SUBMISSIONS OF THE CONSUMERS COUNCIL OF CANADA

RE: STAFF DISCUSSION PAPER ON REVISED DRAFT DEMAND SIDE MANAGEMENT GUIDELINES FOR NATURAL GAS UTILITIES

EB-2008-0346

INTRODUCTION:

Since 2007 the Ontario natural gas local distribution companies (LDCs"), Enbridge Gas Distribution Inc. ("EGD") and Union Gas Limited ("Union") have been undertaking demand side management ("DSM") programs pursuant to an Ontario Energy Board ("Board") Framework established in 2006. In October 2008, the Board initiated a consultation process to review that framework and issued draft DSM guidelines and a Board Staff Discussion Paper for comment. That process was delayed and Union and EGD were required to file their 2010 plans under the existing framework.

By letter dated January 7, 2010, the Board directed the LDCs to file their 2011 plans based on the current framework, but also began a review of that framework. The Board retained Concentric Energy Advisors ("CEA") to evaluate the framework against best practices in selected jurisdictions. In addition, the Board retained Pacific Economics Group Research ("PEG") to assess the potential use of normalized average usage per customer for estimating the impact of the DSM programs. Parties were requested to provide written comments on the two reports in June 2010.

On January 21, 2011, Board Staff issued a further Discussion Paper entitled, "Staff Discussion Paper On Revised Draft Demand Side Management Guidelines for Natural Gas Utilities" ("Staff Paper"). In addition Board Staff set out revised draft guidelines. The Board is seeking comments on the Staff Paper and the revised draft guidelines. These are the comments of the Consumers Council of Canada ("Council"). These submissions are organized by the topic areas identified by Board Staff.

In its submissions dated June 7, 2010, the Council set out a number of considerations for the Board in developing a new DSM framework:

- What is the best way to balance the interests of the utility ratepayers and shareholders?
- What framework best allows for cost-effective DSM to be pursued, while ensuring the regulatory burden is minimized to the extent possible?;
- What incentive levels are "required" to facilitate cost-effective DSM?; and
- The extent to which other factors such overall rate levels may affect the level of DSM budgets.

The Council continues to believe these are important considerations for the Board in the development of a new framework for natural gas DSM.

DSM FRAMEWORK:

Board Staff has recommended that the consideration of a fundamentally different framework is not warranted at this time. This view is consistent with the views expressed by CEA most of the participants in the consultation process.

The Council agrees that the current framework should be maintained. Although we support maintaining the framework at a high level we are supportive of making some changes. Those proposed changes are reflected in the sections below.

With respect to the potential use of normalized average use per customer for estimating the impact of the DSM programs the Council notes that PEG concluded that its research did not provide any "top-down" evidence definitive enough to substitute for the bottom-up approach currently used. In the absence of good evidence it would be inappropriate to move to such an approach at this time.

TERM OF THE PLAN:

Board Staff has proposed that a three-year plan term which would have the plans run from January 1, 2012 to December 31, 2014. The Council agrees that this is appropriate given the fact that the "lay of the land" could change significantly during that time frame. Government policy and regulatory policy regarding conservation and energy efficiency initiatives has been changing at a significant pace in recent years. It will be imperative to ensure that the natural gas DSM framework can adapt accordingly. The Council also agrees that a review of the plan during the term would allow for the Board to assess if an extension would be appropriate or if a new model might be more suitable.

PROGRAM TYPES AND DESIGN:

The current DSM framework allows for resource acquisition programs, market transformation programs and low-income programs. Union, in its earlier submissions had proposed "development" programs which would include "partnerships with Ontario Universities and colleges, the training of delivery partners , contractors and builders as well as strategic consultation with delivery channels or assistance to government supported codes and standards development." EGD also provided examples of development activities. This included Capacity Building, Infrastructure Development and Research and Development.

The Council has concerns that the gas LDCs may pursue activities that will have no real return for ratepayers who would essentially fund these new types of programs. To the extent the LDCs would like to pursue program types outside of the traditional programs the Council would support consideration of these programs on a case-by-case basis. It would be up to the LDCs to provide evidence to justify the programs and demonstrate how they benefit ratepayers. It is assumed that these types of programs would not be subject to incentives.

