EB-2008-0346

ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF a consultation by the Board with respect to Guidelines for Demand Side Management by Natural Gas Distributors.

SUBMISSIONS ON THE DRAFT GUIDELINES FROM THE SCHOOL ENERGY COALITION

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1 OVERVIEW

1.1 *Background*

1.1.1 On October 31, 2008 the Board initiated a consultation process to assist it in developing Guidelines for the next generation of DSM plans from gas utilities. After having short meetings with stakeholders, the plan was that Board Staff would prepare a report and draft Guidelines, and then there would be an opportunity for discussion and dialogue using that as the base.

1.1.2 On January 26, 2009 the Board posted the Staff Report, together with Draft Guidelines prepared by Board Staff, but advised that the consultation would be limited to written submissions.

1.1.3 These are the submissions of the School Energy Coalition on the Staff Report and Draft Guidelines. We have numbered these submissions to correspond with the headings and subheadings in the Draft Guidelines, for ease of reference.

1.1.4 On December 8, 2008 SEC also provided written submissions to the Board with the intention of assisting Board Staff in the preparation of this material. For the most part, those submissions do not appear to have influenced the Draft Guidelines, although we note below potential future consideration of a fundamentally different approach to measurement. In any case, we have not reiterated our December submissions here, except where required in context. We hope that the Board, in considering these comments, will consider our December submissions as well.

1.2 *Overview of Draft Guidelines and the DSM Framework*

1.2.1 ***Transition.*** The Staff Report comments positively on the proposal to investigate empirical measurement of DSM results using top-down metrics. Work is being done in this area in other jurisdictions, and Board Staff correctly points out that step one in investigating this option is to look at what is happening in those other jurisdications. We agree.

1.2.2 Any move in the direction of this approach to DSM planning and measurement would involve very fundamental changes to how gas utilities deal with this area of their business. Gas DSM would, in this scenario, be nothing like it is today, and a number of basic questions about the role of the utilities would have to be addressed along the way. Therefore, during the period in which the Board considers whether to move in that direction, we have assumed that the Draft Guidelines are transitional in nature. While the Board may, of course, ultimately remain with a more traditional approach, it is not likely that will be known for a year or two. In the meantime, there still have to be rules in place. We have reviewed the Draft Guidelines with that in mind.

1.2.3 We note that the Staff Report makes clear these Draft Guidelines have been developed primarily as a compilation of existing rules, rather than striking out in new directions. This would appear to be consistent with a transitional approach.

1.2.4 ***Philosophical Foundation.*** The Staff Report and the Draft Guidelines approach this area from a more conventional point of view than even the current framework, much like this was handled prior to EB-2006-0021. There is a step away from formulae and a more mechanistic approach, and a step towards the filing of individualized plans, with utilities proposing their own budgets, targets and incentives, etc., largely without any prior guidance.

1.2.5 As a transitional approach, that is probably the pragmatic solution. While the dream has not died that the amount of process involved in DSM plan approval and account clearance can be reduced, in the short term a case by case approach may be an appropriate answer rather than trying to solve all of the current problems today.

1.2.6 We do note that the Draft Guidelines propose consideration of DSM plans, programs, budgets, targets, etc. "in the context of rate proceedings for each of the distributors". Given that we are in an IRM regime, we believe it would be useful to provide some procedural guidance as to how these should be handled. The current Enbridge Phase II rate case includes as an issue the timing of the 2010 IRM application, and inclusion of a full DSM plan, with all new proposals based on little guidance, could have a material impact on that timing. One can predict that the same impact will arise in the Union 2010 IRM application, given the proposed approach in the Draft Guidelines. More thought on how this should be dealt with would be useful.

1.2.7 ***Symmetry with CDM Guidelines.*** Staff has made clear their desire to make the gas DSM Guidelines symmetrical with the CDM Guidelines where possible. We disagree, and we have set out detailed reasons for that disagreement in our December submissions.

1.2.8 Since Staff was aware of the detailed rationale for SEC and others opposing this "symmetry", we believe it was incumbent on them to engage the issue. It is fine for Staff to disagree with stakeholders. It is, we think, inappropriate to disagree without any discussion of the basis of their position. If the Board is to adopt a goal of symmetry, we believe it is appropriate that the Board explain why that goal should be adopted despite the several contraindicators that have been brought to the Board's attention.

