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### **BY EMAIL and RESS**

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Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, Ontario  
M4P 1E4

### **Attn: Kirsten Walli, Board Secretary**

Dear Ms. Walli:

### **Re: EB-2008-0346 – Gas DSM Framework**

We are counsel for the School Energy Coalition. In its letter dated March 29<sup>th</sup> in this proceeding, the Board has provided guidance on some of the gas DSM issues, and has posed questions on which it seeks further input from stakeholders.

These are the submissions of the School Energy Coalition. We have divided this letter into two parts: the first, dealing with the general direction the Board appears to be signalling, and the second, dealing with the four specific questions set out in the Board's letter.

We note that these submissions are being filed after the deadline for responses to the Board's letter, and for that we apologize. Although many of the other submissions were filed prior to this letter, we have endeavoured to ensure that none of the comments below are in the nature of reply to submissions already filed. That having been said, we believe the Board would benefit from reply submissions from all parties, and we recommend that the Board consider that step, perhaps as a first step in the additional dialogue we discuss below.

## **The Future of Ratepayer-Funded Gas DSM Programs**

1. In the aftermath of the Board's March 29<sup>th</sup> letter, there was considerable discussion amongst stakeholders as to its import, and whether it signalled a major change in the Board's thinking with respect to conservation. As the Board undoubtedly anticipated, the focus of discussions was not on the four areas in which the Board sought further input, but rather on the budget freeze and the rationale behind it. We assume that the submissions the Board is receiving reflect that focus, instead of focusing only on the specific questions asked.
2. In our view, aside from the four questions, the Board's letter raises two general issues:
  - a. The role of Board Staff in its investigation and presentation of policy options; and
  - b. The medium and longer term future of ratepayer-funded DSM programs offered by gas utilities.
3. The first of these issues is not really up for discussion in this proceeding. However, we do note that, despite the many past statements by Board Staff and the Board that Staff positions are not Board positions, many stakeholders have expressed to us their shock that the Board's direction appears to be so philosophically different from that in the Staff Discussion Paper. While the widespread surprise may not be fair, it is a reality.
4. It is, we think, clear that many in the sector assume the Board will redirect Staff privately if they are moving in a policy direction that the Board cannot accept. Most appear to believe that Staff does not have the freedom to propose radical, or even just creative, new directions (unless the Board has informally blessed those directions). This assumption, if true, would limit Staff's ability to explore options, and thus potentially limit Staff's policy input. On the other hand, most believe that as a matter of policy consistency, Staff, while not speaking for the Board, generally should communicate only those ideas and options that are consistent with the Board's thinking on the particular subject.
5. SEC believes that the Board and stakeholders would benefit from renewed clarity on the role of Board Staff in making policy proposals. If Staff is given freedom to make independent policy proposals, even if contrary to the thinking of Board members, is there a benefit in unleashing Staff's creativity? Conversely, are there some situations in which it is important that Staff proposals are in fact consistent with the Board's likely direction? These questions, plus the collateral question of whether

there is a way for Staff to signal the nature of their participation in any given consultation, are worth exploring in the appropriate forum.

6. The second question is the focus of this consultation. Our assessment of what people have been telling us is that most people did not see the Staff proposal to increase budgets dramatically as a major change in approach to DSM, but did see the Board's decision to freeze budgets at current levels as just such a major change. This perception is perhaps counter-intuitive, but it almost certainly exists. Most people we have spoken to have said that a decision like a freeze should be made only after a more extensive consultation on that issue than has been the case in this proceeding.
7. In our February submissions, SEC noted that in our view all of these policy issues are driven by the Board's long-term vision for, and philosophical approach to, gas DSM programs. If the vision is expansion, then higher budgets are in order. On the other hand, expansion must be justified by results, and the Board has correctly pointed out that the law of diminishing returns may erode those results as budgets increase.
8. We continue to believe that the Board should establish an overall philosophy and vision for gas DSM. In this respect, while the Board's March 29<sup>th</sup> letter is clear in its message of careful movement towards the future, it doesn't yet set out a comprehensive new approach to gas DSM. For example, is this three year freeze a "pause" until the utilities come up with new approaches that deal with the concerns the Board has raised? Or, is this freeze a first step in the gas utilities exiting the DSM business? Or, is neither of those true? Will the Board instead consider alternative approaches to gas DSM programs by utilities, such as the "procurement" model SEC described in its February submissions?
9. We emphasize that this is not a question of whether conservation is good. Schools are the last customers to question whether using energy efficiently is good, or whether implementing conservation measures is good. Schools are the quintessential early adopters, and have already demonstrated that they can cut their bills substantially by a proactive approach to efficiency. For some of that past work, Enbridge and Union have been active partners with the schools. For others, the schools have proceeded on their own analysis and their own ticket. In both cases, schools have learned through doing that conservation is absolutely a good thing. We feel confident that all stakeholders would agree with this.
10. But recognizing that a goal is good does not automatically justify any means to achieve that goal. There is still a second issue – the one the Board is wrestling with – of what is the best strategy to achieve that goal. In the increasingly crowded conservation marketplace, the obvious question is whether that best strategy