PROGRAM AND PORTFOLIO DESIGN:

Board Staff proposes that the DSM portfolios should balance the following objectives:

- Maximization of cost effective natural gas savings;
- Provision of equitable access to DSM programs among and across all rate classes to the extent reasonable, including access to low-income customers;
- Prevention of lost opportunities; and
- Pursuit of deep energy savings.

Board Staff is also advocating an approach that would have the LDCs continue the consideration of program design elements through stakeholder engagement prior to the filing of the plans. In addition, Board Staff has stressed the need for flexibility. In that vein they have proposed that using updated input assumptions to calculate incentive amounts which will provide an incentive for the LDCs to continuously react to, adapt to and anticipate market developments.

Although stressing the need for flexibility Board Staff is also proposing that to the extent a transfer of funds among Board -approved programs exceeds 30% Board approval would be required.

The Council is of the view that the objectives proposed by Board Staff are reasonable. In addition, the Council supports the proposal to use updated input assumptions when calculating incentive amounts. Using the best available information will ensure that to the extent possible that the LDCs are not rewarded for savings that did not occur. With respect to the 30% rule regarding the transfer of funds, and the requirement for Board approval, the Council submits this is reasonable. It allows for flexibility, but maintains a level of regulatory oversight over the LDCs' programs.

LOW-INCOME PROGRAMS:

With respect to low-income programs the Council proposed in its comments submitted on June 2, 2010, that the Board initiate a separate process to determine how best to design, deliver and fund low-income programs. The Council continues to believe such a process is required. As noted by CEA in its paper there are significant challenges associated with low-income programs.

One of the key issues for the Council is that in order to facilitate participation in low-income programs incentives are extremely high. In some cases program participants are given between $3000-$5000 for weatherization and furnace replacements. Under the current Board approved cost allocation policy, residential consumers will fund those program costs. From the Council's perspective, to the extent the establishment of low-income programs has been government policy driven, it is time for the Board to reconsider how those programs are funded. The emergency financial assistance program established last Fall is funded by all Ontario energy consumers. It is not clear to the Council why this should not be the case for low-income DSM programs especially in light of the fact that they will now be screened using cost/benefit ratios of less than 1.0.

Another reason for undertaking a separate consultation process for low-income programs would be to ensure that there is consistency and coordination among the Ontario Power Authority , the Ontario electric LDCs and the gas LDCs with respect to low-income initiatives. To the extent there is not consistency and coordination, money could well be wasted. Another key challenge with low-income programs is administration. LDCs will have to determine eligibility which presents an increased administrative burden. The Council urges the Board to initiate a process as soon as possible to consider how best to incorporate low-income DSM programs into the LDC DSM portfolios.

SCREENING:

CEA had proposed in its report to screen programs using the societal cost test ("SCT")instead of the current total resource cost test ("TRC"). The Council maintains the position it put forward in its June 7, 2010 comments that moving to a framework that uses the SCT as the primary method to screen measures and programs and to evaluate results would only add complexity to a process that is already inherently complex. Debates about input assumptions would only be exacerbated. As noted in June unless the Board is convinced that moving to an SCT or a modified TRC would be better for all utility customers such an approach should not be introduced at this time.

Board Staff is proposing a modified TRC test that would include a value for greenhouse gases of $15/tonne. It is not at all clear to what extent this would impact the number of programs that were deemed "cost-effective". In light of that it is unclear why Board Staff has made the proposal. In addition, it is not clear as to how this amount was derived. The Council is of the view that maintaining the current TRC test is appropriate. If the Board believes moving to a modified TRC test that includes a value for carbon, such a decision should be supported by evidence.

SCREENING LEVEL:

The Council supports the proposal by Board Staff to require LDCs to continue to screen at the program level rather than screening only at the portfolio level. We assume that the LDCs will also continue to screen measures. The Council does not support an approach that would screen at the portfolio level only.

