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February 20, 2009

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, Ontario, M4P 1E4

Dear Ms. Walli:

Re: EB-2008-0346 – Written Comments on the Draft Guidelines from the London Property Management Association and the Building Owners and Managers Association of the Greater Toronto Area

This letter is in response to the Board's January 26, 2009 letter related to the Draft Demand Side Management Guidelines for Natural Gas Distributors (EB-2008-0346). Three paper copies have been provided to the Board and an electronic version has been file through the Board's web portal at www.errr.oeb.gov.on.ca.

These are the written comments of the London Property Management Association (LPMA) and the Building Owners and Managers Association of the Greater Toronto Area (BOMA) on the Board Staff Discussion Paper Draft Demand Side Management Guidelines for Natural Gas Distributors dated January 26, 2009.

Comments have been provided on the sections of the Discussion Paper as shown immediately below. Comments have also been provided on a number of sections to Appendix A to the Draft Guidelines.

3.0 DSM Framework

BOMA and LPMA believes that improving the existing framework is acceptable at this time. However, given the rapidly changing environment in which the delivery of DSM programs is provided, it is strongly recommended that the next DSM plan have a limited term of either 1 or 2 years.

The landscape associated with delivery of DSM programs and conservation in general is rapidly changing. The number of and magnitude of participation in conservation programs has changed significantly over the last decade and even since the acceptance by the Board of the multi-year DSM plans for Union and EGD in August of 2006 (EB-2006-0021). Governments of all levels – federal, provincial and municipal – are now actively engaged in promoting and providing financial assistance for conservation efforts. Many industry associations are now actively engaged in providing assistance to their members in reducing energy consumption. This level of involvement by industry and governments is likely to grow significantly in the next few years as a result of the severe economic downturn being experienced across the country.

BOMA and LPMA support the beginning of preliminary work by Staff of investigating the potential use of "normalized reduction in average use" for assessing the impact of DSM programs. BOMA and LPMA believe this would be a significant change in any DSM framework. Given that this investigation could not likely be done and shared with stakeholders in time for the gas distributors to file plans in the spring of this year for implementation in 2010, BOMA and LPMA have suggested that the term of the plan be limited to 1 or 2 years. For example, a term of 2 years would allow some economies to be recognized in the DSM plans and provide enough time for the Staff investigation of the change in approach to measuring the impact of DSM plans.

BOMA and LPMA also believe that Staff should investigate and report back to stakeholders on two other key issues that need to be addressed in DSM plans. These 2 keys issues are the establishment of DSM budgets and on the existence of and magnitude of SSM plans in the industry. This information may impact on the framework of any DSM plan beyond the proposed 2 years.

The current Discussion Paper deals with improving the existing DSM framework. The comments provided above indicate that there are potentially significant changes to the

DSM framework that could be made in a year or two. In the immediate future, however, BOMA and LPMA strongly suggest that Staff should consider the impacts, if any, of the yet to be announced Green Energy Act on the framework. If necessary, Staff should update or revise the Draft Discussion Paper to reflect an analysis of the Green Energy Act and provide stakeholders with additional time to respond to any changes.

Staff acknowledge that the "evolving nature of government conservation policies in both the electricity and natural gas sectors of Ontario" will be affected by new government policies regarding conservation and could affect future DSM activities.

5.2 Adjustment Factors in the Total Resource Cost Test

BOMA and LPMA support the continued use of the TRC test as a screening tool for proposed DSM measures and programs.

With respect to the inclusion of a "spillover" effect, it is not clear to BOMA and LPMA why this impact should be considered at all. The default provision should be that no spillover effect is included in the TRC calculations. Distributors should, however, be free to bring forward a request for the inclusion of a spillover effect for a specific program. This request would need to be accompanied by comprehensive and convincing empirical evidence of the spillover effect. There must be proof that customers that do not actually participate in a program but adopt the measure have seen and been influenced by the distributor's program-related information and marketing efforts. BOMA and LPMA expect that this will be a difficult hurdle. It may be impossible, for example, for distributors to even identify customers that have adopted an efficiency measure outside of the programs.

Given that the customer adopted a measure but did not participate in the distributor program, the distributor should be required to provide evidence as to why the customer did not participate in the program. If the program is found to be deficient in some manner such as too hard to understand, too difficult to participate in, etc., then the distributor should not get credit for any spillover resulting from a deficiency in their program. Moreover, this information could be used by the distributor to improve the program so that more people actually participate in it in the future.

BOMA and LPMA strongly support the requirement that for purposes of determining whether the distributor has met its TRC target, the input assumptions for the calculation of the SSM not be locked in, but be based on the best available information from the evaluation of the programs. This eliminates the potential that ratepayers end up paying for savings that are not actually achieved. Ratepayers should not be expected to pay for fictitious savings.

With regards to the centrality rule, it is submitted that the default position should be similar to that for the spillover effect. That is, there is no claim unless the distributor provides comprehensive and convincing evidence to support the claim that the distributor was "central" to a program. Again, this should be dealt with on a case by case basis.

BOMA and LPMA also believe that centrality should be better quantified. Distributors are familiar with the concept of cost causality that allocates various costs to different rate classes. A similar approach should be considered when quantifying the degree of centrality. Direct costs of a financial contribution to a program can be measured in relation to the financial contribution of other parties. However, the contribution-in-kind should also be recognized. The involvement of all parties in the initiation of a partnership, the implementation of the program, etc. should be monetized based on the level of involvement of the various parties. The total financial contribution of the distributor can then be measured in relation to the total contribution by all parties. This quantification can then be applied to savings claimed.

