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June 7, 2010

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

Dear Ms. Walli:

Re: EB-2008-0346 – Demand Side Management Guidelines for Natural Gas Distributors - Comments of BOMA and LPMA on Concentric Report 'Review of Demand Side Management (DSM) Framework for Natural Gas Distributors'

In its March 19, 2010 letter to participants in the EB-2008-0346 and EB-2008-0150 Consultation Processes, the Board indicated that it had posted a report entitled 'Review of Demand Side management (DSM) Framework for Natural Gas Distributors' prepared by Concentric Energy Advisors ("Concentric").

A stakeholder meeting was held with representatives of Concentric on April 29, 2010. Participants were also allowed an opportunity to submit written questions to Concentric by May 10, 2010. The Board invited participants to comment in writing on the Concentric Report recommendations by organizing their comments based on the 14 elements of the DSM framework discussed in the Report. By way of a letter dated May 4, 2010, the deadline for filing this comments was extended from May 13, 2010 to June 7, 2010.

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") on the 14 elements of the DSM framework discussed in the Concentric

Report. Comments have been organized in the same format and order as that used in the Report.

<u>Issue 1 - DSM Cost Effectiveness Test</u>

<u>a) SCT vs. TRC</u>

Concentric recommends the use of the Societal Cost Test ("SCT") rather than the traditional Total Resource Cost ("TRC") test. This is because of the advantages of the SCT relative to the TRC in the view of Concentric. Chief among these is the belief that the SCT gives the utility more incentive to develop DSM programs and measures that result in meaningful reductions in gas consumption. Concentric comments that use of the SCT would likely increase the number of DSM measures and technologies that are determined to be cost effective. BOMA and LPMA do not disagree with this assessment.

However, the movement from the TRC to the SCT will introduce a number of additional parameters that will need to be evaluated, such as an economic value for carbon emissions and a societal discount rate.

In order to avoid added complexity to the process BOMA and LPMA suggest that if the Board is interested in using the SCT approach that it use the simplified approach noted in the Concentric Report (page 44) used in Iowa and Colorado. This approach is basically an adjustment to the TRC results by a factor (1.05 in Colorado and 1.075 in Iowa) to account for the avoided costs and societal benefits. This eliminates debates surrounding many of the other parameters and limits the debate to the percentage increase to be applied to the TRC results. This factor will basically be a policy issue based on how many more DSM measures and technologies will be deemed to be cost effective.

<u>b) Prioritization by PAC</u>

Concentric recommends that the Program Administrator Cost ("PAC") test be used to prioritize the proposed DSM programs and measures. BOMA and LPMA believe this is appropriate.

c) Low-Income Customers

Concentric recommends that a separate evaluation for the cost effectiveness of proposed DSM programs for low-income customers be undertaken and that a SCT threshold of 0.6 to 0.75 be adopted by the Board. BOMA & LPMA agree that a separate evaluation should be used for the low-income customers, but makes no comment on the appropriateness of the 0.6 to 0.75 threshold recommended by Concentric.

BOMA and LPMA are concerned with the potential impact of DSM program costs associated with low-income customers and their impact on rates. The lower the threshold for low-income customers, the greater the impact on rates. In other words, there is a trade off between the objective of encouraging energy efficiency programs for low-income customers and the impact on rates for all residential customers.

BOMA and LPMA submit that the Board should consider both a threshold value for low-income programs (as recommended by Concentric) in conjunction with an overall minimum portfolio threshold for all residential customers. At a minimum the residential portfolio threshold should be 1.0, but may be higher depending on the level and mix of low-income DSM programs that the Board wishes to mandate. It is recommended that the Board consult with stakeholders on the mix of residential DSM program spending that should be targeted to low-income customers and what the resulting overall residential portfolio threshold should be.

Issue 2 - DSM Avoided Costs

a) Responsibility and Timing

Concentric recommends that the gas distributors be responsible for calculating avoided costs and submitting them to the OEB for approval. Concentric further recommends that the commodity cost be updated on an annual basis and all other avoided costs be based on a three year program cycle. This is the current approach used by the Board. BOMA and LPMA do not see any reason to change from the current approach. Any changes considered by the Board should simply the process and not add to the time or costs associated with the current methodology.

b) Discount Rate

Concentric recommends replacing the distributor's weighted average cost of capital as the discount rate. In its place, Concentric recommends adopting a social discount rate similar to those in Iowa and Wisconsin, which could be based on the average yield on Government of Canada long bonds over a specified number of months.

BOMA and LPMA do not believe that there is any reason to deviate from the current approach of using the weighted average cost of capital of the distributor as the discount rate. However, if the Board believes that a change to a rate based on the average yield of Government of Canada long bonds is appropriate, then it is submitted that instead of using a figure based on a specified number of months as recommended by Concentric, the Board should simply use the Long Canada Bond Forecast ("LCBF") used in the cost of capital parameters calculation each year. The LCBF is calculated each year based on the 10 year Government of Canada Consensus Forecast from January, along with the actual spread between 30 year and 10 year Government of Canada bond yields, also for the month of January.

c) Value of Reduced Carbon Emissions (and Other Environmental Benefits)

Concentric recommends that the Board should either establish a value of carbon emissions (and presumably other environmental benefits) or seek guidance from an outside expert, the regulated utilities, or the federal or provincial governments. Concentric has proposed a value on carbon emissions of between $15 and $25 per ton.

