



January 14, 2010

**VIA OEB WEB PORTAL, EMAIL & COURIER**

Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, Ontario M4P 1E4

Attention: Ms. Kirsten Walli, Board Secretary

Re: EB-2010-0362  
OEB Cost Assessment Model – Proposed Revisions

Summitt Energy thanks the Board for the opportunity to provide comments on its December 14, 2010 proposed revisions to the OEB Cost Assessment Model.

On November 19, 2010, Summit Energy, as part of a collective Supplier group, filed a letter (attached) with the Ministry of Energy regarding the proposed amendments to Ontario Regulation 16/08. The proposed amendments were to include electricity retailers to low-volume consumers and natural gas marketers as classes of persons liable for Board costs under section 26 (1) of the *Ontario Energy Board Act, 1998*. Summitt would like to capture the following comments made in the November 19, 2010 submission in this submission and respectfully submit questions to obtain a clearer understanding of the proposed revisions to the cost assessment model.

In its March 14, 2005 (page 8) "Ontario Energy Board Cost Assessment Model" Report ("Report"), the Board determined that the criteria for inclusion of market participants in the cost assessments were as follows:

- i. their rates are regulated by the Board; and
- ii. their key activities are subject to regular and routine supervision by the OEB;  
and
- iii. their contribution would not lead to inequitable results for customers.

In addition, on page 9 of the Report, the Board stated that gas marketers and electricity retailers should be excluded in the Board's general cost assessment recovery for the following reasons:

- i. Consumer's purchasing supply from a retailer/marketer would be inequitable since they would be paying the OEB's general cost assessments twice: once through their distributor and a second time through their retailer/marketer. This is because distributors pass through their assessment costs to their entire distribution customer base which includes retail energy commodity consumers;
- ii. The costs associated with specific retailer/market participant proceedings/matters can be recovered by the Board (as permitted in section 20 of the *Ontario Energy Board Act, 1998*). As for example, costs incurred in the *Energy Consumer Protection Act, 2010 EB-2010-0245* proceeding; and
- iii. *"The OEB model ensures that all market participants share in the OEB's costs. In this regard fees have been expanded to include annual registration fees charged for all licenses, in addition to application fees."*

Question 1: Can the Board provide it's rational for revising the criteria to include gas marketers and low-volume electricity retailers in its cost assessment model?

Question 2: Can the Board provide details as to how it arrived at the estimated costs of \$1.6 million – 2.4 million for electricity retailers and \$1.3 million - \$2.1 million for gas marketers?

### Intra-Class Allocation Proposal

On page 10 of the Board's Assessment proposal it indicates that the retailer/marketer's share of the total cost assessment will be apportioned as follows: 50% based on the retailer/marketer's *"average total number of customers taken from the three most recent annual Reporting and Recording keeping statistics"* and 50% on *"the average number of complaints received by the Board's Consumer Relations Center taken from the three most recent year information"*.

Summitt would like to raise the following questions/concerns with using the average number of complaints as one of the allocation classes:

- i. Lag Time: how is it proposed that the complaints be collected; complaint date or incident date (e.g., contract sign date)? Considering the complaint date may not be a fair assessment of the current costs attributed to a retailer/marketer.
- ii. The complaints used have not been determined as being valid complaints against the retailer/marketer; and
- iii. The nature of the complaint may not be one regarding the conduct of the retailer/marketer and therefore should not be included in the assessment.

Summitt is pleased that the Board as solicited comments from industry stakeholders on this topic. However, because of the cost impact that the outcome of this matter has on the competitive energy offerings of retailers/marketers to Ontario consumers, Summitt requests that an independent assessment on the need and impact of revising Regulation 16/08 and the Board's cost assessment model in regard to the inclusion of low-volume energy retailers and marketers, and that industry stakeholders be once engaged to provide input in the assessment process.