2 COST EFFECTIVENESS

2.1 *TRC Calculation*

2.1.1 We note that the Draft Guidelines propose, on page 8, a discount rate that appears to us to be weighted average cost of capital. It is not obvious to us that this is the appropriate discount rate for calculating TRC.

2.1.2 A fundamental problem with the TRC test is that utilities end up being incented for benefits that are forecast to take place in the future. Not only does this mean that the benefits are more nebulous, and that the calculation is more complex, but it also means that the benefits are highly sensitive to the discount rate used.

2.1.3 Use of WACC has the attraction that it is utility-specific, and is the cost of capital ratepayers already pay for hard assets. However, this is a false relevance. WACC is a cost of capital, not a discount rate. A discount rate is used to calculate the value today of money in the future. In effect, it answers the question "How much less is this money worth to me because I don't get it until later?"

2.1.4 There are two reasons why WACC is in fact likely not correct. First, the benefits being measured are those of the customers, for the most part, not the utility. Therefore, if a WACC were appropriate, it would have to be that of the customers. Typically, that would be a much higher rate, since the time value of money for individuals or for a private business is usually much greater than for a utility. Second, the benefits have inherent uncertainties built into their calculation. This uncertainty should tend to reduce the present value of future benefits even further, thus implying a higher discount rate.

2.1.5 In our view a higher discount rate is appropriate for the TRC calculation. Rather than develop a formula, we think it would be useful for the Board to simply establish a rate, which then could be adjusted annually. While we have not done a full analysis of what the rate should be, we believe that something in the 8-10% range is likely to be more reflective of the time value to customers of delay in future DSM benefits, and therefore likely to be a more appropriate discount rate for TRC purposes.

2.2 *TRC Benefits*

2.2.1 ***Avoided Costs*** We found the discussion in section 2.2.1 of the Guidelines to be confusing, with the concept of "avoided costs" not set out as clearly as we believe is appropriate. Of particular concern is the statement that a "common methodology" should be employed in the calculation of avoided costs. In particular, the Draft Guidelines expect commodity costs for the two utilities to be "comparable".

2.2.2 The extent to which commodity cost forecasts should be the same for the two major gas utilities is a hotly debated issue, and is a live discussion in the current Generic QRAM proceeding. We believe it is not helpful for the Draft Guidelines to make categorical statements on commodity price forecasting in the DSM context without considering the issues being raised in the Generic QRAM proceeding. It is likely that the suggestion for a single Ontario-wide commodity price will not fly in that proceeding, and it is not obvious to us that it is any more viable in the DSM context.

2.2.3 The Draft Guidelines state that "the same avoided costs are expected to be used to calculate both the target and incentive amount". As we note in our later discussion, this appears to be inconsistent with the proposal that the actuals will be calculated on best available information. Unless Staff is proposing that targets be retroactively adjusted to insert updated assumptions and inputs – something that appears nowhere in the Draft Guidelines – then it would appear to us that targets and actuals could well have significant differences in avoided costs.

2.2.4 Given the sensitivity of TRC calculations to commodity cost forecasts, we believe that regular updating of those forecasts should be built into the Guidelines as a plan requirement. Each DSM plan should include a proposal for a forecasting methodology that does not rely on the discretion of the gas utility, but has an external and independent basis.

2.2.5 ***Natural Gas Savings*** We believe that the Draft Guidelines contain a fundamental flaw in the suggested approach to the baseline for TRC benefits. On page 10, the Draft Guidelines contain the surprising statement that "the base case technology variable represents the piece of equipment or technology that is being replaced by a more efficient technology". With respect, this is simply not correct. The baseline should in all cases be the alternative that would be implemented but for the program.

2.2.6 By way of example, if an old low efficiency furnace comes to the end of its useful life, and is replaced by a high efficiency furnace, there is significant efficiency benefit, but not all of it is a result of the program. The alternative to the high efficiency furnace is not a low efficiency furnace; it is either a mid efficiency or a high efficiency furnace, because that is what is for sale in the market today. The "current furnace", as the Draft Guidelines would propose, is in fact unlikely ever to be the appropriate baseline. In our opinion, the TRC calculation must be based on the reasonable alternative given the standards, and the market, at the time of the program.

