RULING BY THE CHAIR:

MR. KAISER: The Board heard today a motion filed on April 8th by AMPCO, the Association of Major Power Consumers of Ontario.

In that motion, AMPCO sought an order from this Board directing a rehearing of that portion of the Oshawa Public Utility Commission decision dealing with the allocation of costs for distribution services between the customers of Oshawa, and specifically the revenue-to-cost ratio as approved by the Board in that decision. This is the decision of March 19, 2008.

In the same motion, the applicant, AMPCO, also asked that this rehearing be combined with the distribution rates case being brought by Hydro One.

The Board in its decision of May 2nd found that the applicant had met the threshold test and it would hear the motion on its merits, but declined the relief sought with respect to hearing this case in connection with the Hydro One case, for the reasons stated in that decision.

AMPCO has amplified the relief sought in its written submissions as well as in the submissions this morning.

This is at paragraph 44 of the written argument filed by AMPCO.

AMPCO now requests that this Board issue an order that would establish the revenue-to-cost ratio for setting rates in 2008 at unity. Secondly, that if Oshawa can demonstrate that for some rate classes it is not practical to achieve unity, then Oshawa should identify the data and other requirements necessary to achieve unity for those classes, collect this information, and file it with the Board in order that the Board may rely upon it for setting rates based on unity for 2009. Thirdly, that if for whatever reason and whatever period, the Board determines that the revenue-to-cost ratio of unity should be transitioned, for the benefit of the customer classes that would otherwise experience rate shock, then Oshawa can phase in a rate adjustment, provided that any underrecovery from that customer class is ultimately collected from that customer class over time and not from other classes of customers.

The main argument by AMPCO is that the failure to set the revenue-to-cost ratio at 100 results in systematic discrimination or unjust discrimination, contrary to the Board's requirement to set just and reasonable rates.

They interpret the Oshawa decision to mean that the utility, Oshawa PUC, is allowed systematically, at its discretion, to charge large-volume general service and large-user customer classes an amount greater than cost of serving those classes for an unlimited period.

They say, and this is in paragraph 29 of their Factum, that the Oshawa Panel ignored the elements of the Cost

Allocation Report that reflects the Board policy of allowing distributors to set rates in a manner that departs from cost causality <u>only in limited</u> circumstances. Instead, they say the Oshawa Panel replaces that policy with the policy that such departure is at the discretion of the LDCs, and for an open-ended period, regardless of the status of data quality, with no requirement to improve data quality.

The Oshawa Panel has created a policy, they say, of setting the goal in cost allocation not at unity but at a range. We have heard today from AMPCO and also from Rogers that the revenue to cost target as set by that Panel was now not unity but a range.

They say, and this is in paragraph 29 of the AMPCO Factum: "If a utility achieves the range, the LDC might decide whether or not to achieve unity entirely at its own discretion and for whatever purpose it might choose." That, they say, amounts to unjust discrimination.

AMPCO also goes on to say (and this is in paragraph 31 of the Factum), that the decision under review did not identify any deficiency in evidence that would prevent the attainment of unity.

With respect, this Panel does not believe that the AMPCO interpretation of the March 19 Decision is accurate. What the Panel did in the Oshawa case (and this is set out in the factum filed by Board Counsel at paragraph 4), was to adjust the revenue-to-cost ratios proposed by the applicant in four customer classes. I will refer to the two customer classes that concern AMPCO. That is the

General Service 1,000 to 5,000 kilowatt, and secondly the Large Use class.

The utility proposed a revenue-to-cost ratio for 2008 of 348 for GS 1,000 to 5,000. The Oshawa Panel reduced that in 2008 to 257, and further reduced it in 2009 to 218, and further to 180 in 2010.

Similarly, in the case of the Large-Use class, the utility sought a revenue-to-cost ratio of 207 in 2008. That was reduced in 2008 by the Oshawa Panel to 186 in 2008 and further to 150 in 2009, and further to 115 in 2010.

The revenue-to-cost ratios determined to be appropriate for 2010 met the minimum requirements established in the Board's Cost Allocation Report, which forms part of Exhibit 1.

The table in Board Counsel’s Factum is reproduced in the Appendix to this decision, as is the table that appears at page 28 of the Decision. They set out the appropriate ranges compared with the ratios proposed.

