

**ONTARIO ENERGY BOARD**

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

**AND IN THE MATTER OF** the preparation of handbook for electricity  
distribution rate applications.

**Reply Argument of Rogers Cable Communications Inc. and the Canadian  
Cable Telecommunications Association**

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1. Rogers Cable Communications Inc. ("Rogers") and the Canadian Cable Telecommunications Association (the "CCTA") have limited their participation in the RP-2004-0188 proceeding to one issue: the distribution rates applicable to unmetered scattered load ("USL") customers. Consensus was reached on this issue through the rigorous processes mandated by the Board and is set out in section 10.2 of the 2006 Draft Electricity Distribution Rate Handbook (the "Draft Handbook").
2. Rogers and the CCTA submit that an examination of all evidence and submissions now before the Board strongly supports the Board's acceptance and approval of the USL consensus as written in section 10.2 of the Draft Handbook.
3. First, the consensus is a result of a Board decision and a rigorous and inclusive process which supports the Board's unconditional approval of the interim consensus on USL, as set out in section 10.2 of the Draft Handbook.
4. Second, Board approval of the USL consensus was supported by all participating members of the Working Group (Rate Design and Cost Allocation Sub-Group, Chapters 4 and 5, Cost Allocation and Distribution Rate Design) and the overseeing Executive Committees (the Rate Design and Cost Allocation Executive Group and the Rate Base and Revenue Requirement Executive Group), and is also supported by numerous stakeholders in their final argument.

**(i) The Extensive Board Process Leading to the Consensus**

5. In the process of considering 2006 electricity distribution rates, the Board and its staff were faced with the unyielding task of seeking out, hearing, and considering the views of greater than one hundred stakeholder interests before finalizing the Distribution Rate Handbook, which will govern distribution rate applications for over ninety local distribution companies ("LDCs").
6. The Board and its staff proceeded to manage this task through a unique and very involved process whereby interested stakeholders were charged with participating responsibly through working groups and executive committees in order to discuss, define, negotiate, narrow and, where possible, resolve the many issues that would otherwise need to be

decided by the Board through the hearing process. The full process mandated by the Board and followed by stakeholders in relation to the USL issue is set out in the Final Argument of Rogers and the CCTA at paragraphs 13-17 and in Exhibit D.2.3, Tab 1, paragraph 11.

7. Rogers and the CCTA participated in the full Board-mandated process in order to address the long-standing issue of the inexplicable and unsupported variance in the distribution rates charged to USL customers by Ontario LDCs. Specifically, the uncontroverted evidence is that there is a 40-fold difference in the fixed rates charged by LDCs to USL customers in Ontario (Exhibit D.2.3, tab 1, para 4).
8. On Issues Day, the Board ruled that the variance in USL rates was significant and pressing enough to warrant an interim solution in the Rate Handbook prior to the proposed 2007 cost allocation study. Despite having no involvement on the USL issue prior to final argument, London Property Management Association ("LPMA") is now attempting to challenge the Board's Issues Day decision (the "Issues Day Decision") on USL and advocating delay until completion of the cost allocation study.
9. Rogers and the CCTA submit that not only is the suggested delay contrary to the Issues Day Decision, but such a delay would squander the time and resources that all parties, participating responsibly and in good faith, have invested in the extensive process to arrive at the consensus set out in section 10.2 of the Draft Handbook. The Board's current course of action to facilitate the interim USL solution, as set out in the Issues Day Decision, is therefore clearly the path that is most consistent with the Board's objectives to facilitate efficiency in electricity as set out in section 2 of the *Ontario Energy Board Act, 1998*, as amended.
10. The Schools Energy Coalition ("SEC") also appears to have deviated from the Working Group/Settlement process stipulated by the Board. After agreeing to the consensus, as written in section 10.2 of the Draft Handbook, SEC attempted to have the Board impose conditions that were clearly discussed and rejected as part of the Working Group Process (Transcript, volume 2, lines 253-256, 290-296, Final Argument of SEC at p.53 para. 253). Rogers and the CCTA submit that such conduct is not consistent with the

procedural conventions and deference that is afforded to the Board's negotiation/settlement processes, and which were relied upon by SEC to limit disclosure.