2.2.7 We note in passing that the Draft Guidelines do not appear to realize the inherent connection between baseline and free ridership. The baseline has to be selected to show the net benefits <u>caused</u> by the program. Thus, the evaluator must predict what the customer would have done but for the program. As a matter of convention, if the customer would have installed the same equipment as is being incented, that impact is captured in free ridership. If the customer would have installed something more

efficient than what is being replaced, but less efficient than the equipment being incented, that impact is captured by using that alternative equipment as the baseline.

2.2.8 ***Equipment Lives.*** The Draft Guidelines propose that equipment should be presumed to generate savings for its entire useful life, and that its useful life should be presumed to be the same as the baseline. Neither assumption is correct, and both should be rejected. Using those assumptions is likely to result in utilities being incented for savings they do not actually achieve.

2.2.9 The easiest example of equipment not generating savings for its entire useful life is an accelerated replacement scenario. A homeowner installs a high efficiency furnace even though the current low efficiency furnace is not yet dead. If the remaining life of the low efficiency furnace is five years, it is reasonable to estimate the value of the savings as the difference between low and high for five years. However, at that point there must be presumed to be a replacement in any case, and a reasonable baseline five years out is probably a high efficiency furnace. Therefore, after five years there should be no TRC benefits. The baseline starting in year six should be a high efficiency furnace in any case.

2.2.10 With respect to assuming identical lives for the baseline and the new equipment, this is a historical anachronism that makes sense only where something is replaced by a more efficient but otherwise identical version of the same thing. As gas DSM has matured over the years, the efficiency solutions being implemented are less likely to be identical to the prior equipment being replaced. If a school implements a real time energy monitoring system, what is the life of the baseline? The baseline is human beings sporadically checking the energy use. If a homeowner replaces their furnace with one of the new home micro-cogen units, does it make sense to assume that the micro-cogen, with a rated life of ten years, will actually last twenty?

2.2.11 We therefore think that equipment lives (and the related issue of persistence) should be based on what is actually expected to take place, not a shortcut that results in the calculated savings, on which incentives are based, being different from the actual savings forecast.

2.3 ***Inputs and Assumptions***

2.3.1 The Board has retained Navigant Consulting to develop inputs and assumptions for each program to be used in calculating the TRC costs and benefits. We have serious concerns about this decision, on two counts: the choice of consultant, and the apparent workplan being followed.

2.3.2 On the first point, it is shocking to us that the Board would retain as a theoretically "independent" consultant a firm that makes its living doing work for the very same utilities from which it is supposed to be independent for this study. As much as

Navigant may want to be unbiassed in this study, their economic interests are to keep their customer base satisfied. Their customer base is utilities, not the ratepayers.

2.3.3 Even if Navigant were able to remain unbiassed, they cannot avoid the perception of bias, given the nature of their business. It is submitted that one of the responsibilities of the Board in this context is to avoid an appearance or perception of bias in Board activities, and there is no reasonable way that could be avoided with Navigant doing this work.

2.3.4 This problem is made more acute by the fact that Navigant is not well known as having expertise in DSM assumptions. There are many firms with signficant expertise in this field, and the selection of a firm that does not appear to have that expertise increases the problem. Not only do they have an inherent bias, but lacking the level of expertise of some other firms, they are more likely to be influenced by the experts at their clients, the utilities, than a true expert would be.

2.3.5 On the second point, we note that Navigant has developed their proposed inputs and assumptions by speaking only to the utilities, whose financial interests are those at stake here. It is difficult to understand how a review could be said to be independent if the consultant, apparently with the approval of Board Staff, speaks only to the companies from whom they are supposed to be independent.

2.3.6 We believe that a Board-approved set of inputs and assumptions is probably a good idea, but to do that the Board would, in our opinion, have to have independent work done. In this situation, we believe that the Navigant study should be rejected by the Board in its entirety, and a firm with proper expertise and independence be retained in their stead.

2.3.7 One other concern arises in this section of the Draft Guidelines. The Guidelines propose that the distributor can treat the published inputs and assumptions as a default, or propose and provide evidence for an alternative number. This has the potential to promote gaming, since the distributor is basically allowed to select the more favourable of the default, or an alternative.