The Board did not -- and this is pointed out by Board Counsel -- specify <u>any</u> revenue to cost ratio <u>after 2010</u>. Nothing at all was said with respect to what would happen in 2011. From that, AMPCO concludes that the Board was content to leave it at that and had no concern what would happen after that. This leads to their conclusion that the new target is a range, not unity and systematic unjust discrimination.

It is true the Board was silent on the matter. In the view of this Panel, however, the AMPCO conclusion is not a legitimate interpretation of the decision. And it is certainly not a legitimate interpretation of the Board's Cost Allocation Report.

The Board's Cost Allocation Report deals with this at page 4:

> "The Board has therefore adopted with some modification the proposals set out in the Discussion Paper of creating bands or ranges of tolerance around revenue-to-cost ratios of one. As the influencing factors are addressed over time, the Board expects that these bands will narrow and move closer to one.
>
> The ranges established by the Board are set out in section 3 and are intended to be minimum requirements. 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 move revenue-to-cost ratios nearer to one."

This utility will file for re-basing in 2011. This Panel expects them to file new evidence at that time regarding the revenue to cost ratios that would apply in that year and following years. We would expect that the new revenue-to-cost ratios would meet the Board's expectations as outlined in the Board's Report. That is, that the gap will continue to narrow between the minimum (which is the outside of the range), which will be met in 2010, and will narrow to the optimum, which of course is one.

The utility will file evidence with respect to these ratios. Opposing parties, such as AMPCO, will have an opportunity to file contrary evidence. The matter can then be determined by that Panel at that time.

There were further submissions by the parties with respect to the general rate-making principles applied by this Board from time to time. It is not necessary to deal with them in great detail. It is sufficient to say that, while costs are a factor, and indeed they are an important factor in setting rates, they are not the only factor.

Nor is it true to say that any discrimination or any difference in revenue-to-cost ratios between customer classes amounts to unjust discrimination. Any discrimination doesn't amount to unjust discrimination.

The Board has wide discretion with respect to these matters. The parties have referred to a number of cases, including the Enbridge case, which was a decision of the Divisional Court in 2005, stating that the Board, in fixing just and reasonable rates, can consider matters of broad public policy.

The Court stated as follows:

> "The expertise of the tribunal in regulatory matters is unquestioned. This is a highly specialized and technical area of expertise. It is also recognized that the legislation involves economic regulation of energy resources, including setting prices for energy which are fair to the distributors and the suppliers while at the same time are reasonable costs for the consumer to pay. This will frequently engage the balancing of competing interests, as well as a consideration of broad public policy."

I've referred to the principles laid out in the Cost

Allocation Report at page 4. The introduction to that Report which appears at page 2, also states as follows:

> "The establishment of specific revenue requirements through cost-causality determinations is a fundamental rate-making principle. Cost allocation is the key to implementing this principle. Cost-allocation policies reasonably allocate the costs of providing service to various classes of customers, and as such, provide an important reference for establishing rates that are just and reasonable."

It is important to note, however, that the Board went on to say:

> "The Board is cognizant of factors that currently limit or otherwise affect the ability or desirability of moving <u>immediately</u> to a cost-allocation framework that might, from a theoretical perspective, be considered ideal."

In the context of this case, that theoretical ideal would be unity. There is no question that unity is ideal, but there are factors, as the Report suggests, which prevent that happening at once. The decision of the Panel in the Oshawa case reflects this need for an incremental approach, a need that is stressed time and time again in the course of this Report. Accordingly, the Panel adopted an incremental approach in moving to the outside of the range within a three-year period.

We believe that decision reflects Board policy and is well within Board discretion.

AMPCO, in this motion, asks the Board to set aside the Oshawa decision and replace it with an order that requires Oshawa's revenue-to-cost ratios used for setting rates into 2008 to be brought to unity unless Oshawa can demonstrate that it is not practically possible to do that.

AMPCO also stresses in its Factum that no evidence was brought forward to that effect.

AMPCO's analysis of the Board's Cost Allocation Report suggests that unless a utility can point to specific frailties in its data, or other explanations, it must be assumed that cost ratios can be set at one. With respect, that argument is contrary to the Board's recognition in the Cost Allocation Report that better and more accurate cost-allocation data will be available in the future.

The Board in the Report recognizes that cost allocation is, by its very nature, a matter that calls for the exercise of some judgment, both in terms of the cost-allocation methodology itself, and how and where the cost-allocation principles fit within the broad spectrum of rate-making principles that the Board uses in setting rates.