BOMA and LPMA believe the Board should establish a process that would provide further research and analysis in order to determine a value based on the expected form of carbon regulation in Ontario. Ideally, the use of a third party determination for the value would reduce the level of controversy if the Board is ultimately required to set a value.

It should be noted that the area determining a value of carbon emissions in Ontario is currently evolving. Any process developed by the Board to determine a value should be flexible to accommodate changes in government policy and developments over any multi-year DSM term.

Issue 3 - DSM Input Assumptions/Parameters

a) Development of Assumptions

Concentric recommends the current approach to developing a common set of input assumptions with the assistance of an independent consultant should be maintained by the Board. Concentric also recommends that if a distributor wishes to deviate from these input assumptions they should be allowed to file information in support of their assumptions.

BOMA and LPMA agree with the Concentric recommendations with one addition. In addition to the distributors being able to deviate from the input assumptions and filing information in support of their assumptions, BOMA and LPMA believe that intervenors should also have the same opportunity to provide information in support of their request to deviate from the current input assumptions. In both cases, all stakeholders would be given the opportunity to review and test the information filed by the party supporting a change in the assumptions.

b) Locked In or Updated

Concentric recommends that the Board continue to update input assumptions to reflect the best available information based on the Evaluation Reports. Concentric notes that this is consistent with the approach taken by a majority of other jurisdictions that they surveyed.

BOMA and LPMA agree with this recommendation. In order to measure the success of programs in relation to the policy objectives it is submitted that the use of the best available information is in the public interest. Evaluation of programs using out of date information is neither logical nor good public policy.

Issue 4 - DSM Adjustment Factors

Concentric does not make many specific recommendations in this issue because their recommendation to focus on market penetration of DSM technologies reduces the importance of adjustment factors. While BOMA and LPMA generally agree with this recommendation, the adjustment factors may still play an important role in determining reductions in gas usage attributable to the distributor's DSM programs depending on the framework that is ultimately put in place related to LRAM and SSM determinations and/or calculations.

a) Free Riders and Spillover

Concentric states that it believes that there is merit in simplifying the controversy over free ridership and spillover by either assuming that one offsets the other, or by multiplying the reported energy savings by a designated factor (such as the 90% used in New York). BOMA and LPMA do not agree with this belief, at this time. There is no evidence before the Board that would support the offset proposal or that the net impact is a fixed percentage reduction in the reported energy savings.

Concentric observed that there are significant differences in free ridership rates that the gas distributors assume for different DSM technologies. It is assumed the same may be the case with spillover estimates. The Navigant Consulting report did not provide estimates of free ridership for any of the DSM technologies and measures to be implemented in 2010 because the design of the DSM program and the specific targeted customer segments can influence the rate of free ridership.

BOMA and LPMA believe this is a good reason to continue to estimate free ridership and do the same for spillover effects if they are to be included as an adjustment factor. They do depend on the design of the program and the targeted customer segments. The Board should used the best available information for these adjustment factors.

Concentric goes on to recommend that if the Board determines that it would like to included free ridership as an input assumption (as recommended by BOMA and LPMA), then they agree with Navigant Consulting that this would be best accomplished by relying on empirical data from program evaluation reports or by relying on evidence from other similar jurisdictions as it becomes available. BOMA and LPMA agree with this conclusion but notes that another source of data would be the results of independent third party surveys of the customers that took part in a program (for the free ridership rate) and surveys of customers that did not take part in a program (for the spillover effect) but adopted the energy efficiency measure.

BOMA and LPMA also recommend that if the spillover effect is to be included as an input assumption in the calculation of the reported energy savings, then this adjustment also needs to be reflected in the TRC (or SCT) reward curve to compensate for the adjustment.

<u>b) Persistence</u>

BOMA and LPMA agree with the Concentric conclusion that persistence is an important measure that examines whether the customer continues to use the more efficient technology. Concentric recommends that persistence should not be assumed at 100%, as is the case in the current DSM framework. BOMA and LPMA agree. BOMA and LPMA further agree with Concentric that the level of persistence should be established in the evaluation reports.

Concentric further recommends that if a distributor wishes to deviate from the established persistence level it be allowed to do so by filing evidence with the Board to support a different adjustment factor. BOMA and LPMA accept that this would be reasonable but further recommend that the same opportunity be provided to intervenors as well to file evidence in support of different adjustment factors.

<u>c) Attribution</u>

Concentric states that it is concerned that the centrality principle currently used by the Board gives too much credit to gas distributors for DSM programs. BOMA and LPMA share this concern.