2.3.8 However, if this rule only applies to program design and selection, as the Draft Guidelines imply, it would appear to us to be OK. While it would affect prioritization between prospective programs, the utilities are incented to use realistic numbers, since as we understand the Draft Guidelines the incentive calculation would be based on best available information, not published or planning assumptions.

2.3.9 On the other hand, if the intent of this section of the Draft Guidelines is to allow the utility to choose between the published default, and an alternative they propose, for target and incentive calculations, then in our view the Draft Guidelines should specifically provide that any party to a proceeding can propose an alternate number for

any input or assumption, along with evidence to back it up.

2.4 *TRC Costs*

2.4.1 ***Equipment Costs.*** As noted earlier, in our view all TRC costs and benefits should be incremental in nature. There is a baseline, which has both costs and benefits, and there is the revised scenario resulting from the program. It is the difference between the baseline and the incented scenario, on both the cost and benefit sides, that results in a net TRC benefit. For example, unless the baseline includes no equipment cost, the full cost of the incented equipment will not be the cost for TRC purposes. Only the excess of the cost of the incented equipment over the cost of the baseline should be included. Any other method of calculation is, in our opinion, incorrect because it would calculate incentives based on net benefits other than those actually forecast to arise.

2.4.2 ***Program Costs.*** There is a lengthy discussion of the various types of program costs in the Draft Guidelines at pages 13 – 15 inclusive. It is not clear to us how this discussion is helpful to the discussion of how to measure cost-effectiveness, and in some places it appears to muddy the waters. For example, on page 13 it says "Program promotion may also involve trade-offs between increases in promotion costs and expected increases in participation". Does this imply that there is some test that should be used, and that program costs could be disallowed if the increase in participation is not sufficient to justify the spending? There are several examples like this.

2.4.3 What is also not included is any discussion of the internal (ie. intra-corporate) cost allocation method to be used in the calculation. For example, one would assume that standard fully allocated costing should be employed, but that is not always implemented by the utilities. It would be useful for the Draft Guidelines to spell out that fully allocated costing should be employed in all TRC calculations

2.4.4 Since the heading of the section is "Cost Effectiveness", it is surprising to us that no mention is made of the cost effectiveness of incentive amounts. While we understand that incentive payments are not costs for TRC purposes, it is also clear that paying an incentive that exceeds the net TRC benefit of a program is normally not prudent. In our view, the Draft Guidelines should address the cost effectiveness of incentive amounts as well as TRC-based cost effectiveness.

2.5 *Adjustment Factors in the TRC Test for Assessing DSM Programs*

2.5.1 ***Free Riders.*** As noted earlier, the various causation-related issues are tied together, and represent a major problem area for the current DSM regime. There are no clear-cut answers because, despite what the Draft Guidelines say, rarely is free ridership (or attribution or spillover, for that matter) black and white. The extent to which a utility DSM program "causes" a particular result is, especially as the conservation marketplace becomes more crowded, a very murky analysis.

2.5.2 Therefore, frequent review, in a program-specific context, is a requirement for TRC benefits to be calculated fairly. We believe that the auditor should, each year, give an opinion on whether the free ridership assumptions used in the Evaluation Report and the TRC calculation are reasonable and, if not, how they should be altered.

2.5.3 We also note that the Draft Guidelines do not include any commentary on the goal of designing programs that minimize free ridership. That would be a useful addition.

2.5.4 ***Attribution.*** The Draft Guidelines appear to treat attribution as the only one of these components that is related to causality. Of course, that is not the case, as we have stated earlier. Rather, where free ridership and spillover are about <u>whether</u> a program caused a result, attribution is about <u>who</u> caused the result (and, incidentally, baseline is about <u>how much</u> of the result was caused by the program).

2.5.5 We strongly disagree with the "centrality" principle. Collaborative efforts amongst the many participants in the conservation sector today are not readily amenable to designation of one participant as the "lead". It would appear to us that allowing distributors to claim that they were "central" to a joint program is inviting claims that are not really capable of clear evidence, and will promote disputes and discord.

