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**PRESENTATION BY THE
BUILDING OWNERS AND MANAGERS ASSOCIATION OF GREATER TORONTO**

CONTEXT FOR RENEWED ELECTRICITY REGULATION IN ONTARIO

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1. The Building Owners and Managers Association of Greater Toronto ("BOMA") represents building owners and managers in the Greater Toronto – Golden Horseshoe area and, because of the concentration of a large commercial real estate owners and management firms in that area, throughout the province. Many of the organizations' members are very large consumers of gas and electricity, for heating, cooling, equipment operation and lighting.
2. BOMA is supportive of the Board's efforts to review electricity regulation in Ontario. Of necessity, BOMA's comments in this submission will be at a relatively high level. It will provide supplemental comments on both the Board's five papers and the submissions of the parties in the coming days.

3. BOMA suggests that in undertaking the review, the Board:

- Pay attention to its enabling legislation, other relevant legislation, and principles of public (administrative) law.
- Ensure that its proposals for change are consistent with, and help to implement the current energy policy of the Government of Ontario.
- Be very clear as to the purpose of the review. In saying that the Board will emphasize "outcomes" in its review, the Board is not saying enough. The real questions are what should be the outcomes (results) the Board is trying to achieve. How would those outcomes be different from the outcomes that regulation produces now? In a recent speech (January 26, 2012) to the "Northwinds Conference", the Board Chair stated that "the Board will want to hear from you about issues such as the set of outcomes that will ensure the utility performance is aligned with consumer expectations, and leads to a viable electricity industry". What are the outcomes that parties need or want? Are they the same outcomes, and how can they best be achieved?
- Ensure that its review is comprehensive and includes all relevant aspects of its mandate and its work, including the work added by "Green Energy Act".
- Ensure that it takes into account its experience with the current incentive ratemaking regime.

- Include the role of the Board itself in the examination to ensure that it has the requisite skills to carry out its responsibilities in electricity (and gas) regulation in the next few years.

4. The Legal Framework

The Ontario Energy Board Act states in subsection 1(1) that:

"The Board in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1."

Of particular interest to BOMA is the number and scope of these objectives, and the fact that no one objective is assigned priority or special status (our emphasis). The objectives include:

- Protect the interests of consumers with respect to prices, adequacy, reliability and quality of electricity service.

- Promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale, and demand management of electricity.
- Facilitate the maintenance of a financially viable electricity industry.
- Promote electricity conservation and demand management consistent with government policy and a consumer's economic circumstances.
- Facilitate implementation of a smart grid.
- Promote the use and generation of electricity from renewable energy including timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation.

The Board and parties should note that the statute does not accord special importance to the issue of the price of distribution services above the other objectives.

Second, the Board does not, except with respect to some of the electricity produced by Ontario Power Generation, regulate the price of the electricity commodity. It regulates the price, directly or indirectly through the revenue requirement, of distribution and transmission services. Distribution service account for approximately 30% of the customer's electricity bill, transmission 7% to 8%, and the commodity, the remainder.

The Board's October 25, 2010 letter which launched this review, in speaking of the likely increase in the electricity commodity cost, stated:

"New generation is the primary driver for the cost increases and the Board's authority with respect to new generation costs is limited. However, to the extent the Board approves related network investment, the effect will be to enable some

of the new generation costs. The Board, together with consumers, transmitters, and other stakeholders, must consider how to manage the price of rate or bill increases for consumers".

And in the next paragraph,

"Efforts to manage the prioritization and price of network investments may require an assessment of the combined cost impact of both the proposed network investment and the generation that would be connected by that investment".

In our view, the Board should not be taking into account the nature and price of electricity produced by the connecting generator, when assessing the desirability of the network investment required to accommodate that generation. Electricity commodity prices in Ontario are, for the most part, set by the Government when it determines the mix of generation that it wishes to have and accountability for those decisions resides with government, including its administrative agencies, like the Ontario Power Authority. It did this recently in the long term energy plan. Such action by the Board also contravenes the Board's legislated mandate to promote renewable energy including the requisite connections. The Board should not make its decisions on network expansion in this manner. There already exist clear legal/economic tests for expansions and reinforcements of the transmission and distribution systems in the Board's Transmission System Code and Distribution System Codes, respectively. They make no reference to modulating or "pacing" the infrastructure investments for the purpose of controlling commodity costs. BOMA does agree that the Board should focus on the customers' bills (along with their rates), but in ways that are consistent with the transmitter's and distributor's business operations and the Board's jurisdiction.