Concentric recommends that rather than attributing 100% of the benefits to the gas distributors that satisfy the centrality principle the distributors should be required to provide evidence supporting any percentage greater than that actually spent by the distributor relative to the total dollars spent on designing, developing and delivering the joint DSM programs in question.

BOMA and LPMA support this recommendation. In the absence of any other information, the percentage of actual costs incurred by a distributor relative to the total costs incurred for a joint DSM program is the best indicator and information available to allocate the benefits to the gas distributors.

Issue 5 - DSM Program Design

a) Market Potential Studies

Concentric recommends that the Board utilize the energy efficiency potential studies from Union and Enbridge as an indicator of which DSM programs are most likely to achieve the highest energy savings because they are aligned with documented opportunities to reduce gas consumption. BOMA and LPMA agree that the Board should utilize these studies, as they represent the best information available to the Board (and other parties).

The question, in the view of BOMA and LPMA, is whether the Board should continue to rely on market potential studies commissioned by Union and Enbridge, or whether the Board itself should commission the market potential study for Ontario. If the study was Board initiated, it could be expanded to include not only natural gas, but also electricity, other energy types (propane, heating oil, etc.) and evolving technologies such as solar hot water. Such a market potential study could provide insight into complementary technologies that cross over fuel types (for example combining solar hot water with tankless water heaters).

b) Market Transformation

Concentric recommends that the Board utilize a combination of customer and vendor surveys to estimate the effectiveness of market transformation programs because it is difficult to attribute verifiable savings to these programs. BOMA and LPMA believe this recommendation is reasonable.

c) Low Income Customer Group

Concentric notes that the low-income resident may not be the person responsible for the utility bill, or the decision maker in terms of installing more energy efficient technologies. In particular, if there is a tenant/landlord relationship, then the landlord is most likely responsible for deciding whether (and when) to upgrade to more energy efficient technologies. Concentric recommends that gas distributors and the Board continue to explore ways to address this concern.

BOMA and LPMA concur with the Concentric recommendation. The gas distributors should continue to discuss ways to address this concern directly with rental property owners and managers in order to ascertain the issues that need to be addressed. These issues can then be brought forward by the distributors to the Board for review in terms of proposals to deal with them.

Issue 6 - DSM Budget Development

a) Minimum Percentage of Distribution Revenue

Concentric recommends establishing a minimum percentage of distribution revenue that gas distributors would spend on DSM programs of 3.0% . Concentric notes that at this level of expenditures, Enbridge spending would only be slightly higher than their 2010 DSM budget, while for Union spending would be slightly below the 2010 DSM budget approved for Union.

BOMA and LPMA support the 3.0% as an appropriate figure for the minimum percentage of distribution revenue for the DSM budget. However, there are a number of issues that were not directly addressed in the Concentric Report that BOMA and LPMA believe should be addressed.

First, should the percentage apply to actual distribution revenue or to the distribution revenue requirement? If it is applied to the actual distribution revenue, should this revenue be normalized to remove the ups and downs associated with the weather variance? If applied to actual or to normalized actual distribution revenue, is it appropriate that DSM budgets would decline during (or immediately after) a recession that reduces distribution revenue? Conversely, should DSM budgets increase during times of strong economic growth? BOMA and LPMA believe that the DSM budgets should be relatively stable year to year and should not reflect increases or decreases related to weather and economic activity.

Second, should the DSM budget be determined each year based on distribution revenues or should they be set at an initial level based on the then current distribution revenue and then be adjusted automatically for the remaining years of the DSM plan? BOMA and LPMA submit that a stable budget, established in the first year of the DSM plan, and then escalated in a predictable manner over the remaining years of the DSM plan, providing stability in funding and in rates, is appropriate and desirable.

Third, how should the DSM budget be escalated in the second and subsequent years of the plan? As noted above, BOMA and LPMA do not believe that the DSM budget should be determined on an annual basis based on actual or normalized actual distribution revenue as this will result in fluctuations in distribution revenue being reflected in fluctuations in the DSM budget. Rather, BOMA and LPMA submit that the DSM budget should be increased in the second and subsequent years to reflect a phase in to a higher percentage of distribution revenues, as determined by a Board recommended range of distribution revenue percentages, as discussed below. If the Board does not provide a recommendation on a range of percentages of distribution revenue, then the escalation factor should be based on the same GDP IPP FDD factor used to adjust rates (for Union) and to adjust revenue per customer (for Enbridge).

b) Board Recommended Percentage Range of Distribution Revenue

Concentric recommends a Board recommended range between 4.0 and 6.0% of distribution revenues to set the overall DSM budget.

BOMA and LPMA do not believe that DSM budgets should be set based on a range of percentages of distribution revenues. However, the DSM budget should fall within a reasonable level of distribution revenues. In other words, distributors should develop their DSM budgets on a bottom up basis based on their plans to address their specific market conditions and customer needs. The end result should be within a narrow range of total distribution revenues.