2.5.6 In our opinion, while the Board is still using the TRC driven calculation of benefits, attribution should be done strictly on the basis of spending. The total amounts spent by each program sponsor (on program costs and incentives) should be summed, and the percentage of the total each incurred calculated. That percentage should be the attribution percentage.

2.5.7 We note that the Draft Guidelines also propose that rate-regulated entities can agree between them how to divvy up credit. This is not appropriate unless the incentive structures for all players are identical, and none of those incentive structures have thresholds. If two sponsors have different incentives, the "divvy up" rule incents them to optimize their combined financial rewards at the expense of the ratepayers. If incentives have thresholds, the rule incents them to use the division to optimize their achievement of thresholds artificially. In the current environment, therefore, this is simply not a good rule.

2.5.8 ***Spillover.*** We found the section on spillover unhelpful, in that it proposes a default of no spillover, with the right to apply for it. Not only does this promote more proceedings and more disputes before the Board, but to our mind it fails to grapple with the fundamental question of whether spillover is appropriate at all.

2.5.9 We understand why utilities want to get credit for spillover. However, so far we have not heard anyone answer the question: "Why would you incent someone to do something they are not doing on purpose?" The Board authorizes the spending of

ratepayer money on incentives such as SSM because the payment of the incentives causes the utilities to do beneficial things. Spillover, by definition, is something that happens accidentally as a collateral impact from utility DSM programs. Since it happens accidentally, it is not possible to "cause" it to happen intentionally, and thus paying a utility to do it is not actually producing any beneficial result. Put another way, the beneficial result will happen whether or not it is included in the incentive. Therefore, the incremental incentive (SSM, for example) is simply wasted.

2.5.10 Our conclusion on this is that even if it were possible to calculate spillover in some empirical and reliable way, which we doubt, paying an incentive based on that calculation would serve no useful purpose. It would be spending ratepayer money for nothing.

2.5.11 We also note that, while the Draft Guidelines seem to treat spillover as approved only on an exception basis, spillover crops up in numerous other places in the draft, implying that its inclusion is routine and expected. We believe this should be corrected throughout.

2.5.12 ***Persistence.*** The Draft Guidelines correctly raise the issue of persistence, but then provide no guidance to the utilities on how it should be handled. In our view, persistence is a part of the calculation of either baseline or measure life, and should be approached from that point of view. A comprehensive and rigorous approach to identifying the true baseline for a program or measure is the solution to dealing with persistence. More detailed analysis of this issue would be a helpful addition to the Guidelines.

2.6 ***Fuel Switching***

No submissions.

2.7 ***Pilot Programs***

2.7.1 We are confused by the section on Pilot Programs. To our mind, the Board should be setting out in the Draft Guidelines:

(a) What constitutes a pilot program, what purposes can it be used for, and how does it differ from a market transformation program?

(b) Should the costs and benefits of pilot programs be included in the TRC calculation?

(c) Do pilot program results count for target, LRAM, SSM and DSMVA purposes?

(d) Should there be special reporting requirements so that the benefits of pilot programs are achieved?

(e) How does a distributor determine when a program shifts from pilot to the real thing, if at all?

(f) How, if at all, should distributors be sharing information on pilot programs so that the research benefits of those programs have the maximum benefit to ratepayers?

3 DSM BUDGETS AND TARGETS

3.1 *Budget Determination*

3.1.1 The Draft Guidelines leave budgets entirely up in the air, without any parameters whatsoever. In effect, the proposal is to leave the policy decision of how much DSM spending by gas utilities is appropriate to individual Board panels hearing rate applications (as was the case prior to 2006). We agree that is an appropriate transitional approach for the next year or so.

3.2 *Budget Term and Reporting*

3.2.1 SEC have consistently supported longer term DSM plans, and we continue to believe that is the best way to maximize the effectiveness of DSM spending.

3.2.2 However, in the current environment, with fundamental change in the conservation landscape happening weekly, and with the Board exploring a different approach to this area, it would appear to us that the 2010 plans should be limited to one year. This is particularly important given that the Draft Guidelines do not tackle many of the most critical issues in the current DSM framework, electing instead to be a compilation of the status quo with a few exceptions.

3.2.3 This section of the Draft Guidelines also appears to imply that the DSMVA has no upper limit, and the utilities can spend as much as they like on successful programs, put it in the account, and seek recovery from ratepayers later. We assume the intent is that the existing 20% upper cap would be retained. This should be clarified.

