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

Dear Ms. Walli:

Re: EB-2008-0150 – Consultation on Energy Issues Relating to Low-income Consumers Report of the Board: Low-income Energy Assistance Program – Comments of the Building Owners and Managers Association of the Greater Toronto Area and the London Property Management Association

This letter is in response to the Board's March 10, 2009 letter related to the Consultation on Energy Issues Relating to Low-income Consumers Report of the Board: Low-income Energy Assistance Program (EB-2008-0150). 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 Building Owners and Managers Association of the Greater Toronto Area (BOMA) and the London Property Management Association (LPMA) dealing specifically with anticipated implementation issues and proposed solutions.

General Comments

BOMA and LPMA support the Low-Income Energy Assistance Program (LEAP) as outlined in the Board's March 10, 2009 Report of the Board on Low-Income Energy Assistance Program.

In particular, BOMA & LPMA support the three pronged approach of LEAP. The temporary financial assistance for customers in need is a good measure to deal with the immediate need while the targeted conservation and demand management programs will tackle the cost of energy on a long term basis. Sandwiched in between, more flexible customer service rules should help reduce the immediate need while the longer solutions are implemented.

BOMA & LPMA agree with the Board that a comprehensive province-wide approach to assisting low-income energy customers is important. BOMA & LPMA believe that LEAP is a significant step toward this goal.

Funding Through Distribution Rates

The Board has determined that the greater of 0.12% of a distributor's Board approved distribution revenue requirement, or $2,000, is a reasonable commitment of distributors to LEAP. Inclusion of these costs in the revenue requirement provides a number of benefits as compared to other alternatives reviewed such as rate design options, a special rate for low-income customers, or rate riders.

In the view of BOMA & LPMA this approach is the simplest approach in terms of regulatory and administrative burden. The approach also helps to minimize the cost to all distribution customers because the inclusion of the LEAP funds in the revenue requirement will yield a taxable expense that will reduce the income tax component of the revenue requirement. It also minimizes administration costs for the distributors, and hence for their customers.

As noted in the Staff Report to the Board, there are likely to be savings to the distributors associated with bad debt expense, connection/reconnection costs and collection costs associated with LEAP. These savings will also help reduce the impact on the overall cost of the LEAP program.

Regulatory and Administrative Burden

By including the costs associated with the LEAP program in the revenue requirement as a percent of the revenue requirement, the Board has streamlined the process. More importantly, by ensuring that the social agencies that partner with the distributors are responsible for the assessment of eligibility for assistance, there is no significant cost impact on the distributors. These social agencies are best positioned for this function. Distributors do not have the information or expertise needed to perform this key role.

BOMA & LPMA note that there will be additional reporting requirements and perhaps some costs associated with the customer service changes that would be applicable to low income customers. However, it would not appear that any such costs would be significant.

Implementation Issues

BOMA & LPMA believe that there may be a number of implementation issues associated with LEAP. These issues are provided below, in no particular order of importance. BOMA & LPMA invite the Board, Board staff and other parties to suggest solutions to the issues or ways that the issues can be minimized or eliminated.

a) Lack of a Social Service Agency

BOMA & LPMA strongly support that LEAP should be a "comprehensive and province-wide approach to assisting low-income energy consumers" as indicated on page 2 of the Report of the Board. BOMA & LPMA also support the development of partnerships with social service agencies by distributors.

LEAP should be available on a province-wide basis. However, it may be the case that not all distributors will have a social service agency to partner with. This is not likely to be a problem in the large and mid-sized towns and cities, but may well be an issue in smaller towns and villages and in rural areas. If such situations exist, then distributors will not be able to provide LEAP funding to a social service agency partner that serves their franchise or service area.

BOMA & LPMA believe that the Board should immediately contact distributors and ask them to determine whether or not there is a social service agency for them to partner with in their franchise or service area.

If there are some situations in which there no social service agency to partner with, the Board may want to provide further guidance to the distributor. For example, a social service agency serving a neighbouring service area may be able to extend their coverage to the relevant area.

On the other hand, if no social agency is available, the Board may have to determine who should be responsible for administering and deciding on eligibility for assistance. This could be the distributor itself, or its municipal shareholder. In any event, if such situations arise, the distributors should be able to look to the Board for guidance.

b) Equal Access Across a Distributor's Franchise or Service Area

Even if the situation in (a) above does not exist or is rare, there are likely to be situations in which some customers may not have access to LEAP funds. Where franchises or service areas cover multiple municipalities, native reserves or unincorporated townships, some of these areas will have social service agencies, while others may well not.

The Board needs to ensure that all customers of a distributor have equal access to LEAP funding. It would not be appropriate if a customer in the same need of financial assistance as another customer did not have access to LEAP funding simply because they lived in a different area than the other customer and both were served by the same distributor.