BOMA and LPMA believe that the 4.0% to 6.0% range recommended by Concentric is too high, based on the significant customer impacts of a 6.0% level shown on page 96 of the Concentric Report. The increase from 3% (where the distributors currently are) to 6% doubles the cost to a customer and increases their bill by more than $30 per year. The impact on many customers will be in excess of this amount, since most of the DSM budget is recovered from customers through the variable charge. As a result, customers with above average usage will end up paying much more than the incremental $30 per year shown in the Concentric Report. The impact on small commercial customers would be even more pronounced.

BOMA and LPMA recommend that instead of a Board approved range, the Board should set a maximum percentage of distribution revenues to be used to set the DSM budgets. This would complement the minimum level determination. This maximum, or ceiling, in the view of LPMA should be set at 5.0%. In effect the Board would be recommending that DSM budgets fall within a range of 3.0% to 5.0% of distribution revenues.

The increase to 5.0% will still be a heavy burden on some customers, but will allow for some continued growth in DSM budgets over the term of the DSM plan. BOMA and LPMA note that it is not likely that the distributors will propose going to the 5.0% ceiling directly from the 3.0% floor where they currently are. In fact, BOMA and LPMA would recommend a gradual increase within the range for the DSM plan horizon. This would phase in the impact of the higher costs for customers over a multi-year period and would likely result in better customer acceptance.

BOMA and LPMA also believe that the impact on customers should be considered not only based on the DSM budget, but on the aggregate of the DSM budget, the DSM variance account and the shareholder incentive mechanism. This is discussed in more detail under Issue 8 below.

<u>c) DSM Variance Account</u>

Concentric endorses the current DSM variance account as an effective method for reconciling the difference between actual DSM spending and budgeted amounts. BOMA and LPMA concur, with one exception.

The current DSM variance account allows a distributor to spend more than the approved budget and recover up to a maximum of 15% of its DSM budget for the year. BOMA and LPMA believe this should be tightened up to a maximum of 10% to reflect the increase in the magnitude of the DSM budgets that is expected to take place during the next DSM plan. With a larger budget comes added responsibility for the distributor to manage its spending.

Another option the Board may wish to consider is if the distributor exceeds its DSM budget in any given year, the amount up to 15% of the DSM budget would be removed from the following year's DSM budget. This may be appropriate in situations where the excess spending in one year is related to timing issues.

<u>d) Separate DSM Budgets</u>

Concentric notes that it would be reasonable to establish separate DSM budgets for resource acquisition programs, market transformation programs and low-income customer programs. BOMA and LPMA also believe this is appropriate.

Concentric does not provide any estimate of the percentages that should be allocated to each segment in Ontario. BOMA and LPMA believe this should be done in consultation with stakeholders.

Issue 7 - DSM Metrics and Targets

Concentric has recommended that the Board adopt market penetration of the Best Available Technologies ("BAT") as its primary focus for evaluating whether a particular DSM program or measure is successful. In situations where market penetration is not applicable or cannot be readily measured, Concentric recommends measuring the reduction in gas consumption per customer attributable to the DSM program or measure.

This recommendation is a significant, and in the view of BOMA and LPMA, welcome change from the current methodology of calculation TRC net savings. BOMA and LPMA strong support the Concentric recommendation.

There is likely to be some initial costs associated with the distributors establishing a baseline of the existing situation in Ontario (or in their service territories) for each energy efficiency and conservation measure by conducting an inventory assessment. However, once this is done, the market penetration for each program and measure will be significantly easier to measure. This can then be compared against the targets set for each specific program or measure by a specific date.

Some parties may be hesitant to use market penetration as the basis for the measurement because the actual market penetration would likely be derived by market surveys that will be accurate to some level of confidence less than 100%. BOMA and LPMA note that the surveys can be designed in order to minimize the level of uncertainty. It should also be noted that all of the assumptions currently used in estimating actual TRC results are also only accurate within a broad range of confidence.

Concentric further recommends that the Board should consider establishing long-term market penetration targets that cover three to five years. BOMA and LPMA also support this recommendation. BOMA and LPMA believe that changing market penetration is a long term process. However, changes in the short term are likely to be informative as to how fast and what magnitude of change has been accomplished and may provide valuable information on the longer term market penetration targets.

Concentric recognizes that market penetration does not resolve the ongoing controversy surrounding free ridership. In other words, the market penetration of a BAT may increase independent of any activity by the distributors. This could be because of changes to building codes, advertising by other proponents of the BAT, or simple increases in the cost of gas. For example, as noted in the Pacific Economics Group report titled "Top Down" Estimation of DSM Program Impacts on Natural Gas Usage, there is a strong negative price elasticity for virtually all of the residential and commercial classes reviewed.

BOMA and LPMA submit that when market penetration targets are set for a DSM program or measure, the target should incorporate not only the existing baseline penetration but the expected change in that penetration absent distributor activity in the area. The market penetration target should reflect the objective of a higher penetration rate than what would otherwise be expected to occur. This would be an "a priori" approach.