3.3 *Adjustments to an Approved Plan*

3.3.1 We note that in recent years the trend has been away from specific program approvals and towards a budget approach. The requirement to seek approval for inter-program transfers of more than 20% looks to be imported from the CDM Guidelines. Even if it is appropriate there (on which we have no comment), it is clearly not appropriate in the context of the more mature Gas DSM environment.

3.3.2 It is, we should add, within a Board panel's discretion to earmark funds for a particular program or category of programs, such as low income or industrial, and to enforce that earmarking later. If a utility wants to go outside of those parameters, of course an application should be required. On the other hand, it is normally not a good idea for a Board panel to earmark funds for particular programs within an approved plan. Utilities, in consultation with stakeholders, should be implementing their plans in a manner than continually optimizes them for market response, changes in the external environment, etc. Subject to our comments in section 3.4 below, they should not be

required to apply for changes to their plan to implement it in an optimized manner.

3.4 ***Targeted Program Spending***

3.4.1 In general we agree with the principle being expressed in the Draft Guidelines. However, it would appear to us that allowing stakeholders to challenge spending changes after the fact is to in effect exclude stakeholders from consideration of re-allocation altogether.

3.4.2 If a utility is implementing a DSM plan properly, it should be working closely with its stakeholders. If the utility wants to make a significant change in allocation of effort between ratepayer groups, it should do so in consultation with those stakeholders. If during that consultation it becomes clear that there is significant opposition to the change, in our view the utility should make an application for alteration to their plan, or risk being unable to recover diverted funds from ratepayers.

3.5 ***TRC Savings Targets***

3.5.1 The Draft Guidelines provide no guidance on what principles or rules should be applied in establishing targets. We believe that is not very helpful.

3.5.2 In our opinion, the formulae set out in EB-2006-0021, a settlement in which we participated, have significant flaws and cannot be continued. Those flaws in some cases favour the utilities, and in some cases favour the ratepayers, but they ensure that the formulae put in place will not produce a fair annual target.

3.5.3 That having been said, the Draft Guidelines propose that the utilities be invited to set their own targets. If that is to be the approach in the near term (which may be the only viable method of dealing with it in the current environment), then it is important that the Board give ample time in the DSM rate proceeding for stakeholders to test the basis of those target proposals. Current time periods for IRM rate proceedings would not normally provide a sufficient forum for this debate.

3.6 ***Market Transformation Targets***

3.6.1 It is our submission that the Draft Guidelines should prohibit market transformation programs by gas distributors unless a distributor demonstrates that a particular proposed program is one that they are uniquely able to deliver, and it is of significant benefit to the ratepayers.

3.6.2 We have watched as the environmental groups have pushed for a market transformation focus, and the utilities have struggled to do this successfully. Our observation is that utilities do not do this well, because it is not within their core competencies.

3.6.3 Market transformation is about changing behaviour or changing market conditions over time. The skills required to do this are related to mass marketing, group psychology, and consumer economics. This is not what gas distributors do for a living. They are not advertising companies. They are not marketing specialists. They should not be asked to be what they are not.

3.6.4 Further, the point of market transformation is to make changes to society. This is something that government should do, and agencies funded by government, and other organizations with a public service focus. It is not appropriate to ask a profit-driven investor-owned utility to be an agent of social change, unless it is a natural complement to their core business. In this case, it is not.

3.6.5 There may be a small subset of programs in which the utility, because of their market position, is uniquely positioned to cause a major change in a specific market, for example by working with manufacturers to introduce a new energy efficient product. This will be rare. Where this is the case, we propose that the distributor be allowed to come forward to the Board with a proposal, which would have to demonstrate why the distributor should be given an exceptional budget to carry out this program, and why no-one else is able to do it.

3.7 ***Low Income Customer Program Targets***

3.7.1 SEC has consistently taken the view that utilities should not be in the business of delivering social objectives. The Draft Guidelines appear to propose that targets for low income programs should be based on different considerations from those of other programs. If those targets are not based on achievement of overall energy efficiencies, then in our view they would not be appropriate.