SCREENING OF LOW-INCOME PROGRAMS:

Board Staff is proposing that with respect to low-income programs they should be screened using the modified TRC (including a value for carbon) and using a lower threshold. So unlike other programs the cost-effectiveness threshold would be .7 rather than 1.0. As noted above, the Council supports a further process that would consider how best to define, deliver and fund low-income programs. There is a need to coordinate and collaborate with the OPA, the Ontario Government and the Ontario electric LDCs to ensure that low-income programs are rolled out effectively.

The Council is concerned that residential ratepayers will be subject to increased cost impacts of these programs that have been initiated largely in response to government policy. If the threshold for screening is reduced those impacts could be even greater.

The Council proposes that the LDCs continue with their low-income programs that are currently in place. However, before any additional programs are rolled out, the Board should assess low-income DSM/CDM programs generally in a separate process. The issues for that process should include but not be limited to:

- How can the gas programs, the programs run by the OPA and any Board approved low-income programs run by electric LDCs best be delivered and coordinated?;
- How should the low-income programs be funded?
- What is the most appropriate way to screen low-income programs?

MARKET TRANSFORMATION PROGRAMS:

The Council agrees that Market Transformation ("MT") programs should be assessed on a case-by-case basis. The challenge from the Council's perspective with respect to MT programs is assessing results. It is difficult to measure the extent to which a program "transforms the market". The Council submits that the LDCs should be required to provide better evidence than they have in the past of actual market transformation prior to receiving any incentive payments.

RESEARCH AND DEVELOPMENT AND PILOT PROGRAMS:

The Council agrees that Research and Development ("R&D") and pilot programs should be funded through the DSM budget and not subject to a separate funding process. LDCs must justify why these initiatives are required and how they will directly benefit the LDC's customers.

DEVELOPMENT, UPDATING AND USE OF ASSUMPTIONS:

Traditionally, this aspect of DSM planning and reporting has been highly contentious. Assumptions are important for screening programs and for assessing the extent to which savings have been achieved. They are also critical in terms of arriving at shared savings mechanism amounts and lost revenue mechanism amounts. The LDC audit processes spend a great deal of time debating what should be appropriate input assumptions and avoided costs.

The Council supports having the Board approve a common set of assumptions. In addition, we support the use of "best available information" for both the determination of the LRAM amounts and the incentive amounts. This approach was supported by CEA and Board Staff. To not adopt this approach could potentially result in ratepayers funding incentives for savings that did not actually occur. As CEA noted this approach is consistent with the approach taken by the majority of other jurisdictions in their research survey. CEA concluded, "The advantage of this approach is that the Board will be better able to measure programs success against policy objectives when input assumptions are updated frequently. Another advantage is that the Board will relying on the best available information for purposes of determining the lost revenue adjustment mechanism and the financial incentive for the utility." (CEA Report, p. 61-62)

AVOIDED COSTS:

The Council supports the proposal to maintain the current approach to avoided costs. Commodity costs should be updated annually and other avoided costs in place for the three-year plan.

COSTS OF CARBON DIOXIDE EQUIVALENT EMISSIONS:

As noted above, the Council is of the view that it is premature to establish a value for carbon to be included in a modified TRC test. The Council supports using the TRC as currently designed and to the extent new values are added this should be subject to a process supported by evidence.

FREE RIDERSHIP

As noted by Board Staff free ridership is “a program participant who would have installed a measure on his or her own initiative even without the program”. Spillover refers to customers that adopt energy efficiency measures because they are influenced by a natural gas utility's program-related information and marketing efforts, but do not actually participate in the program. The Council does not agree that the two offset each other.

As more information is in the marketplace about conservation free ridership becomes harder to measure. The Council believes this will continue to be the case. The natural gas LDCs should not be rewarded for conservation that occurs regardless of whether their programs have been initiated. The LDCs must be required to provide comprehensive evidence to support free-ridership and potential spill-over.