Finally, the second paragraph of Section 2.3 in the Appendix to the Discussion Paper indicates that distributors may use other data where appropriate and justified and that in such circumstances the distributor should provide detailed evidence to justify the use of other data. BOMA and LPMA believe this should be extended to include the financial impact of using other data. The distributor should provide the impact on the LRAM and the SSM of using the other data. It should also be open to other participants to suggest the use of other data where appropriate and justified. The participant should provide detailed evidence to justify its use as well. This would put other parties on a level playing field with the distributor.

5.3 Development of DSM Budgets and Targets

BOMA and LPMA agree with the need for separate budgets for resource allocation, market transformation and low income programs. BOMA and LPMA also believe that budgets should be proposed by the distributors and reviewed as part of their application. The proposed budgets will need to be supported by complete information based on past performance and budgets, market potential studies and government policies. DSM budgets **need** to be the subject of stakeholder review as part of a rate proceeding.

5.3.1 Resource Acquisition (TRC Net Savings) Target

The Board may wish to consider whether the TRC net savings target should continue to be set by the distributors. The distributors have substantially exceeded their targets over the last number of years. The distributors have a significant incentive to minimize the targets as they are well rewarded for exceeding those targets.

More emphasis should be placed on recent achievements by the distributors and the associated budget that achieved the savings. This should replace the current bottom up approach that relies heavily on projections of what can or cannot be achieved by individual programs based on a certain level of spending.

5.3.2 Market Transformation Targets

BOMA and LPMA do not believe that either of the distributors have shown that they have the capability to transform a market. If the distributors are to engage in market transformation, they should work together to transform the provincial market. It does not make sense to try and transform the market in one franchise area while ignoring the other. Specific, measurable and verifiable targets need to be set.

5.3.3. Low-Income Customer Programs

BOMA & LPMA agree with the concepts put forward in the Draft Guidelines with respect to low-income customer programs. However, it is submitted that it may be useful to set a floor for the DSM budget that is allocated to the low-income customer programs. This floor could be a percentage that is fixed by the Board or negotiated with stakeholders as part of the consultation process or though the review of the plans as part of a regulatory proceeding.

Another possible way to establish a floor would be to allow the percentage to vary and have it based on the percentage of residential customers that are classified as low income using the same criteria for determining eligibility for low-income customer programs. The Draft Guidelines, for example, suggest using criteria currently used by various levels of government.

5.4 Shared Savings Mechanism (SSM)

BOMA and LPMA are not clear on the reward structure as proposed in the Discussion Paper. The Paper indicates that "The reward structure will continue to be the non-linear function relative to TRC savings as decided in the DSM generic proceeding (EB-2006-0021)". It is unclear from this whether the non-linear function as described in detail in the EB-2006-0021 Decision With Reasons dated August 25, 2006, including the level of payments based on the various percentages of TRC achieved is supposed to remain unchanged, or whether, more generically, a non-linear function is to be used which may have different levels of payouts at different achieved levels from that specified in the EB-2006-0021 Decision.

BOMA and LPMA believe that the current SSM mechanism is overly generous to the distributors and should not remain in place even for a short duration of 1 or 2 years for the next plan term. The specifics of a non-linear function relative to TRC savings should be the subject of a rate proceeding, just as is the incentives for low-income and market transformation programs. In each case, the financial impacts have a direct impact on ratepayers. As the Discussion Paper states, stakeholders need to be mindful of the need to avoid an increased impact on ratepayers and to make effective use of incentive mechanisms. An "automatic" reward for the distributors does neither.

BOMA and LPMA support the development of separate incentive payments for market transformation and low income customer programs. More emphasis should be placed on the low income customer program incentives as this segment of the market is more adversely affected by increasing energy prices and the least able to reduce their consumption on their own.

As noted above, BOMA and LPMA believe that all three incentive payment mechanisms should be the subject of a rate proceeding allowing for stakeholder review.

The following comments are related to the sections found in Appendix A of the Draft Guidelines.

2.3 Inputs and Assumptions

BOMA and LPMA believe that distributors that proposed to use other data should not only provide detailed evidence to justify its use, but should also provide evidence as to the financial impact (on LRAM and SSM, for example) of the proposed data.

2.5.1 Free Riders

As the emphasis on conservation activities grows and Ontario moves towards a Culture of Conservation, free rider rates may change significantly over short time periods. As a result, it is submitted that free rider rates needs to be updated on an annual basis.

3.1 Budget Determination

This section should be clarified to indicate that the level of the DSM budget will be the subject of a rate proceeding, in a manner similar to that found in Section 3.2 Budget Term and Reporting.

4.2 Calculation of LRAM

This section is silent on the use of the half-year rule for savings in the first year. BOMA and LPMA believe that LRAM volumes should continue to be calculated using this half-year approach for the first year that savings are achieved. This approach more accurately reflects lost volumes in the first year as not all savings will be in place for the full year. I

6.5 Independent Third Party Review

BOMA and LPMA submit that a key responsibility of the third party review is to ensure that calculations used to estimate the savings and the financial impacts on the LRAM and SSM amounts are accurate. This should be added to the bullets points listed.

Sincerely,

Randy Aiken

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