3.7.2 We also note that the Board has a process in place to deal with ratemaking approaches to low income consumers. We believe that any significant changes to the DSM framework to meet policy goals relating to low income consumers should await the outcome of that process.

4 LOST REVENUE ADJUSTMENT MECHANISM

4.1 *Eligible Programs*

No submissions.

4.2 *Calculation of LRAM*

4.2.1 Our comments earlier in Section 2 would apply to the LRAM calculation as well.

4.2.2 It is submitted that the calculation of LRAM and SSM should be based on the same input assumptions, all of which should be best available information.

4.2.3 In IRM, the lost revenue impact of DSM programs can be more difficult to calculate because the forecast is not a public part of a rate proceeding. Further, both of the distributors have average use adjustments in their IRM models that would potentially capture some or all of the things that LRAM would capture. The Draft Guidelines should, in our view, deal expressly and clearly with the interaction between the IRM models in place and the LRAM baseline.

4.3 *Lost Revenue Adjustment Mechanism Variance Account*

No submissions.

4.4 *Timing of LRAM Application*

No submissions.

5 INCENTIVE PAYMENT MECHANISMS

5.1 *Long Term Debt*

5.1.1 ***Shared Savings Mechanism (SSM) for Resource Acquisition Programs.*** The Draft Guidelines raise a number of issues relative to SSM.

5.1.2 In the first paragraph, the phrase "adjusting for free riders and spillover effects as required" implies those are the only adjustments. Of course, there are a number of inputs and assumptions that affect the TRC net benefits. We believe this phrase should be removed. The TRC net benefits and their calculation are handled in detail elsewhere, and any attempt to deal with that here as well is likely to be either confusing or inconsistent.

5.1.3 The reference to the non-linear function approved in EB-2006-0021 is not clear. The Draft Guidelines should make clear whether it is the pattern, the formula, the actual numbers, or some other combination of attributes of that approved function that are being maintained. For example, if parties want to propose reduction of the cap, or removal of the cap, is that within the Guidelines or not? Similarly, could a non-linear function with multiple pivot points, or with conditions that are not based on TRC, be proposed within the Guidelines. In short, how much of what was approved in 2006 is expected to be retained in the 2010 plans?

5.1.4 The Draft Guidelines are clear that the actual TRC net benefits for SSM purposes are to be calculated using best available information. We assume that means that, while the target is based on the old assumptions, the actual savings are calculated using best available information.

5.1.5 We see tremendous benefit in this approach. Although utilities complain that using different inputs for the target and actuals calculations is unfair to them, ratepayers rightly point out that using inputs known to be incorrect to calculate incentives means by definition incenting savings that are not real. This has always been a problem.

5.1.6 By ensuring that the audit uses best available information, the Board will also indirectly be reducing the problems with inputs in the target setting process. Currently, utilities are incented to game their inputs, since the same inputs are used for targets and actuals. Under the proposed approach, utilities have to be more realistic in the inputs at the front end (which includes both targets and program design), since a rosy picture at that time could hurt them when the audit figures come in and are more realistic.

5.1.7 ***Market Transformation Incentive.*** We have noted earlier that we believe market transformation programs are generally not suitable activities for gas distribution utilities. In those rare cases in which they should be allowed, we agree that the

incentive should be tailored to fit the program. From a ratepayer point of view (and, we submit, from the Board's point of view) the question that needs to be asked at that point is "Is it reasonable for us (the ratepayers) to hire this company (the utility DSM group) at this bonus level to use our money to achieve this market result?"

5.1.8 ***Low Income Customer Programs Incentive.*** We do not understand why it would be appropriate to provide an additional incentive to utilities relative to their low income programs.

5.2 ***Shared Saving Mechanism Variance Account***

No submissions.

5.3 ***Timing of Application***

No submissions.

6 PROGRAM EVALUATION AND AUDIT

6.1 *Evaluation Plan*

No submissions.

6.2 *Program Type Specific Guidelines*

6.2.1 We will not comment on the individual components of this section. Instead, we will make two general comments.

6.2.2 First, we found the examples singularly unhelpful. For example, it would not appear to us to be good planning for a coupon program to assume that each coupon means a properly installed piece of equipment. A properly designed evaluation plan would include some sampling to test whether coupon=savings.