Alternatively, the Board could direct the distributors to use an "ex post" approach and file information related to the free ridership rates, as part of the overall market survey to determine the market penetration rates and ask those surveyed what influenced the decision to adopt a BAT.

Concentric further recommends that similar metrics be developed for the DSM programs serving low-income customers. Again, BOMA and LPMA strongly support this recommendation.

Issue 8 - Shareholder Incentive Mechanism

a) Need for Shareholder Incentive and Penalties

Concentric states that gas distributors require a financial incentive for achieving various DSM program objectives, however they be calculated. BOMA and LPMA do not believe this is necessarily true in Ontario any longer. As the Board is aware, the province is attempting to create a culture of conservation across all sectors and all forms of energy use. This will require a change in the behaviour of residential, institutional, commercial and industrial users of energy.

BOMA and LPMA submit that it should also require a change in the behaviour of the regulated distributors. They should be required to promote energy conservation to the best of their ability for the benefit of all of their customers. A shareholder financial incentive should not be required to do what is expected of others.

BOMA and LPMA note that, as described on page 114 of the Concentric Report, only 9 out of the 20 jurisdictions included in their research provide financial incentives for achieving the DSM targets.

Concentric does not recommend the use of any penalties for meeting DSM targets, despite the fact that in 4 out of the 7 jurisdictions shown in Table 24 of their Report penalties can be imposed for failure to meet targets.

BOMA and LPMA recommend that the Board should impose penalties when a distributor fails to meet at least 75% of its DSM target. Note that this assumes the continuation of the current TRC approach or the need for a similar approach where the market penetration measure cannot be used. It could, however, also be applied to a market penetration measure. Further details on how the penalty would be calculated are provided below.

Based on the recent history of Union and Enbridge, it would be a rare circumstance for one or both of the distributors to fail to hit 75% of their target. However, BOMA and

LPMA believe that the possibility of a financial penalty would serve as a strong incentive to the distributors to ensure that they meet at least 75% of their target. Negative financial consequences can be as effective, or more effective, than positive financial consequences.

b) Eligibility for Financial Incentives

Concentric recommends that gas distributors should not be eligible for any financial incentives if they do not exceed the established DSM targets for each program (i.e. resource acquisition, market transformation, and low income). In particular, Concentric indicates that the gas distributors should not be rewarded for achieving less than 100% of program success. BOMA and LPMA strongly agree.

Financial incentives should only be provided for success. Anything less than 100% cannot be deemed a success. Ratepayers will be required to pay tens of millions of dollars to fund DSM programs. They should not be expected to pay a bonus to the distributor for failing to deliver the targeted savings.

c) Structure of the Financial Incentives

BOMA and LPMA note that the Concentric Report did not provide any recommendations on the structure of the financial incentives, including the maximum allowed incentive. BOMA and LPMA provide the following recommendations with regard to these matters as follows.

i) Maximum Incentive Available

BOMA and LPMA believe that the current maximum incentive of $8.5 million adjusted for inflation for reaching 125% of the target is excessive. Based on the number of customers shown in Table 5 of the Concentric Report, this amounts to more than $4.50 per customer for Enbridge and more than $6.50 per customer for Union. These figures are far in excess of the average cost per customer of the incentive payments shown in Table 25 of the Concentric Report for all but one distributor. Equally important is that the total incentive amounts shown for 3 of 4 of the distributors shown is substantially less than $8.5 million.

While the amounts shown in Table 25 are not directly comparable to the maximum amount of $8.5 million (plus inflation) for Union and Enbridge, BOMA and LPMA submit that it is clear that the maximum amount allowed for Union and Enbridge is far more than what other distributors receive or require.

BOMA and LPMA recommend that the maximum allowed incentive be tied to the DSM budget. In particular, the maximum incentive should be 10% of the approved DSM budget.

Using Enbridge as an example, with distribution revenue of approximately $1,000 million and the proposed range of 4.0% to 6.0% recommended by Concentric, this would amount to an annual budget of $40 to $60 million. The corresponding maximum incentive proposed by BOMA and LPMA would therefore be $4 to $6 million.

As noted above, the maximum SSM would be 10% of the approved DSM budget. The actual amount of the SSM recoverable from ratepayers would be further reduced by 50% of any amount claimed through the DSMVA. BOMA and LPMA do not believe that the distributors should be able to spend more than that budgeted in order to increase their SSM claim and expect ratepayers to pay for both. This is neither reasonable nor an efficient use of ratepayer money. The following table shows three examples of the SSM amount that would be recoverable from ratepayers under different scenarios for the amount in the DSMVA.

