

June 24, 2016

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
P.O. Box 2319
Toronto, Ontario
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Dear Ms. Walli:

Re: EB-2015-0363 – Cap and Trade Staff Discussion Paper – Comments of the Consumers Council of Canada

Please find attached, comments from the Consumers Council of Canada regarding the above-referenced Ontario Energy Board Staff Discussion Paper.

Yours truly,

Julie E. Girvan

Julie E. Girvan

CC:

All Parties

COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

RE: CAP AND TRADE REGULATORY FRAMEWORK

EB-2015-0363

I. INTRODUCTION:

On March 10, 2016, the Ontario Energy Board (“OEB” or “Board”) initiated a consultation to develop a natural gas regulatory framework to support the implementation of Ontario’s Cap and Trade Program. The framework is intended to guide the OEB’s assessment of natural gas distributors’ Cap and Trade Compliance Plans, including the cost consequences of these plans and the mechanism for recovery of costs in rates.

On May 18, 2016, the *Climate Change and Low-Carbon Economy Act, 2016* (“Climate Change Act”) received Royal Assent. On May 19, 2016, Ontario Regulation 144/16 was issued which provides details about the proposed Ontario Cap and Trade Program. Under the legislation the natural gas local distribution companies (“LDCs”) will be required to comply with the Cap and Trade program by undertaking activities such as Green House Gas (“GHG”) abatement and purchasing emissions credits.

On May 25, 2016, the Ontario Energy Board Staff (“OEB Staff”) released its Staff Discussion Paper on a Cap and Trade Regulatory Framework for the Natural Gas Utilities for comment by interested stakeholders. These are the comments of the Consumers Council of Canada (“Council”) regarding the OEB Staff paper. The Council does not intend on commenting on every element of the paper and all of the OEB proposals. The Council will focus on some of the key issues that are will directly impact ratepayers. Our comments are organized according to the major topic areas set out in the OEB Staff Paper:

- Guiding Principles (Section 3)
- Compliance Plans (Section 4)
- Cost Recovery (Section 5)
- Monitoring and Reporting (Section 6)
- Customer Outreach and Education (Section 7)
- Confidentiality of Cap and Trade Information (Section 8)

II. SUBMISSIONS:

Guiding Principles:

OEB has suggested that the framework be guided by the OEB's statutory objectives as well as the following principles to ensure consumer protection:

- Cost-Effectiveness: Compliance Plans are optimized for economic efficiency and risk management
- Rate predictability: consumers should have just and reasonable, and predictable rates regarding the impact of the utilities' cap and trade activities
- Cost Recovery: prudently incurred costs related to cap and trade would be recoverable as a cost pass-through (similar to natural gas supply procurement)
- Transparency: investment/buying strategies and optimization processes re transparent and well docketed to facilitate the OEB's assessment of the plans and costs, while ensuring market integrity
- Flexibility: plans are flexible and can adapt to changing market conditions and utility-specific characteristics; potential for framework to evolve as market matures and experience is gained
- Continuous Improvement: plans demonstrate continuous improvement of processes and practices, including the use of existing systems¹

The Council is of the view that OEB Staff has identified an important list of principles that should guide the development and operation of the regulatory framework. We have the following additional comments.

From the ratepayers' perspective cost-effectiveness is critical. Ratepayers should not be subject to any unnecessary cost implications from the Cap and Trade program. OEB Staff suggests that in this context the plans should be "optimized" for economic efficiency and risk management. In addition, the paper states that the framework should encourage utility "optimal" decision making when developing a portfolio of cap and trade compliance activities². It is not clear, however, what is meant by "optimal" and how the Board will assess cost-effectiveness and "optimal" decision-making. The Council recognizes that OEB Staff has set out further detail regarding how LDCs should demonstrate optimization of their plans in section 4 of the Discussion Paper, but this appears to be a complex exercise that needs further explanation. The framework must be explicit about how cost-effectiveness will be measured.

¹ Staff Discussion Paper, p. 8

² Staff Discussion Paper, p. 8

Rate-predictability is important and in this context will require comprehensive customer communication. In addition, adhering to the principle of rate predictability may require rate-smoothing to minimize any volatility arising from the potential swings in deferral account balances.