*MR. SHEPHERD: Mr. Chairman, I'm sorry to interrupt, but I'm starting to get a little concerned with the level of detail we're going into for what was, although not formally a ADR process, clearly a process in which people were negotiating with each other. And the Board's normal practise is that those discussions, at least not in detail, are not put forward to the decision makers. Those discussions are discussions that we have amongst ourselves and we come with the consensus.*

*Now, I understand what my friend is trying to do here in stating how difficult it was to get the consensus and how broad the consensus was. I don't have a problem with that and we're part of it, but I think, as sort of a matter of general principle, once you start talking about who was there, the next thing presumably is what people said. And I think I'm a little uncomfortable with that and I would raise that concern to the Board. (Transcript, volume 2, lines 131-135)*

11. In light of the Board's procedural conventions and protections surrounding negotiations, SEC should not be permitted to, following agreement to a consensus supported by all parties, undermine the process and the goodwill of the parties by asking the Board to insert conditions that were rejected during negotiations. Consequently Rogers and the CCTA submit that the Board should not permit such conditions and reward such a deviation from the procedural conventions and protections that have come to characterize the Board's proceedings.
12. In conclusion on this point, Rogers submits that the rigorous and extensive process that the Board has mandated and many intervenors responsibly followed warrants the Board's approval of the interim consensus on USL as it is written and set out in section 10.2 of the Draft Handbook.

**(ii) Stakeholder Support for the Consensus**

13. There is very broad stakeholder support for the USL consensus from all of LDCs, rate payer groups, and non-governmental organizations. The specific stakeholders involved in achieving the consensus through both the Working Group and the Executive Committees are set out at tab 2 of Exhibit D.2.3, (attached as Appendix B to the final argument of Rogers and the CCTA). In addition, all of the Consumers Council of

Canada ("CCC"), the Vulnerable Energy Consumers Coalition ("VECC"), Hydro Ottawa, Energy Probe, and Energy Cost Management Inc. ("ECMI") provide further support for the USL consensus in their final argument.

14. Rogers submits that this extensive and broad-based support for the USL consensus, as it is written in section 10.2 of the Draft Handbook, substantiates that the consensus constitutes a reasonable interim solution that should therefore be approved by the Board.
15. Two stakeholders, Niagara Erie Public Power Authority ("NEPPA") and LMPA question the USL consensus through final argument. LMPA did not actively participate in the process to achieve the consensus, did not file evidence on USL in response to the joint ECMI-Rogers evidence supporting the consensus, and did not cross examine the joint ECMI-Rogers witness panel. It is only through final argument, and in the absence of any evidence, that LMPA argues for delaying any solution to address the 40-fold variability in USL distribution charged by LDCs. Rogers respectfully submits that such a position is contrary to the Board's ruling on Issues Day pertaining to the need to find an interim solution to address USL.
16. NEPPA is a consortium of seven LDCs with members including Haldimand County Hydro, Niagara Falls Hydro, Peninsula West Power and Welland Hydro. Peninsula West Power and Haldimand County Power are also members of ECMI, which provided written and panel evidence and argument in full support of the USL consensus (Transcript, volume 2, lines 178-181). Further, both of these LDCs expressly distinguished their position from NEPPA's in letters found at Exhibits D.2.1 and D.2.2. Moreover, Niagara Falls Hydro and Welland Hydro (through its consultant RDI) were also both members of the Working Group that created, analysed, compromised and finalized the USL consensus. As a result, Rogers and the CCTA submit that NEPPA's position on USL does not appear to be supported by all of its members and is, in fact, contradicted by the evidence (Exhibits D.2.1, D.2.2, and D.2.3).
17. In conclusion on this point, Rogers and the CCTA submit that the extensive and broad-based support of the USL consensus by virtually all intervenors supports the Board approval of section 10.2 of the Draft Handbook.

**(iii) Costs**

18. A number of stakeholders have received and/or requested funding from the Board for their participation in the EDR 2006 process. Rogers and the CCTA are generally supportive of the Board's initiatives to fund the responsible and efficient participation of rate payer and interest groups that bring experience and an otherwise unrepresented perspective to the Board in order to assist in its decision-making. Rogers and the CCTA therefore submit that the Board should exercise its discretion to award costs accordingly.