$ millions			
DSM BUDGET	40.00	50.00	60.00
MAXIMUM SSM (10%)	4.00	5.00	6.00
SCENARIO 1 - DSMVA = 0% OF DSM BUDGET			
DSMVA	0.00	0.00	0.00
MAXIMUM RECOVERABLE SSM	4.00	5.00	6.00
SCENARIO 2 - DSMVA = 15% OF DSM BUDGET			
DSMVA	6.00	7.50	9.00
MAXIMUM RECOVERABLE SSM	1.00	1.25	1.50

SCENARIO 3 - DSMVA = 5% OF DSM BUDGET			
DSMVA	2.00	2.50	3.00
MAXIMUM RECOVERABLE SSM	3.00	3.75	4.50

The advantage of the above approach is that it removes some of the incentive for the distributor to simply spend up to the maximum allowed in the DSMVA to increase the shareholder profit at the expense of ratepayers. If the distributor achieves a financial incentive, the additional cost (i.e. the amount in the DSMVA) is shared equally between the ratepayer and the shareholder.

ii) Cost to Ratepayers

The above approach puts an effective cap on the cost to ratepayers of the entire DSM plan based on the DSM budget. The cost to the ratepayers is the sum of the following, where DSM is the DSM budget, DSMVA is the amount recoverable in the variance account over and above the DSM budget and the SSM is the maximum recoverable financial incentive:

Ratepayer Cost = DSM + DSMVA + SSM

Since the DSMVA is capped at a fixed percentage of the DSM budget, the maximum DSMVA is equal to 15% of DSM (or whatever percentage the Board determines is appropriate). Similarly the SSM can be rewritten as 10% of DSM less 50% of the DSMVA. The above equation then becomes:

Ratepayer Cost = DSM + 0.15 x DSM +0.10 x DSM - 0.50 x 0.15 x DSM
= 1.175 x DSM

If the DSMVA cap is 10% of the DSM budget, as recommended by BOMA and LPMA in place of the current 15%, the ratepayer cost is capped at 115% of the DSM budget.

Under both scenarios, if the DSMVA is not used, the ratepayer cost is capped at 110% of the DSM budget.

iii) Calculating the Recoverable SSM

The above table illustrates the maximum SSM recoverable from ratepayers assuming the distributor reaches the point where it qualifies for the maximum SSM payout. If the distributor exceeds their target but does not reach the level to qualify for the maximum SSM payout, then BOMA and LPMA propose that the recoverable SSM be prorated based on the following formula. To qualify for the maximum SSM payout, the distributor would have to hit 150% of the target. The formula is as follows:

Recoverable SSM = [(DSM Budget x 10%) - 0.5 x DSMVA] x [% Target Achieved - 100%] x 2

and would apply when the % Target Achieved is between 100% and 150%.

As an example, with a DSM budget of $50 million, if the distributor hit 130% of their target, the recoverable SSM under Scenario 3 above (i.e. $2.5 million in the DSMVA) would be $2.25 million.

Similarly, if the distributor had a $60 million budget, but maxed out the DSMVA at $9.0 million (Scenario 2 above) and hit 110% of their target, the recoverable SSM would be $0.3 million.

This last example illustrates that if the distributor has a large budget and exceeds that budget by the maximum allowed, but only exceeds their target by a small amount, the maximum recoverable SSM is relatively small. However, as shown in Scenario 1 of the above table if the distributor spends a budget of $60 million with no additional DSMVA required and still hit 110% of their target, the recoverable SSM would be $1.2 million. In other words, the distributor is rewarded with an addition $0.9 million for achieving the same results without burdening ratepayers with an additional $9.0 million in costs. In the view of BOMA and LPMA this sends an appropriate signal to the distributor to spend ratepayer money wisely.

As noted earlier in these comments, BOMA and LPMA believe a penalty should be imposed in the actual savings are below 75% of the target. It is submitted that the following formula, similar to that of the Recoverable SSM noted above, would be appropriate:

Penalty SSM = (DSM Budget x 10%) x [% Target Achieved - 75%] x 4/3

This formula would apply if the % Target Achieved was less than 75%. The 4/3 factor used in the above equation ensures that if the distributor achieves 0% of the target, the SSM penalty is equal to the maximum SSM that the distributor was eligible for. The Board may wish to also deny recovery of any DSMVA amount when the actual achieved is less than 75% of the target.

Finally, BOMA and LPMA would propose that any amount of actual benefits achieved in excess of 150% in any year can be used by the distributor to go back and reduce (or eliminate) the penalty from a previous period. The distributor can also "bank" the excess for future use against the penalty being invoked in a future year. The distributor could not, however, use any excess in one year to increase the recoverable SSM in a previous or a future year.

d) Locked-In or Best Available Information

Concentric recommends that the best available information be used for purposes of calculating the financial incentive payment. Concentric indicates that they believe this is appropriate because Ontario already has significant experience with its DSM programs and the Board has developed input assumptions with the assistance of a consultant, stakeholders (distributors and ratepayer groups) have the opportunity to comment on those assumptions and that any changes to input assumptions are likely to be refinements rather than large adjustments.

BOMA and LPMA agree with this analysis. The Board should require that the best available information be the basis for any calculation of a financial incentive payment to the distributor.