The Board may want to consider how such a situation should be handled by the distributor to ensure equal access to LEAP funding by all customers.

c) Equitable Assistance

As noted above, BOMA & LPMA support the partnership between distributors and social service agencies that serve the relevant franchise or service areas. However, the use of different social service agencies by different distributors or of different social service agencies by a single distributor may result in a number of issues that should be addressed in the Board's Low-Income Energy Assistance Program.

The large distributors, such as Hydro One, Union Gas and Enbridge Gas Distribution cover vast areas of the province. These distributors will need to create partnerships with many different social service agencies to ensure that all of their customers have equal access to LEAP funding. Many more distributors serve both contiguous and non-contiguous service areas that will have multiple social service agencies.

It is likely that there will be differences related to a number of issues when dealing with multiple social service agency partners on a single distributor. These differences could include eligibility criteria for assistance, level of assistance, maximum levels of assistance, frequency of assistance and so on.

BOMA & LPMA believe that such differences within a distributor's franchise or service area could result in significantly different levels of assistance to like customers of the same distributor. Each of the agencies involved may have good reasons for their own criteria, policies and levels of assistance. However, this may not be an equitable result.

The Board has no authority to standardize any of the differences in criteria, policies or levels of assistance across the social service agencies. The Board should, however, investigate any measures that it could take to ensure that any differences in the level of assistance to different customers within a distributor are minimized.

<u>d) Not Enough LEAP</u>

BOMA & LPMA support the level of assistance as determined by the Board to be reasonable. However, in the current economic environment, there is a strong possibility that the level of assistance provided through the LEAP program may not be sufficient. This may be especially true for individual distributors where the franchise or service areas have been disproportionately impacted by plant closures and job losses. BOMA & LPMA believe this raises two significant issues.

i) Allocation of LEAP Funds by a Distributor

As noted above, many distributors will have a number of social service agency partners that serve different geographical areas within a distributor franchise or service area. In the circumstances where the request from these partners is in excess of the total LEAP funding available, the distributor will have to allocate the funds. It is submitted that the Board should set some guidelines as to how this allocation should be done. As most requests for funding are likely to occur in the winter months and given that the LEAP funding is available from the distributors on a calendar year basis (page 10 of the Report of the Board), it is likely that funds may need allocation in the October through December months.

BOMA & LPMA note that the Board has indicated that if there are funds left over at the end of the calendar year, it expects the distributors to roll these funds over into the next year, adding to the following year's annual commitment. BOMA & LPMA support this approach.

However, the Board may also want to consider allowing distributors the discretion to advance some portion of the next year's annual commitment to the current year in the situation where the current year funding is inadequate and there is a reasonable expectation that the requests for funding in the following year (or years) will decline. BOMA & LPMA submit that some limit be applied to the portion of the following year's commitment that can be brought forward should be set. BOMA & LPMA suggest a limit of 25% is reasonable as this could provide significant additional funding for the current year, while not crippling the amount of funding available for the following year.

ii) Allocation of LEAP Funds Among Distributors

As noted earlier, the current economic environment is having disproportionate impacts on different areas of the province. Some areas have been impacted by significant industry restructuring and plant closures, along with the accompanying impact on employment and the multiplier effect that has on communities.

It is likely that the LEAP funds will be more than adequate for some distributors while being less than needed for others. This division will change over time as the economy changes.

The Board may want to consider whether it is appropriate or even preferable to allow/encourage distributors to temporarily transfer leap funds from one distributor to another with the funds paid back at a later date. This would allow assistance to flow to areas of the province where more help is currently needed without any current or future harm to those areas providing the assistance.

BOMA & LPMA note that if the LEAP funds had been raised as part of the transmission revenue requirement rather than as part of the distribution revenue requirement, or through a change similar to the debt retirement charge or the Rural or Remote Electricity Rate Protection (RRRP) or some other similar system benefit charge there would essentially be one province-wide pot of money available to all ratepayers for assistance. The use of the distribution revenue requirement to raise these funds effectively results in the establishment of a number of pots, some of which may be overflowing while others sit empty.

e) Accounting and Management of LEAP Funds

An issue that arises from the discussion in (d) above and in the Report of the Board is the management of the LEAP funds on an ongoing basis. As noted in the Report of the Board, any funds left over from one year are to be rolled forward into the next year, in addition to that year's annual commitment.

i) Accounting Issues

This raises the issue of the accounting treatment of the LEAP funds recovered from ratepayers on an ongoing basis and the payment of these funds to the various social service agency partners. Would any difference in funds received from ratepayers over those paid out to the social service agencies on an actual basis in a year be reflected in the revenue for the utility? Would this difference in revenue also have an income tax impact? For example, if a distributor has excess funds to carry forward to the following year is the amount to be carried forward the actual excess or the after-tax actual excess? Similarly, if a distributor had a shortfall in the funds relative to the amount paid to its partners is the amount to be carried forward the actual shortfall or the after-tax shortfall which would be reduced by the tax savings?

ii) Management Issues

As noted in the Report of the Board, there could be unused funds that are brought forward from one year to another. Further, the Board could adopt the proposal to allow the distributors to access a portion of the following year's funds in the current year and/or encourage distributors to temporarily transfer funds among themselves as commented on above. In any case, there should be some industry wide standard process for managing the funds.