includes ratepayer-funded gas DSM programs from utilities at all. If the strategy should include those programs, how should they be included in it, and what is the infrastructure in which they can be most effective?

11. In our submission, this longer-term decision would benefit from a comprehensive process in which the views of all stakeholders can be expressed, challenged, and debated, and relevant evidence can be led and tested, to inform the Board and all parties.
12. Such a process would not, in our view, include reconsidering the Board's freeze decision, although we assume – perhaps cynically – that for some stakeholders that would be their main focus. Subject to that, we believe that it is fair to the utilities, and of value to all stakeholders, to discuss and have a conclusion, as early as possible, on where this is all going. This is not something that should be left for a few more years. The gas utilities will manage their programs today differently based on where those programs are expected to go in the future.
13. We note in this respect that it may be appropriate to consider having this long-term discussion within the context of a generic hearing rather than a policy consultation. The reason for this is the value of evidence. The Board will be aware that SEC and others were very dissatisfied with the policy consultation that led to the Cost of Capital Report, precisely because the issues were so fact-driven, and there was no opportunity to properly test the “evidence” used to bring those facts to the table. The same concern arises here. Parties need to be able to lead evidence, and challenge evidence through information requests and cross-examination, so that the Board's ultimate decision on direction has a very solid foundation.
14. We therefore recommend that, while proceeding with the budget freeze for at least 2012, the Board concurrently initiate a generic proceeding on the future role of ratepayer-funded gas DSM programs.

### **Board's Questions**

15. **Low Income.** In the past SEC has generally not commented on the design or structure of low income programs, including DSM programs. The Board has lots of stakeholders involved who can provide useful input, and SEC's involvement might not be justified by the value we would add.
16. We will therefore comment on only two of the low income questions.
17. First, assuming that low income gas DSM programs continue into the foreseeable future, SEC has reached the conclusion that the incremental cost of those programs – relative to normal residential or multi-unit building programs – should be borne by

all ratepayers. By way of example, if in a normal residential program each \$1 of TRC costs 18 cents to achieve, say, but in low income residential programs each \$1 of TRC costs 30 cents to achieve, 18 cents of the cost of those low income programs should be borne by the residential customers, and the remaining 12 cents should be borne by all customers.

18. Our reasoning is that the utilities should be going after the most cost-effective DSM. If instead the utility is diverting resources to less cost-effective low income DSM to achieve other policy benefits, the incremental cost of changing goals is one we all should bear. In effect, the ratepayers, through the Board as regulator, have put cost-effectiveness behind other objectives for this category of programs. It is not just the residential ratepayers that are seeking this result. All of us are. Therefore, we all should bear the incremental cost.
19. Second, the Board has asked about co-ordination of gas and electric conservation programs in the low income area. In our submission, co-ordination between the gas and electric utilities is a major issue, not just in low income, but throughout the delivery of conservation initiatives generally. We believe that this should be a key part of the Board's generic process discussed earlier.
20. In the meantime, we believe the gas utilities should be directed to include in each and every low income program proposed a detailed plan for co-ordination with the electricity distributors and the OPA. Those plans will inform the Board, and assist with the broader consideration of the best strategy to achieve Ontario's conservation goals.
21. **Industrial/Commercial - Competitive Advantages.** We believe that industrial and commercial programs create market disparities not just because of the participants vs. non-participants division, but also because of the way they impact early adopters.
22. In the industrial and commercial sector, companies regularly assess and, on occasion, implement new energy-saving technologies. This is done because of market forces, and their constant desire to stay competitive or add a competitive edge.
23. When a utility enters the arena promoting a particular technology, it is rare that the existing market penetration is zero. There will be some early adopters who have assessed the technology and, despite the lack of incentives, implemented it for competitive reasons.
24. When the gas utility then comes along and writes cheques to ease the implementation for the competitors of the early adopter, that could be seen as unfair,