AMPCO's insistence that the default position for rate-setting is always a revenue-to-cost ratio of 100 runs contrary to the Board's acknowledgment in the Cost Allocation Report that cost-allocation principles are just one principle among many in setting utility rates.

We then come to the issue of mitigation. There are two aspects to the quantification of the mitigation. One would be if the revenue-to-cost ratio was 100, or unity, and the other (which are the facts in this case), where in the case of large customer classes for the year 2010 it was set at 115. There is no decision that the revenue cost ratio should be 100. There is a decision that it should be 115, at least by 2010.

The fact that the revenue-to-cost ratios for these customer classes are reduced over time, means that the AMPCO members suffer to the extent that their rate reduction resulting from the adjustment in the revenue-to-cost ratios is delayed. So there is a cost. No-one denies there is a cost.

AMPCO says they shouldn't have to bear that cost, that the customers that benefit should bear that cost, and they should be compensated for it.

We are unable to find any precedent for that principle in past decisions of the Board. We are unable in this record to find the evidence as to what that cost would be. In the circumstances, we are not inclined to depart from the principle established by this Board in the Cost Allocation Report, which is that these matters should proceed on an incremental approach.

The Cost Allocation Review referenced in the Report is a longstanding process that's taken place over five years. It has been a complex process. The data is imperfect. The methodology, to some degree, is in question. We think the incremental approach is the proper one, and we support the Board's decision in the Oshawa case with respect to that.

We would add that this matter of mitigation was discussed by the Board in the Cost Allocation Report. That's at page 14. The Board specifically stated that the cost-allocation policies reflected in the Report should be followed by distributors whenever they apply for rates on a cost-of-service basis. The Report goes on to say:

> "To the extent that the application of these cost-allocation principles results in a significant shift in the rate burden amongst classes, relative to the status quo, distributors should be prepared to address potential mitigation measures."

This Panel accepts that statement, and we believe that granting the AMPCO request in this regard would run contrary to that principle.

We would point out that this is not the only case where the Board has engaged in mitigation with respect to adjusting revenue-to-cost ratios. We have the Halton Hills decision of March 27th, the Barrie decision of March 25th, and the Rideau-St. Lawrence decision of the same date. They all involve a process of adjusting revenue-to-cost ratios for certain customer classes over a period of time.

That brings us last to the question of costs. The Board accepts the request for costs made by various parties. All the parties that have participated in this hearing will be entitled to their reasonably incurred costs, to be taxed in the usual fashion. Any costs claims should be filed within five days of the date of this decision.

The utility will have five days to object, as will the

Board, if it has any concerns. If there are any objections, the parties making the claims can respond to those objections within a further five-day time period.

Lastly, there has been a request by the utility, Oshawa, that they be entitled to establish a deferral account to record the costs of this hearing. That request is granted. They can pursue the necessary mechanics with the Chief Accounting Officer.

Any questions? Thank you, gentlemen, ladies.

--- Whereupon the hearing adjourned at 1:44 p.m.

Appendix A:
Tables Referenced in Decision

Excerpted from Oshawa PUC Networks Decision, page 28, issued: March 19, 2008

Table 3: Revenue to Cost Ratios				
Customer Class	2006 Informational Filing Run 2 [A]	Proposed Rates per Application [B]	Alternative Within Target Ranges [C]	Board Target Ranges [D]
Residential	89	88	93	85 – 115
GS < 50 kW	130	134	120	80 – 120
GS > 50 kW to 1000 kW	158	102	108	80 – 180
GS > 1000 to 5000 kW	334	348	180	85 – 180
Large Use > 5000 kW	257	207	115	85 – 115
Street Lighting	23	33	70	70 – 120
Sentinel Lighting	55	60	70	70 – 120
Unmetered scattered load	132	109	109	80 – 120

Excerpted from Board Staff Submission, page 4, filed: May 14, 2008

Table 1: Revenue-to-Cost Ratios for 2008:

GS 1000 – 5000 kW	257
Large Use	186
Street Lighting	46
Sentinel Lighting	62

Table 2: Revenue-to-Cost Ratios for 2009:

GS 1000 – 5000 kW	218
Large Use	150
Street lighting	58
Sentinel Lighting	66
Other classes	Not specified

Table 3: Revenue-to-Cost Ratios for 2010:

GS 1000 – 5000 kW	180
Large Use	115
Street Lighting	70
Sentinel Lighting	70
Other classes	Not specified