<u>e) Market Penetration</u>

Concentric recommends moving to a financial incentive mechanism that is based primarily on the success of the gas distributor in achieving pre-determined market penetration levels for each DSM technology.

BOMA and LPMA believe the Board should investigate this fundamental change in methodology. On the surface, it would appear to be a significant step in the right direction. It would alleviate the need for more verifiable results that stakeholders require to justify large incentive payments. As Concentric notes, it would be relatively simple to independently verify whether the distributor has achieved the target market penetration rate for different DSM technologies.

However, BOMA and LPMA caution the Board that along with this new methodology, there will be further issues that will need to be addressed. For example, how would the target market penetrations for each different DSM technology be determined? How would the quantum of an incentive payment for each different DSM technology be determined? How would the budgets allocated to increasing the market penetration be allocated to each different DSM technology? The Concentric Report is silent on all of these key matters.

However, as noted above, BOMA and LPMA do believe that the methodology recommended by Concentric merits further consideration and investigation.

<u>Issue 9 - Lost Revenue Adjustment Mechanism (LRAM)</u>

Concentric recommends that the Board consider providing the gas distributors with the opportunity to request revenue decoupling. Concentric also acknowledged that the Board has a separate review underway (EB-2010-0060) that deals with the issue of distribution revenue decoupling.

BOMA and LPMA refer the Board to the comments of the LPMA dated May 17, 2010 related to the issue of revenue decoupling and will not repeat them here, other than to indicate that both Union and Enbridge have variance accounts for the change in average use in the residential and small commercial customer classes that provide stability to both the distributor and the ratepayer from unforecasted changes in use. It was also noted in those comments that revenue decoupling will impact a number of other issues, including the principle of cost causality, the cost of capital, rate design, cost allocation, International Financial Reporting Standards, rate stability, customer impacts and the Board policy from the Natural Gas Forum regarding the minimization of deferral and variance accounts.

BOMA and LPMA recommend that the Board continue to promote the cost causation principle and move the gas distributors towards a rate design that would recover the customer and capacity related costs through a combination of fixed charges and (where possible) demand charges with the remaining variable costs recovered through a variable charge. Both Union and Enbridge have been gradually increasing their monthly fixed charges for the residential and small commercial (non-contract) customers for several years and BOMA and LPMA believe this should continue. This increase in the fixed customer charge results in reduced revenues to be recovered through the variable charge. This leads to a lower amount of revenue that needs to be recovered through the LRAM process and reduces the financial impact of the assumptions used to estimate the lost volumes for each rate class since the rates to be applied to the volumes will become lower over time.

Concentric notes that if the Board continues to rely on the LRAM, the distributors will have the necessary information to estimate the lost volumes (and revenues) through the application of the SCT and program administrator cost test.

Concentric also recommends that the LRAM calculation should continue to be based on updated input assumptions rather than being locked in at initial values. BOMA and LPMA support this approach as the LRAM should reflect the best information available in the estimation of lost volumes due to DSM programs and measures.

Issue 10 - DSM Conservation Impact Evaluation

Concentric recommends that the Board appoint the entities that are responsible for conducting the independent program evaluation and the third-party audit of program results. BOMA and LPMA support this recommendation.

BOMA and LPMA believe that this approach would increase the transparency of the process and lead to greater confidence and trust among all stakeholders. The use of truly independent parties chosen by the Board should alleviate any and all concerns over the actual independence of the party doing the audit when they are hired and paid by the party being audited.

Issue 11 - Filing and Reporting Requirements

Concentric endorses the Board's proposed annual reporting and evaluation reporting requirements. BOMA and LPMA also believe that the Board's requirements are appropriate. However, these reporting requirements should not be set in stone. If deficiencies are identified during the term of a DSM plan, then these deficiencies should be addressed as soon as possible rather than waiting for the next plan period.

Issue 12 - DSM Stakeholder Input

BOMA and LPMA are concerned with the continuation of the status quo approach to soliciting stakeholder input. Many of the organizations represented in the DSM Consultative have developed extensive DSM experience and expertise over the last few years. This expertise has grown out of hands on experience within their industry and the often unique challenges and opportunities that may not always be evident to those outside of the immediate industry.

BOMA and LPMA believe that the DSM programs of the distributors could be enhanced if they took full advantage of the knowledge of these organizations. BOMA and LPMA submit that regular roundtable discussions should take place involving the distributors, Board Staff and parties from those organizations that have developed or are developing expertise in the DSM area as well as manufacturers and distributors of equipment (or their industry organizations). The discussions would deal with what is working, what is not working (and why), developing issues and opportunities, emerging technologies, new uses for existing technologies and so on.

Issue 13 - Integration of Gas and Electric DSM

Concentric indicates that the integration of gas and electric DSM programs would appear to offer some benefits in terms of reducing administrative costs associated with separate programs, and may improve penetration of some programs. However, as Concentric notes, integration in Ontario is problematic because of the large number of electric distributors in the province.