and even more so when the early adopter is bearing some of the cost of that incentive program. In effect, the early adopter has paid full freight, then is forced to subsidize its competitors to help them catch up.

25. This problem of fairness to early adopters will always exist as long as there are utility conservation incentive programs. However, it can be reduced where it is of biggest concern, large industrial and commercial users. For those categories, it would appear to us that reducing the use of incentives would also reduce inappropriate competitor subsidies, while at the same time allowing the gas utilities to add value through their expertise and their educational activities.
26. **Education and Training.** In general SEC supports the continued involvement by gas utilities in DSM education and training programs, as long as they continue to have specialized expertise in this area.
27. We do note, however, that many types of education and training in the private sector have now moved to the “train the trainers” approach. The analog for this in the area of DSM training is active partnerships between the utilities and the industry associations. The gas utilities can get greater bang for their buck if they assist the contractors’ and professional associations, among others, to provide this kind of education and training as a service to their members.
28. **R&D/Pilot Programs/Standards Changes.** The Board is exploring the appropriate role for gas utilities in these three areas.
29. In the area of R&D, it would not appear to us that gas utilities are naturally suited to take the lead on R&D programs. Gas utilities are not heavily involved in R&D generally, and they normally do not have either the internal infrastructure, or the corporate culture, to manage R&D effectively.
30. On the other hand, the utilities do have expertise in natural gas end uses. We therefore believe that the utilities should participate in research projects, but only those managed by other, research-intensive organizations. The role of the utilities should be to provide access to their expertise as required by those external project leaders.
31. Pilot programs are quite different. Gas utilities are uniquely suited to taking an idea from somewhere else – another jurisdiction, a private sector inventor, etc. – and proving it in the field through a demonstration or pilot project. The utilities have access to the marketplace, as well as a knowledge of customer behaviour, both of which are invaluable in making a pilot project meaningful.

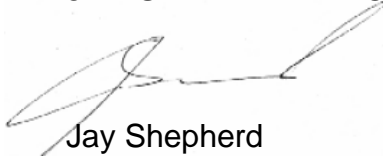
32. Intuitively, gas utilities are not the best choice to lead the way in changing building codes or equipment standards to reduce gas use. These are activities that reduce throughput, but without the protection of an LRAM if they succeed. Generally, speaking, one would assume that the gas utilities are incented to slow down these processes of changing standards.
33. However, experience appears to show that the gas utilities have in fact been effective in helping the evolution of code and standard changes. Would the changes that have happened so far, and others currently in the works, be happening faster if the gas utilities were not at the table? There is no evidence that we have seen to suggest this. If anything, the confidence that other stakeholders get from knowing that proposed changes are supported by the gas utilities, may actually reduce resistance and make these processes more successful.
34. Therefore, in our view the gas utilities should continue to play a role in working on standards and codes, as long as that role continues to produce positive results.

### **Conclusion**

35. SEC supports the Board's signal that it will proceed cautiously on gas DSM, and will freeze budgets as an initial step.
36. That having been said, now that the Board has put the critical issues front and centre, we believe that all parties and the Board would benefit from a comprehensive process of evidence and discussion – a generic hearing, in our view – so that the Board's long-term vision for gas DSM becomes clear, and rests on a firm evidentiary foundation.
37. SEC appreciates being given the opportunity to provide comments on the Board's questions, and on the direction of gas DSM in the future, and hopes that these comments are of assistance to the Board.

All of which is respectfully submitted.

Yours very truly,  
**JAY SHEPHERD P. C.**



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cc: Wayne McNally, SEC (email)  
Interested Parties (email)