6.2.3 Second, we found the use of Market Support and Market Transformation confusing. This appears to be the only place that Market Support Programs are referred to, and we cannot figure out how it fits into the proposed framework.

6.3 *Implementation of Updated Input Assumptions*

6.3.1 We have commented elsewhere on the use of best available information for both SSM and LRAM actuals. We support this change, for the reasons stated earlier.

6.3.2 We found the example on page 34 confusing, and recommend that a clearer example be employed to express the point.

6.4 *Evaluation Report*

6.4.1 This section appears to assume that inputs and assumptions for a given technology are consistent, regardless of program design. This is not the case. The same technology, delivered in a different way, can produce materially different results. For example, if a piece of equipment is dropped off at the front door in Program A, or installed by an HVAC contractor partner in Program B, the actual savings that will be delivered will be different in the two programs. The differences are not just ones of free ridership or persistence, but also participant count, avoided gas use, measure life, and other impacts. This should be clarified.

6.4.2 A related issue is the introduction of the notion that new programs added during the plan can be evaluated using the distributor's proposed inputs and assumptions. In our view, each of the inputs and assumptions for any such program should be audited for that year by the independent auditor, and it is the resulting inputs and assumptions that

should be used.

6.5 ***Independent Third Party Review***

6.5.1 We continue to be concerned that a third party review cannot be truly independent if the process is controlled, and the "independent consultant" retained and paid, by the distributor. That is especially true given the use in the Guidelines of best available information for SSM actuals. Where that is the case, the independence of the auditor is critical to the fairness of the system. As the Draft Guidelines are currently written, Enbridge or Union could hire Navigant to approve their SSM claims, and that would be just fine.

6.5.2 The EB-2006-0021 case introduced the analogy to the financial audit, where the auditor has an independent responsibility to express an opinion on the results. This was an important step in the right direction, but it must be recognized that DSM auditing does not have the rich set of rules and responsibilities for auditors that exist in financial auditing (Generally Accepted Auditing Standards), nor do DSM auditors have the same legal obligations that financial auditors bear.

6.5.3 As a result, to make a DSM audit work as effectively as a financial audit, it is necessary for the Board to establish parameters that ensure independence and rigour.

6.5.4 The Draft Guidelines appear to retain the notion, which we already know has not worked, that the EAC is limited to an advisory capacity only. We have already seen in the case of Enbridge – and as reported in the memo attached to the SEC Notice of Intervention in this proceeding - that simple phrase being interpreted to mean that Enbridge is free to instruct the auditor any way they like, despite contrary "advice" from the EAC.

6.5.5 In our submission, the better approach is for the Board to stipulate that the responsibility for supervising the work of the auditor is delegated to the EAC, which would then also have the responsibility to ensure that the auditors responsibilities are met.

7 DSM CONSULTATIVE

No additional submissions.

8 ACCOUNTING TREATMENT

8.1 *Funding of DSM Programs*

8.1.1 We believe this section should clarify that, once alternative funding is secured, the program budget is diverted to the DSMVA (unless the distributor establishes a new program to spend it), and the LRAM and SSM will no longer apply to that former program after alternate funding commences.

8.2 *Cost Allocation*

8.2.1 We found this section to be too limited. If the Draft Guidelines are to give instructions on cost allocation, then they should stipulate the cost driver to be used for allocation of each category of costs. This would deal not just with allocations to classes, but also fixed/variable split, and changes that arise because of changes in program design, spending, or prioritization.

8.2.2 We also think it would be useful for this section to deal with the allocation of cost responsibility for LRAM, SSM, DSMVA and market transformation (if allowed).

8.3 *Revenue Allocation*

8.3.1 We did not understand this section.

8.4 *Demand Side Management Variance Account (DSMVA)*

No submissions.

8.5 *Carbon Dioxide Offset Credits Deferral Account (CDOCDA)*

No submissions.

8.6 *Recording of DSM Spending Not Funded Through Distribution Rates*

No submissions.

9 ANNUAL REPORTING GUIDELINES

9.1.1 It is submitted that the appropriate timing for filing of the annual report should be ten weeks after the delivery to the auditor and the EAC of the final Evaluation Report and all other information required to carry out the audit.

10 ADMINISTRATION

No additional submissions.

All of which is respectfully submitted.

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