BOMA and LPMA believe the Board should consider whether or not the current administration and delivery of DSM and CDM programs is effective and efficient. In particular, BOMA and LPMA suggest that the Board consider whether or not consumers across the province are being provided with the best access to and information about programs that should be equally available to all consumers in the province. The Board should follow up on the Wisconsin example where the third party administrator of DSM programs "makes it easier for consumers to find energy efficiency programs ('one stop shopping')".

Issue 14 - Alternative DSM Framework(s)

BOMA and LPMA believe the Board should give consideration to a third party administrator to deal with DSM and CDM programs. Moving the administration from two gas distributors and 80 electric distributors into one administrator should reduce administrative costs, thereby providing more focus on the delivery of programs to consumers.

BOMA and LPMA are also concerned with the continuation of providing financial incentives to the distributors to exceed their targets, however they are set. Providing these incentives to the regulated distributors may be hampering the ability and desire of third parties to provide the design and delivery of conservation measures to consumers. Not only do these third parties not have access to a financial incentive for doing what they do, but they may also take away savings that the distributors want to qualify for the incentives. In other words a distributor may have a financial incentive to limit the "intrusion" of third parties into this profit center.

In the EB-2009-0172 Decision on a Preliminary Motion dated December 22, 2009, the Board provided a number of reasons why they would not allow the inclusion of costs related to investments for the production of renewable energy in rate base for Enbridge.

As one of the reasons, the Board indicated that Enbridge did not have a monopoly franchise for the production of renewable energy and that the production of renewable energy takes place within a competitive market. Other participants would be materially disadvantaged by allowing Enbridge to include the investment in rate base and earn a regulated return. The Board went on to say that:

> *"The same line of reasoning applies to the Green Energy Initiatives that do not directly involve the generation of electricity, but which take place within a broad competitive market involving the provision of a variety of new and refined products designed to facilitate the creation of an innovative conservation culture in Ontario. Permitting a well financed public utility to include its costs of participation in this market into its rate base, thereby transferring risk to the ratepayer, is unfair to other market participants."* (page 6)

BOMA and LPMA submit that it is unfair to other market participants (and to other potential market participants) to have to compete with distributors that have a financial incentive to deliver conservation measures. It is also unfair to ratepayers to expect them to pay this financial incentive when other market participants could have delivered the same benefits to consumers without the additional cost associated with the incentive payment.

Other Issues - Not Fully Addressed

In addition to the 14 issues discussed above, BOMA and LPMA submit that there are two additional issues that should be addressed as part the DSM framework.

a) Term of the Plan

BOMA and LPMA believe the term of the next DSM plan should be 3 years in length. While it would be better for long term planning if the plan were 5 years long, BOMA and LPMA believe that the rapidity of changes related to DSM need to be taken into account and that a term of only 3 years is appropriate. The term can always be extended if necessary and desirable, as the Board has done with the current plan.

Changes to government policies, provision of government (federal, provincial and municipal) programs, and provision of conservation services by non-government organizations and private companies are likely to change substantially over the next few years, as they have over the last few years. This may have a significant impact on the role of the gas distributors in the design and delivery of programs.

b) Target Setting

The Concentric Report did not discuss in any detail how the target savings would be calculated. This is true whether the target is a TRC or SCT number or a market penetration percentage.

BOMA and LPMA believe this is one the four major issues that should be addressed in the DSM plan (the others being the budget, the financial incentive, and attribution). The current formula for setting the TRC target is described in Tables 21 and 22 of the Concentric Report for Union and Enbridge, respectively. As the Board is aware, the actual TRC figures calculated for Union and Enbridge have varied significantly from year to year.

BOMA and LPMA believe that the target, no matter how it is set, should always be an aggressive target, one that the distributors will have to work hard to achieve and one where the distributors will have to work even harder and more effectively to exceed the target and claim an incentive. On average, a distributor should exceed the target 50% of the time, otherwise the annual targets may be too low on average.

If the target is based on TRC or SCT, BOMA and LPMA suggest the following methodology to set the target.

For each of the last three years of actual information, the TRC (or SCT) per dollar spent (DSM budget plus the recoverable amont in the DSMVA) should be calculated. The actual TRC (or SCT) for these three years should be adjusted to reflect the latest available information to ensure they are calculated on a consistent basis. The highest of these three figures should then be selected and multiplied by the DSM budget, yielding the corresponding TRC (or SCT) target. This would require the distributor to increase the TRC (or SCT) results directly in line with any change in the budget, and require them to use their best results per dollar spent in the last three years as the base upon which they will be evaluated. This requires continued improvement by the distributor. This is what is expected by the ratepayers that are footing the bill. This is what should be expected by the Board.

If the information is available, this TRC (or SCT) target should be calculated on a rate class by rate class basis. The ratepayers in any rate class where their specific target was not achieved should not be expected to pay any part of the financial incentive that may be earned by exceeding the target in another rate class. Doing the calculation on a class by class basis would provide the appropriate base upon which to recover any financial incentive on an appropriate basis from the various rate classes.

Sincerely,

Randy Aiken

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