The Board may want to consider ways to maximize the value of any funds that reside in an account through guidance on investment of the funds to earn interest. Any interest earned on the LEAP funds should be excluded from distributor earnings and added to the LEAP funds available for future use.

The Board may want to consider whether it is most efficient to have each distributor manage its funds individually or whether some other organization, such as the Electricity Distributors Association, would be able to provide such a service at a reduced cost and provide a better return, especially for the smaller distributors.

f) LEAP Fund or Funds?

The Board noted that it does not regulate fuels other than electricity and natural gas, such as wood heating oil or propane. LEAP funds will not be used to provide financial assistance for energy costs beyond electricity and natural gas. However, it not clear whether natural gas related funds should be used for assistance with electricity bills and vice versa.

It is not clear to BOMA & LPMA whether or not the Board has considered if LEAP assistance raised through natural gas rates should or should not be used to provide assistance related to natural gas consumption only or whether these funds can also be used to assist the payment of the customer's electricity bill. It is likely that most, if not all, natural gas customers are also electricity customers. This does raise an additional question, being whether or not funds raised through natural gas distribution rates are to be used for electricity customers that are not natural gas users.

Similarly, it is not clear if the Board has considered whether or not LEAP funds raised through electricity distribution rates should be used to provide assistance to a customer for their natural gas bill? Unlike the situation noted above, not all electricity customers are natural gas customers. This raises the issue of whether funds raised through electricity distribution rates should be used to assist natural gas users.

BOMA & LPMA submit that the Board should add clarity around these issues by indicating whether or not there should be separate electricity and natural gas "pools" of funding. Clarity should be provided on whether or not these pools should be used exclusively for assistance on the specific energy bill from the distributor that provides the funding; whether the assistance to a distributor's customer can be applied to the other energy form (i.e. natural gas funded assistance applied to electricity bill and electricity funded assistance applied to natural gas bill); and whether or not funds provided by a distributor should be available to non-customers of the distributor (e.g. natural gas funded assistance available to an all electric consumer in the franchise area).

g) Amount to be Committed in Non-Cost of Service Years

The Report of the Board has set a level of funding to be provided by distributors as the greater of 0.12% of a distributor's Board-approved distribution revenue requirement, or $2,000.

However, this calculation only works during cost of service rebasing years. This is the only time that the Board approves a distribution revenue requirement for distributors.

During incentive regulation years, there is no Board-approved distribution revenue requirement. Similarly, there is no approved distribution revenue requirement associated with distributors that are not rebasing due to mergers/acquisitions. As a result, BOMA & LPMA believe that the Board should indicate how the amount will be determined in non-cost of service years.

It is suggested that there are two ways that the Board could deal with the setting of the level of LEAP funds in non cost of service years. The first would be to simply maintain LEAP at the level determined by the last cost of service approved distribution revenue requirement. The second would be to take the amount determined by the last approved distribution revenue requirement and adjust it by the same price cap index as is applicable to the distributor. This inflation less productivity approach appears to be the approach to take to BOMA & LPMA. It would appear to be more sustainable in the long term.

h) Review of LEAP Requirements

BOMA & LPMA submit that the Board should review the level of the approved distribution revenue requirement to be allocated to LEAP on a regular basis to ensure that the funds generated are at an appropriate level. If the funds are exhausted well before year end on an ongoing basis, the Board may want to increase the level of 0.12% or the minimum figure of $2,000. On the other hand, if LEAP funds continue to be rolled forward a year to year basis with an increasing balance in the fund, the Board may want to consider a reduction. As noted earlier, the need for funds across distributors is likely to be different. A one size fits all may not be appropriate.

The ratio determined by the Board, as well as the minimum figure of $2,000 is appropriate as a starting point for the industry in aggregate. However, it may not sustainable on a distributor by distributor basis over the longer term. It is suggested that the review of the level and balances associated with LEAP should be reviewed on a regular basis as part of a distributor's cost of service rebasing application. The distributor should propose changes, if any, as part of that application.

i) Reporting Requirements

BOMA & LPMA believe that effective reporting requirements are necessary in order to evaluate LEAP and the level of funding provided.

In addition to disconnections and bad debt expense, it is submitted that a key indicator of how successful LEAP is would be the number of notices sent to customers related to arrears and/or disconnects.

BOMA & LPMA appreciate the opportunity to provide comments on potential implementation issues that may arise from the Report of the Board. Please contact me if the Board requires any further information or clarification related to these comments.

Sincerely,

Randy Aiken

Randy Aiken
Aiken & Associates