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February 14, 2011

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 Staff Discussion Paper and Guidelines

By way of a letter dated January 21, 2011, the Ontario Energy Board ("OEB") posted for comment a staff discussion paper along with revised draft DSM guidelines. The Board indicated that following receipt and consideration of participants' comments on the staff discussion paper and on the guidelines, the Board would make any revisions to the Guidelines that it found to be appropriate.

These are the comments of the Building Owners and Managers Association of the Greater Toronto Area ("BOMA") and the London Property Management Association ("LPMA") on the staff discussion paper and guidelines. Comments have been limited to those areas where the staff discussion paper requested participants to provide further comments and to areas where BOMA & LPMA strongly disagree with the staff recommendations.

3.5.2.2 Cost of Carbon Dioxide Equivalent Emissions

Staff has asked participants to provide further comments on whether they consider that any value for carbon dioxide emissions should be included at this time. Staff has recommended using the lower end of the range recommended by Concentric Energy

Advisors ("CEA") of $15 per tonne and that this value be maintained for the duration of the multi-year plan term.

BOMA & LPMA support this approach. As Staff note, the value of the emissions in the Draft Revised DSM Guidelines would apply only for the purpose of screening programs to determine whether they should be considered for inclusion in the final DSM portfolio.

More programs would qualify for inclusion in the final DSM portfolio the higher the price per tonne. BOMA & LPMA support the $15 as suggested by Staff because it represents an initial price that will have less of an impact on the number of programs that will qualify than would a higher price. BOMA & LPMA believe this is appropriate in the short term. As the utilities gain experience in dealing with a portfolio that may have a larger number of programs than they are currently used to dealing with, the Board may want to review the $15 figure.

3.5.2.3 Discount Rate

BNOMA & LPMA recommend that a simple average of Options 3 and 6 shown in Table 1 of the Social Discount Rate Options in the Staff paper would be appropriate, yield a discount rate of 8.65%. Each of these methodologies represent government based social discount rates. This figure is lower than the rates currently used by Enbridge and Union. This is in line with the CEA recommendation that "reducing the discount rate to place more value on savings that are expected to occur in future years".

BOMA & LPMA agree with Staff that the discount rate should be fixed for the duration of the proposed three-year term of the plan.

3.7 Budgets

BOMA & LPMA fundamentally disagree with the Staff recommendations related to the budget amounts for Enbridge and Union.

Staff have provided three budget options: Option 1 would maintain DSM budgets at their 2011 Board-approved levels throughout the three year term; Option 2 would set the DSM budgets at significantly higher levels to support increased focus on deep measures and low-income program integration with electricity CDM; Option 3, which is recommended by Staff, would increase the DSM budgets to about 6% of the distribution revenues by 2014.

Freezing the DSM budgets at 2011 levels (Option 1) is not a viable alternative, in the view of BOMA & LPMA, but neither is a significant increase (Option 2) in DSM budgets that would cost Enbridge customers an addition $48 million per year in 2014 and cost Union customers an additional $35 million per year in 2014. BOMA & LPMA submit that most of this cost would be paid for by customers that will not receive any significant benefits from the DSM programs being funded.

In the commercial and industrial sectors, where customers are often in competition with one another, BOMA & LPMA do not believe that it is appropriate for customers to shoulder significant costs that could provide significant benefits to their competition. This could be the case if deep DSM measures were to be instituted for a relative small number of customers in the commercial and industrial sectors. The level of cross-subsidization would increase between customers that compete with one another.

In the residential and low-income sectors, BOMA & LPMA again note that potential for increased levels of cross-subsidization among customers in these groups. While deep DSM measures do have an appeal in the low income sector, Staff recognize that fewer participants will be reached. This means that a larger number of low income and other residential customers will seen an increase in their rates to subsidize a relatively small number of other customers. The Board must keep affordability for all customers as continuing objective of regulation.

Option 3, which is recommended by Staff, would see an increase in annual DSM expenditures of $34 million by 2014 for Enbridge and an increase of $15 million for

Union. These figures are based on the figures provided in Table 2 of the Staff Discussion Paper and represent the movement to approximately 6% of distribution revenues by 2014 being spent on DSM.