ATTRIBUTION:

The Council continues to support the consideration of attribution rules on a case by case basis. In addition, the Council does not support the proposal set out in the CDM Code that if the rate regulated entity either contributed more than 50% of the program funding or "initiated" the program it should get allocated 100% of the savings. From the Council's perspective LDCs should only be attributed savings that are related to their efforts. Where joint programs are initiated attribution proposals should be justified with concrete evidence to support those proposals.

PERSISTENCE:

As noted by Board Staff persistence of DSM savings can take into account how long a DSM measure is kept in place relative to its useful life. The Council agrees that persistence should not be assumed to be 100%. Persistence is a complicated issue. From the Council's perspective we agree that persistence factors would require Board approval.

BUDGETS:

The approved 2011 DSM budgets are $28.2 million for EGD and $27.4 million for Union. This represents 2.8% of EGD's approved distribution revenue and $4.1 of Union's 2011 distribution revenue. CEA recommended minimum annual DSM budgets for Enbridge and Union of 3% of their annual distribution revenues and that a range of between 4-6% be established.

From the Council's perspective the budgets should not be set by some arbitrary measure, a percentage of distribution revenue. The budgets should be informed by historical spending levels, market potential, rate impacts and an assessment of the activities being undertaken by other service providers. In addition, to the extent the Minister of Energy and Infrastructure and the Environmental Commissioner of Ontario are promoting more gas DSM the gas utilities could look for funding support from the Government. This potential source of funds was identified by Board Staff. To significantly ramp up DSM spending without a consideration of all of the factors set out above would be irresponsible. The Council is not opposed to increases in budget levels, but they should only be allowed if the benefits to customers are clear.

The Council does not agree that it would be appropriate to increase EGD's budget from $28 million in 2011 to $76 million in 2014 and Union's from $27 million to $62 million in 2014 (Option 3). This level of escalation would clearly be arbitrary. The Council supports an approach that would allow the LDCs to come forward with proposed budgets and an annual escalation factor. The budgets should be based on potential studies, historical experience and represent a balance in terms of achieving cost-effective DSM while having regard to rate impacts. The Council supports expanding DSM within the utility franchise areas, but only at a measured pace. Adopting Option 2 or Option 3, as set out by Board Staff would not accomplish this.

TARGETS:

The setting of DSM targets has always been contentious in Ontario. The Council is of the view that the targets should be both aggressive and challenging. In recent years the targets have not proven to be a challenge for the LDCs to achieve, securing large incentive payments for the shareholders of Union and EGD.

The Council submits that targets, budgets and incentives are inextricably linked. It is difficult to set a target in the absence of an approved budget. It is difficult to develop an incentive structure in the absence of a target. The Council is of the view that it will be up to the LDCs to come forward with a budget based on the factors outlined above and a target that aligns with that budget. It will be up to the Board and intervenors to test the reasonableness of that target and budget. Clearly, historical experience will be an important consideration.

INCENTIVE PAYMENTS:

The Council continues to take the position that incentive payments for regulated natural gas utilities should not be required, but acknowledges that the Board has consistently approved such incentives. The Council reiterates that if there are to be incentives, there should be a better alignment between the achievements of the LDCs and the rewards. Union and EGD have earned in recent years incentives that represent approximately 30% of their spending levels. "Returns" for DSM activities should not necessarily exceed returns for other aspects of the distribution business. In addition, CEA's analysis demonstrated that large incentive payments are not the norm in other jurisdictions.

The Council urges the Board to consider incentive structures that are simple. The current structure is complicated, contentious and has resulted in payments that in our view are excessive. EGD and Union have proven they can deliver cost-effective DSM. The Board must determine what it will take to encourage them to continue. Models such as those that incent staff on the basis of results achieved may well be more effective and easier to administer.

EGD and Union pride themselves on being leaders in DSM delivery. There is no reason why, under an alternative incentive model they cannot continue to be leaders. Proving DSM programs should be a standard service provided to their customers, and not a service for which their customers are paying the shareholders a 30% "return".

LOST REVENUE ADJUSTMENT MECHANISM:

The Council continues to support the use of an LRAM and supports Board Staff's proposal to align the way in which the LRAM is calculated.

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