Sincerely,



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November 19, 2010

Anne Smith  
Ministry of Energy  
Communications Branch  
900 Bay Street  
4<sup>th</sup> Floor, Hearst Block  
Toronto, Ontario M7A 2E3

Dear Ms. Smith,

**Re: Proposed Amendment to Ontario Regulation 16/08**

On October 13, 2010 the Ministry of Energy posted proposed amendments to Ontario Regulation 16/08 (O. Reg 16/08) to extend the list of prescribed entities from which the Ontario Energy Board (the Board) can recover its annual operating costs. Active Energy, Direct Energy Marketing Limited, Just Energy Ontario L.P. Shell Energy North America (Canada) Inc., Summitt Energy, and Superior Energy Management (collectively the "Suppliers") share similar views as presented in this submission and therefore have filed this position jointly. All parties reserve their right to participate independently throughout the consultation.

Introduction

The Summary of Proposal found on the Regulatory Registry indicates the purpose of this amendment is to allow the Board to recover costs related to the oversight of electricity retailers and natural gas marketers. However, this proposal as currently written selectively and punitively exposes retailers and marketers to a broader range of Board costs which are currently and prudently recovered from distributors for the benefit of all Ontario energy consumers; and not just those availing themselves of competitive services.

It is important to note that O. Reg 16/8 is a corresponding regulation to Section 26 (1) of the Ontario Energy Board Act (the Act), which states:

*"Subject to the regulations, the Board's management committee may assess those persons or classes of persons prescribed by regulation with respect to all expenses incurred and expenditures made by the Board in the exercise of any powers or duties [emphasis added] under this or any other Act. 1998, c. 15, Sched. B, s. 26 (1) ; 2003, c. 3, s. 24."*

The existing O. Reg 16/08 defines the classes of persons liable for Board expenses and expenditures under section 26 (1) of the Act. These classes include:

- (i) licensed electricity distributors
- (ii) electricity transmitters
- (iii) natural gas transmitters, distributors and storage companies
- (iv) the IESO
- (v) the OPA; and
- (vi) OPG.

However, the proposed amendment unnecessarily extends this list to include:

- (vii) electricity retailers to low-volume consumers and;
- (viii) natural gas marketers.

Under the formulation cited above, all prescribed entities may be allocated any expenses and expenditures at the Board's discretion. Should the proposed amendments be adopted, retailers and marketers may be required to pay a portion of either all, or a sub-set, of the Board's operating costs; the allocation methodology and amount of which would be determined by revisions to the Board's Cost Assessment Model.

#### Redundancy of proposed amendment

Section 30 of the Act already allows the Board to assess costs, including costs of the Board, of a proceeding, notice, comment process, or any consultation, in part or in whole, against any person. The Board referred to section 30 of the Act in its recent Decision EB-2010-0245, in the matter of cost award eligibility for interested parties in the consultation process regarding the implementation of consumer protection provisions of the *Energy Consumer Protection Act, 2010*, wherein it assessed costs against electricity retailers and gas marketers. Given that the Board already has sufficient powers to assess specific costs against retailers and marketers, the proposed amendment is unnecessary. Furthermore the Board has had the ability to recover these costs from marketers and retailers for many years, but has not found it necessary to change the Cost Assessment Model. To the contrary, the Board has already determined that costs should not be recovered from competitive market participants.

#### The Current Board Cost Assessment Model

The Board's current Cost Assessment Model was finalized after extensive stakeholder consultations. A further review was completed in 2006 and the Board determined that no changes to the model were necessary. The Board found that the criteria for inclusion of market participants in the general cost assessments are as follows:

- their rates are regulated by the Board; and
- their key activities are subject to regular and routine supervision by the OEB; and
- their contribution would not lead to inequitable results for customers.<sup>1</sup>

It was also specifically determined that certain market participants should *not* be included in cost recovery. The Board intentionally excluded Gas Marketers, Electricity Retailers, Electricity Generators (except OPG), and Electricity Wholesalers as categories of market participants for general cost assessment. Gas marketers and electricity retailers were excluded for the following reasons<sup>2</sup>:

*"Competitive Suppliers (Gas Marketers and Electricity Retailers):* The rates of competitive market participants are not regulated by the Board, and their inclusion in the General Assessment would lead to inequitable results for customers. Much of the Board's cost that is uniquely associated with retailers/marketers relates to compliance and enforcement. The OEB can and will collect the costs of proceedings (i.e., outside of the general cost assessment process) that directly relate to marketers/retailers. The OEB model ensures that all market participants share in the OEB's costs. In this regard fees have been expanded to include annual registration fees charges for all licenses, in addition to application fees."