BOMA & LPMA believe the 6% figure is too high and would represent a substantial burden on all of those customers across all rate classes that will be called upon to increase the cross-subsidization to other customers within the same rate classes. Many residential customers will pay more so that a few will be able to consume less. This is especially a burden to those low income customers which will, for one reason or another, not qualify or benefit from DSM programs for low income customers.

As noted above, in the commercial and industrial sectors, the cross-subsidization will benefit some customers at the expense of others, including their competitors. BOMA & LPMA recommend that if the Board does move to a 6% factor, or some other level, of distribution revenues as an appropriate budget for DSM, it should consider whether such a level should be applicable to rate classes that consist of commercial and industrial customers, or whether such a factor should only apply to residential classes.

BOMA & LPMA recommend that the DSM budgets for Enbridge and Union be based on an approach such as that set out in Option 3, but that instead of 6% of distribution revenues, the target should be a maximum of 5%. This would result in a 2014 DSM budget for Enbridge of approximately $52 million and a 2014 DSM budget for Union of approximately $36 million. These increases are still substantial (at $24 million for Enbridge and $9 million for Union), but would result in significantly less ongoing cross-subsidization within the various rate classes. Amounts above this level, in the submission of BOMA & LPMA are not warranted, given the impact on customers and the level of cross-subsidization.

3.7.2, 3.7.3, 3.7.4 & 3.7.5 Budget Allocation

BOMA & LPMA believe that flexibility is required in allocating the overall DSM budget between that for resource allocation programs, low-income programs, market transformation programs and cost related evaluation, monitoring and verification.

It may not be effective to set the allocations for the three year term, and it may not be appropriate to set the same allocation on a year by year basis the same for Enbridge as it is for Union.

BOMA & LPMA believe the allocation of the budget is best left to the individual distributors, in consultation with their stakeholders through the stakeholder engagement process. The Board may wish to establish some generic figures, such as range of 3 to 5% of the DSM budget being allocated to evaluation, monitoring and verification, or a minimum level of spending for low income programs (either on a percentage basis or on a dollar basis). However, these figures would be guidelines only and could be altered with an agreement between a distributor and its stakeholders.

3.9 Targets

Regardless of the program, BOMA & LPMA believe that the setting of aggressive and challenging targets is essential. Targets that are too low simply reward distributors (at the added expense (incentives) of ratepayers) for achieving mediocrity. Targets that are too high may result in distributors throwing money (approved DSM budgets) at programs to get whatever meager results they can achieve. Again ratepayers would pay (DSM budgets) for less than adequate results.

BOMA & LPMA note that Staff do not appear to recommend if, or how, the targets are changed from year to year under the three year term of the plan. It is recommended that this be left to the distributors and the stakeholders to determine.

BOMA & LPMA do note that Staff recommend that the distributors develop their targets for each of the programs, taking into account inputs gathered through the stakeholder engagement process. BOMA & LPMA believe this is appropriate, with the provision that if the stakeholders and the distributor cannot come to an agreement, then resolution of the issue must be made by the Board through the hearing process.

3.10 Incentive Payments

BOMA & LPMA believe the incentive payment amounts and mechanism as recommended by Staff remain too generous. BOMA & LPMA continue to believe that the distributors do not need incentive plans to entice them to promote DSM. As the CEA jurisdictional review noted, only one of the five other Canadian jurisdictions surveyed offered incentive payments. Eight of the twelve U.S. states reviewed offered incentives and then only for exceptional program performance.

