus can influence the timing and pacing of spending, independent of any incentive to defer or accelerate expenditures for strategic advantage.

The SPA Report notes variations in spending patterns but does not fully account for how regulatory workload intensity affects organizational capacity to execute capital programs simultaneously with regulatory proceeding management. For smaller distributors with limited staff depth, this constraint is particularly acute.

Observed variations in spending across a rate term may therefore reflect regulatory workload cycles and resource reallocation rather than discretionary behaviour or strategic rate manipulation.

### **4. Adversarial Structure and Predictable Behaviour**

The cost of service process operates within an inherently adversarial framework. Distributors, intervenors, and the Board each play established roles:

- Distributors understand that filed costs and forecasts will be challenged and adjusted through interrogatories, argument, and settlement discussions. They manage regulatory risk by filing conservatively on volumes and comprehensively on costs.

- Intervenors are incented to push costs downward and volumes upward, often proposing reductions to staffing, capital programs, and operational budgets.
- The Board functions as arbiter and balancer between competing positions, often settling on intermediate values through negotiated settlement or decision.

Over repeated applications, this dynamic produces predictable, rational behaviour patterns. Distributors learn from experience how filed amounts translate to approved amounts. They adjust filing strategies accordingly. The resulting settlement pattern—where approved spending systematically falls below requested levels—creates baseline constraints that compound across subsequent rate terms.

These outcomes should be understood as emergent properties of the regulatory design rather than evidence of distributor inefficiency or misaligned intent. The SPA Report references incentive structures but may not fully account for how adversarial process mechanics shape long-term spending capability.

## **5. Efficiency Expectations and the Role of Investment**

Incentive regulation assumes that distributors will generate efficiencies between cost of service applications. The stretch factor mechanism embedded in Price Cap IR explicitly expects productivity improvements. However, in practice, many operational efficiencies require upfront investment in systems, processes, automation, and workforce capability.

Where spending is constrained—either through settlement outcomes, regulatory risk management, or rate impact considerations—the investments needed to unlock future efficiencies may be deferred. This creates a paradox: the framework expects efficiency gains while potentially constraining the very investments required to achieve them.

As a result, expected productivity gains may not materialize—not due to lack of intent, but because the enabling investments are difficult to advance within existing rate constraints. Pushing spending downward without recognizing this dynamic risks suppressing transformation investments and perpetuating inefficient operational models.

## **6. Synchronized Asset Replacement and Spending Waves**

The SPA Report identifies variations in capital spending patterns, including late-term increases for some distributors. While the report frames these as potential responses to regulatory incentives, an equally plausible explanation involves synchronized asset replacement cycles.

A clear example is Ontario's Smart Metering Initiative. Following the Minister of Energy's directive in July 2004, the Ontario Energy Board mandated that all electricity distributors install smart meters—800,000 by December 2007 and complete province-wide deployment by December 2010. By 2012, approximately 4.8 million smart meters had been installed across 73 distribution companies at a total sector cost exceeding \$1.4

billion. This was not a utility choice but a government-mandated program with specific timelines and universal participation requirements.

Smart meters typically have a 15 to 20 year operational lifespan. Given the concentrated deployment period of 2007-2012, the sector is now experiencing—or will shortly experience—a synchronized replacement wave affecting all distributors simultaneously. For a small distributor with 15,000 to 30,000 meters installed during a compressed 24-month window, the replacement program cannot be smoothed or phased significantly. The spending increase is not discretionary or strategic—it is the predictable consequence of mandated infrastructure reaching synchronized end-of-life.

Similar dynamics exist for other infrastructure categories. Distribution automation equipment deployed during grid modernization initiatives, transformer replacements driven by regulatory mandates, and communications infrastructure supporting advanced metering all exhibit synchronized aging characteristics. Where government policy or regulatory direction drove coordinated sector-wide investment, synchronized replacement needs are the unavoidable result.