Transparency is also important from the customer perspective in two ways. The first is to ensure that the OEB has all of the information required to assess the plans and the costs that flow through to customers, and is transparent about the way it will assess the prudence of those costs. The second point is that transparency must mean that the customers have an understanding of what is happening with respect to Cap and Trade. Customers should be informed that Cap and Trade is now part of their energy costs and they should be able to see the impact of the program on their bills.

Flexibility is important as Ontario is embarking on new ground with the implementation of a Cap and Trade program. Things might not proceed as planned and the program elements may have to be amended along the way. The LDCs must have the ability to adapt to any of those changes without incurring significant costs (that will ultimately be born by their customers).

Overall, the Council is of the view that it makes sense with respect to Cap and Trade to move forward cautiously, and to the extent possible take “baby steps”. Embarking upon detailed long-term regulatory requirements does not make sense at this time. Setting out a framework that will guide the LDCs over the next couple of years is appropriate. That will give the Board and all stakeholders an opportunity to gain experience with the Cap and Trade program and consider the implications it has for the LDCs and their customers.

Compliance Plans:

As OEB Staff has noted the overall purpose of a Compliance Plan will be to describe the LDC’s strategy for meeting its Cap and Trade obligations. The OEB will review and consider the plans to determine whether to approve the associated cap and trade costs for recovery from customers³.

OEB Staff has set out a complex process related to reporting and assessment of the Compliance Plans. The Council has no comments on the overall approach at this time, but is of the view that more prescriptive filing requirements and more detail regarding how the OEB will assess the Compliance Plans should be developed. For example, OEB Staff has set out performance metrics.⁴ What is not clear at this time is how the OEB will use those metrics to assess the “cost-effectiveness” of the plans.

³ Staff Discussion Paper, p. 9

⁴ Staff Discussion Paper, pp. 20-21

The framework should be explicit about how the Board will determine whether the costs to be included in rates are prudent.

The Council has the following specific comments on some of the specific proposals set out in the OEB Staff paper:

- OEB Staff has suggested that the LDCs submit a one-year Compliance Plan for 2017⁵. This would allow the LDCs to gain experience before developing a more comprehensive, longer-term plan. The Council supports an annual approach on an on-going basis until there is more certainty about how the Cap and Trade program will operate and how the market will develop. This would be a cautious, yet prudent approach as creating longer-term plans will require tested experience in the market.
- OEB Staff has suggested that the Board develop a consensus forecast of long-term carbon prices that would be used by the LDCs⁶. The Council sees merit in this approach, but does not see it as a requirement until the development of longer-term plans are mandated.
- OEB Staff is recommending that the LDCs engage in risk management strategies because they view the trading of emission units in the secondary and tertiary markets as a key component of a Cap and Trade program.⁷ In 2008 the Board determined that with respect to gas supply costs the utility risk management programs were not benefitting the customers relative to the costs of those programs. The Council does not believe that at the outset of the Cap and Trade program Ontario LDCs should be encouraged or required to undertake complex risk management strategies. Over time this may be appropriate, but until there is greater certainty regarding the markets and how they will operate it should not be assumed that risk management strategies will result in benefits to the LDC customers. The implications of risk management for utility customers should be carefully considered by the Board before it becomes a mandated LDC obligation as part of the Compliance Plans.

Cost Recovery:

Cost Allocation

The LDC compliance obligations under the Cap and Trade program will have costs associated with them. These costs include:

⁵ Staff Discussion Paper, p. 13

⁶ Staff Discussion Paper, p. 16

⁷ Staff Discussion Paper, p. 22

- Facility-related obligations for facilities owned and operated by the utility
- Customer-related obligations for natural gas fired generators and residential, commercial and industrial customers who are not Large Final Emitters (“LFEs”) or voluntary participants
- Administrative costs to meet compliance obligations⁸

OEB Staff suggest that customer-related and facility-related (LDC owned facilities) obligation costs should be allocated on a volumetric basis to each rate class because the cost driver is load. The Council supports this approach.

With respect to administrative costs OEB has suggested that they be allocated in the same manner as similar existing administrative costs. The Council also supports this approach.