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<sup>1</sup> Ontario Energy Board Cost Assessment Model – Issued March 14, 2005; page 8

<sup>2</sup> Ontario Energy Board Cost Assessment Model – Issued March 14, 2005; page 9

Since gas marketer and electricity retailer rates are not regulated by the Board and as noted above, the recovery of Board costs from competitive market participants would lead to inequitable costs for customers. The Board further explains its rationale for not including competitive market participants on page 6 of its Report on The OEB Cost Assessment Model Development and Consultation:

#### "Competitive Market Participants

The OEB was convinced that inclusion of gas marketers and electricity retailers in general cost assessment would lead to inequity in costs ultimately borne by customers who are served by default supply (whether gas or electricity) on the one hand, compared to customers who are served by competitive supply on the other. This is because distributors will pass through their assessment costs to all distribution customers regardless of whether these customers' commodity is supplied by the distributor or a retailer/marketer.

In other words, distributor assessments do not unbundle regulatory costs relating to distribution from regulatory costs relating to commodity. Thus all distribution customers pay for both. In light of this, it is the view of the Board that it is inappropriate for customers of retailers/marketers to pay these costs and in addition pay regulatory costs related to competitive supply. The Board believes that the recovery of costs through approved rates will more accurately apportion ratepayer costs.

Also, retailers and marketers offer consumers long-term, fixed-price contracts. In most cases, these participants are not able to recover newly imposed costs from existing customers and therefore either new customers or shareholders, or both, would have to bear these costs."

The Suppliers are of the view that these same principles and findings hold true today and that, consistent with the Board's findings on Cost Assessments, it would be inequitable to recover general Board costs on an ongoing basis from competitive market participants.

Competitive market participants already pay annual licensing fees in accordance with the Board's determination, and as noted above can be directed by the Board to pay costs to other parties, including the Board itself. Furthermore, it should be noted that gas marketers and electricity retailers are prevented from recovering their costs of participation in any Board proceeding or consultation, even though their contributions to such matters are for the benefit of the Ontario energy market as a whole. It would be a further inequity to recover amounts from competitive market participants through the implementation of the suggested amendments, and then continue to prevent marketers and retailers from recovering their costs for participating constructively in regulatory proceedings.

#### Conclusion

It is the position of the Suppliers that the proposed amendment sets an unacceptable precedent for regulatory costs to be recovered from unregulated private entities, and creates an inequitable recovery of costs from retail energy customers. Just as the oversight of distributors and generators is to the benefit of all energy consumers, so too is the oversight of electricity retailers and natural gas marketers. More broadly, the matters of the Board relate to the oversight of the energy sector as a whole, and therefore the most prudent and efficient method for cost recovery is via rate-regulated entities; as has been the practice to date. Consequently, the Suppliers request that the Ministry retract its proposed amendments to O.Reg 16/08.

The Suppliers would like to thank the Ministry for this opportunity to comment, and we look forward to the continuing consultation in this matter. Should you have any questions or comments, please contact any of the undersigned.

Yours truly,

*Original signed by*

Ric Forster  
Director  
Government & Regulatory Affairs  
Direct Energy Marketing Limited

On behalf of Direct Energy and the Suppliers:

Michael Stedman  
Vice President, COO - Active Energy

Gord Potter  
Executive Vice President - Just Energy

Gerry Haggarty  
President- Summitt Energy

Susannah Robinson  
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Paul Kerr  
General Manager, Market Affairs – Shell Energy North America (Canada) Inc.

Cc: Hon. Brad Duguid – Minister of Energy  
Aleck Dadson – COO, Ontario Energy Board  
Elise Herzig – President and CEO, Ontario Energy Association