Failure to distinguish between legitimate synchronized replacement and strategic rate manipulation risks penalizing prudent asset management and creating reliability and compliance risks.

## **7. Governance Model Evolution and Behavioural Change**

Ontario's regulatory framework was developed during a period when utilities operated primarily as not-for-profit, public-service entities. Under that model, organizational purpose and regulatory objectives were closely aligned, and long-term system stewardship dominated decision-making.

As distributors transitioned to corporatized and, in many cases, for-profit governance structures, leadership responsibilities and fiduciary obligations evolved. Modern distributor management must now balance system performance, financial stability, credit metrics, dividend expectations, and regulatory risk. This evolution naturally influences decision-making behaviour, investment timing, and risk tolerance.

Observed spending patterns may therefore reflect this structural shift in governance rather than shortcomings in regulatory compliance or intent. Any future framework should recognize how organizational form interacts with regulatory design and whether incentive mechanisms remain appropriately calibrated to contemporary governance realities.

## **8. Applicability Across Regulatory Models**

The SPA Report focuses primarily on Price Cap IR frameworks, though similar dynamics can exist under Custom Incentive Rate structures. While Custom IR can smooth spending profiles and provide certainty for approved initiatives, organizational

behaviour continues to respond to regulatory structure, risk exposure, and reporting requirements.

Spending tends to align with protected or pre-approved activities, while discretionary or transformational investments may still be deferred if not explicitly sanctioned. This suggests that observed behaviours are structural in nature and persist across regulatory models, albeit with different manifestations.

## **9. Capitalization Policy and Mid-Term Changes**

The SPA Report appropriately highlights concerns regarding mid-term capitalization policy changes, particularly for asset repair and field work. Changes in capitalization policies during a multi-year rate plan can shift costs between rate terms and affect customer equity.

However, some capitalization evolution may reflect legitimate responses to accounting standard changes, operational transformation, or improved cost tracking capabilities rather than strategic earnings management. The challenge lies in distinguishing between necessary policy refinement and inappropriate rate manipulation.

The Board's proposal to require notification and potentially compensate customers for detrimental mid-term changes represents a balanced approach that protects customer interests while preserving necessary operational flexibility.

## **10. Implications for Future Framework Design**

The Spending Pattern Analysis provides valuable insight into how current frameworks influence distributor behaviour. However, care should be taken to avoid over-correcting through tighter controls or increased scrutiny alone. Behavioural patterns are more likely to change through adjustments to process design, information flow, and investment enablement than through incremental changes to incentive strength.

The SPA Report proposes several remedies, including enhanced scrutiny during rebasing, use of multiple historical reference years, and efficiency carryover mechanisms. These merit consideration, but implementation should account for:

- Proportionality for smaller distributors with limited analytical resources,
- Accommodation of legitimate synchronized replacement cycles,
- Recognition that regulatory burden growth itself constrains operational capacity, and
- The importance of distinguishing between strategic gaming and operational reality.

Future regulatory frameworks, including the Next Generation Rate Framework, should consider:

- reducing the disruptive intensity of episodic rebasing,

- supporting investment-enabled efficiency rather than efficiency by constraint,
- aligning regulatory expectations with modern organizational governance realities, and
- recognizing that systematic under-settlement creates baseline constraints that compound over time.

## **11. Conclusion**

The SPA Report correctly identifies observable spending patterns across the electricity distribution sector and raises important questions about framework design. The analysis provides valuable empirical foundation for ongoing regulatory evolution.

However, those patterns should be interpreted as outcomes of regulatory design, organizational structure, human behaviour, and legitimate operational constraints rather than predominantly as evidence of strategic gaming or misaligned incentives.

Recognizing these structural drivers will help ensure that SPA findings inform regulatory evolution in a way that supports sustainable system performance, prudent investment, operational excellence, and long-term customer value—without inadvertently constraining the very capabilities the sector requires to meet emerging challenges.