Bill Presentment:

OEB Staff is proposing that all of the cap and trade costs to be recovered from customers be included in the “delivery” component of the bill.⁹ The Council supports this approach as it will link GHG emissions costs with a customer’s natural gas consumption. OEB also proposes:

- In terms of whether these costs should be recovered as a separate line item on the bill, consumer research indicates that low-volume customers are concerned with the overall bill impacts. Staff is concerned that an additional line item on the bill could increase customer confusions and utility call center activity.¹⁰

The OEB in recent years has been focused on consumer education, energy literacy, and it continues to move forward with initiatives aimed at consumer awareness. The OEB Staff proposal to not include these costs as a separate line item on the bill is contrary to what the Board has been trying to accomplish over the past several years – a better understanding of the bill, its components and how to mitigate energy consumption (e.g. DSM).

The Council is of the view that natural gas consumers need to be aware of the following:

- The Ontario Government has established a Cap and Trade program;
- They are paying more on their natural gas bills because of this program than they would in the absence of the program to reflect the cost of carbon;
- How much their natural gas bills are increasing as a result of this program.

⁸ Staff Discussion Paper, p. 28

⁹ Staff Discussion Paper, p. 30

¹⁰ Staff Discussion Paper, p. 32

To the extent customers are aware of the impact of the Cap and Trade program and the impacts that the program has on their bill, this should serve as an incentive to reduce energy consumption.

True Up Process:

OEB Staff has proposed that true up with respect to compliance costs be done on an annual basis.¹¹ OEB Staff also expressed a concern with the potential for large deferral account balances in relation to customer-related obligation costs. They have suggested that in order to mitigate large deferral account balance amounts that triggers be set based on potential customer impacts.

The Council supports an annual forecast and annual true-up for the first two years. To the extent the balances are significant, alternative approaches can be considered. At this point we have no indication as to the level of true-up that may be required.

Monitoring and Reporting:

The OEB Staff in section 6.1 has set out performance metrics¹², but it is not clear how those metrics would be applied in monitoring and assessing the Compliance Plans. The Council suggests the establishment of a working group to define reporting requirements and establish metrics that will enable the OEB and intervenors to assess the prudence of the plans.

Customer Outreach and Education:

The OEB Staff paper states:

Customer outreach and education is essential as customers need to fully understand the provincial government's cap and trade program and the impact of the program on their bills. Also, customers need to be educated on how to manage the GHG emissions to reduce bill impacts.¹³

The Council supports a comprehensive effort on the part of the OEB and the LDCs of educate customers about the implications of the Cap and Trade program on their energy consumption and their bills. The statement above is ironic given the position advanced by OEB Staff earlier in the Discussion paper to subsume the impacts of Cap and Trade within the delivery charge. Customers need price signals related to GHGs in order to incent them to reduce those emissions.

Confidentiality of Cap and Trade Information:

¹¹ Staff Discussion Paper, p. 34

¹² Staff Discussion Paper, p. 37

¹³ Staff Discussion Paper, p. 39

As a matter of policy, the Council supports having as much information as possible on the public record when considering the cost consequences of LDC decisions. OEB Staff has proposed that two categories of information, auction and market sensitive information, not be disclosed to any parties. There are certain legislative requirements that preclude some information related to the Cap and Trade program from being disclosed. The Council accepts that the Board will be bound by that.

OEB Staff is also proposing that “Auction Confidential” and “Market Sensitive” information only be reviewed by OEB Staff and a Board panel in a proceeding. OEB Staff is concerned that there will be market harm and public disclosure may lead to certain actions that are prohibited under the new legislation¹⁴. With respect to market sensitive data (e.g. primary market activity, as well as secondary market activity including bilateral agreements and other transactions and instruments) the Council is not aware of any statutory prohibition on disclosure of this information. The Council is of the view that an assessment of this data will be critical in terms of determining whether the LDCs have acted in the best interests of their ratepayers. The Council encourages the Board to consider whether this type of information could be treated confidential pursuant to the *Practice Direction on Confidential Filings*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON JUNE 24, 2016

¹⁴ Staff Discussion Paper, p. 47