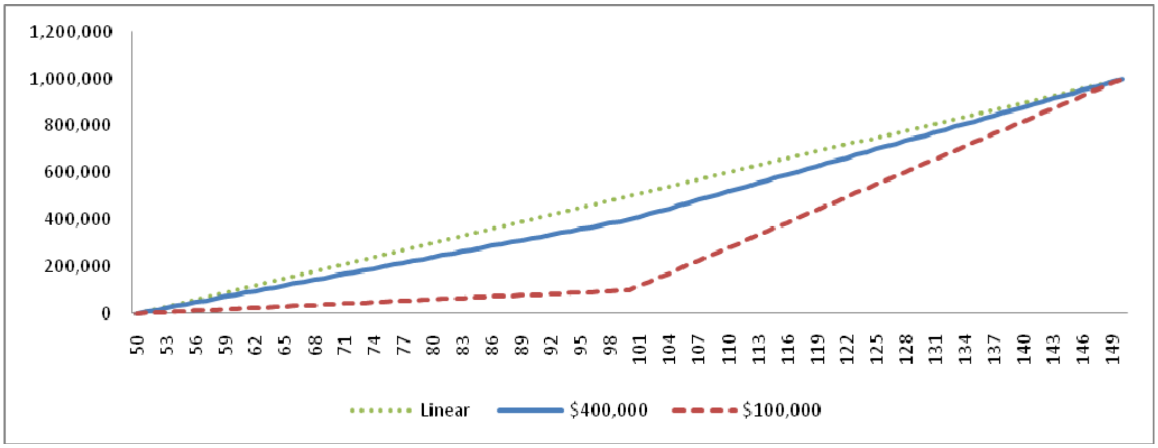
If the Board determines that Ontario distributors require an incentive payment, then it is submitted that significant changes should be made to that proposed by Staff.

First, the starting point at which a distributor starts to earn a bonus (50%) as recommended by Staff is an extremely low figure to start rewarding anybody for anything. As noted in the CEA report, the U.S. states that do offer an incentive mechanism provide payments only for exceptional performance. In the view of BOMA & LPMA, anything under 100% should not and cannot be considered exceptional. However, if the Board agrees that mediocrity should be rewarded, then it is submitted that that the threshold at which incentives are earned (and paid for by the ratepayers) should be increased to at least a level of 75%.

Second, while BOMA & LPMA support the pivot point concept described by Staff (assuming there is a reward for less than 100%), the methodology advanced by staff ($400,000 for 100%, an additional $600,000 for reaching 150%, based on a total incentive payment of $1 million) lacks a significant impact at the proposed pivot point.

The Staff proposal pays an incentive of an additional $8,000 for each percentage point increase between 50% and 100% and $12,000 for each percentage point increase between

100% and 150%. As shown graphically below, this pivot point is barely distinguishable from the dotted linear trend line.



BOMA & LPMA submit that an incentive mechanism that provides $100,000 for achieving 100% of the target and reserves the remaining $900,000 of the $1 million available to encourage a result greater than 100% of the target is appropriate. With a $100,000 pivot point, the proposal pays an incentive of an additional $2,000 for each percentage point increase between 50% and 100% and $18,000 for each percentage point increase between 100% and 150%. This is illustrated above, where the pivot point for the $100,000 approach can be easily seen, unlike the case with the $400,000 pivot point.

Finally, BOMA & LPMA note that the maximum incentive for each gas utility should be set at the 2011 level of $9.4 million and increased annually by the increase in the consumer price index. BOMA & LPMA do not believe there is any need to increase the cap by inflation over a relatively short three year period. More fundamentally, BOMA & LPMA believe that the cap is significantly too high. Ratepayers should not be expected to pay an extravagant amount to reward distributors for being good corporate citizens. BOMA & LPMA recommend a cap on the incentive amount (achievable at 150%) of $6 million. This is a substantial reward, keeping the impact on ratepayers in mind.

Under the Staff proposal, with a $9.6 million cap and earning 40% of this total for achieving 100% of their target, the distributors could earn $3.84 million for simply achieving their target.

Under the BOMA & LPMA proposal, with a $6 million cap and earning 10% of this total for achieving 100% of their target, the distributors could earn $600,000. If the BOMA & LPMA proposal related to the pivot point were adopted but the cap remained at $9.6 million, the distributors would earn almost $1 million for reaching their target. BOMA & LPMA submit that this is a significant reward for simply achieving the target.

Sincerely,

Randy Aiken

Randy Aiken
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