5. Government Policy

Current government policy includes strong endorsements through legislation, regulations, directives, or Ministers' letters to the Board in respect of energy conservation, renewable energy and aboriginal participation and consultation in energy projects. The Board's review should take these into account. The Board should further address the issue of aboriginal participation in energy projects.

6. Review Must be Comprehensive

Having declared its focus on customers' bills, BOMA finds it surprising that the Board appears to be suggesting that energy conservation (DSM, Demand Response) should be outside the scope of this review. Energy conservation when widely adopted has been proven to be the best way to lower consumers' bills, and it should be a major driver of this exercise. It is a major bill mitigation tool. Many studies, some of which have been undertaken by participants in this review, for other Board proceedings, and others by the Board itself, have demonstrated that substantial potential remains for cost effective energy efficiency measures and practices, including distributed cogeneration, in virtually all end use sectors. Utilities' CDM plans should be integrated with the utilities distribution and transmission plans to allow the necessary tradeoffs to be made between distribution investment and energy efficiency and distributed generation measures, either by the utilities or third parties. The current division of responsibility for CDM between the distributors/transmitters and the Ontario Power Authority for CDM needs to be addressed, as does the Board's CDM Code. Recent truncated proceedings involving

Hydro One and Toronto Hydro DSM plans illustrate some of the problems with the current structure.

7. Need for Reliable Infrastructure

BOMA members must have reliable high quality electricity service. Utilities need to be able to make the necessary capital investments to continue to provide that service, which means they must invest regularly to supply, maintain their assets, and where necessary, upgrade and replace aging transmission and distribution assets. The IRM "capital investment module" in its current form does not have sufficient flexibility to allow these investments to be made, as required.

This problem was illustrated by the recent Toronto Hydro proceeding.

BOMA was troubled by the deep divisions of perspective and attitude among the Board and Toronto Hydro and some intervenors in the recent "preliminary hearing" on Toronto Hydro's 2012 rates application.

Other large utilities have recently commented in a letter to the Board on the need to address the capital module, and comments have also been made in the ongoing review of natural gas regulation.

BOMA supports the idea, expressed in the Board's distribution planning paper, that a "one size fits all" approach is not appropriate in many cases, and future IRM plans need to reflect that. It may also be the case that for some utilities in some circumstances, a cost of service regulation may be better than IRM. IRM should not be the only available

method of regulation for all periods of a utility's lifecycle, and some flexibility to rebase early may be helpful.

8. Board Status and Capabilities

- (a) The Board is a quasi-judicial tribunal. It has many court-like powers, including the right to subpoena witnesses, require evidence to be produced, and assess substantial financial penalties. Its main job is to make decisions on gas and electric utilities rates, and facilities expansions, on the basis of the evidence before it. It is the quality, reasonableness, consistency, and fairness of those decisions on the contentious matters that will largely make or break the Board's reputation as a competent, impartial, independent tribunal. It has wide discretion in the manner in which it chooses to determine rates. It also decides whether to licence most participants in the electricity and gas markets, including participants that are not utilities, such as generators, wholesalers, and retailers, and approves utility mergers and intersecting transactions. It has the authority to produce legal and binding codes on subjects specified in its enabling legislation. In this sense, the Board is very different from an administrative branch of the government or the Ontario Power Authority. It is not a planning agency, nor is it a policy-making body. Energy policy is the domain of the government. What the Board has characterized, in the not too distant past, as policies or policy initiatives, are better characterized as regulatory guidelines, or practices. Use of the word "policy" creates needless confusion.

In addition, while the Board is usually careful to state that its "policies" on such matters as cost of capital and IRM are only that, and are not legally binding, and that an affected party can always demonstrate to the Board that the "policy" as it applies to them is not in the public interest, it must be careful to allow parties a fair opportunity to demonstrate that the "policy" is not appropriate for them. This may require that the Board hear the party's case, which the Board may be reluctant to do, and some parties may object to. Both the affected party and the Board are placed in a catch-22 position by the notion of a "preliminary hearing" to determine whether an exemption is justified. The issue of the role of Board guidelines (and policies) needs to be addressed as part of the review.

- (b) Second, the expansion of the Board's mandate requires that the Board expand its expertise. While BOMA is of the view that the quality of Board and Board staff personnel is almost always high, and the customers and utilities have benefited from that quality, BOMA notes two areas where additional expertise seems to be required.

First, the Board requires an additional member or two with senior legal practice experience. The Board's principal job is to make well reasoned, fair decisions, on contentious and often complex matters. It needs more Board members with senior legal experience to help with these decisions. One of these individuals should also be a Vice-Chair. The Ontario Energy Board Act requires that the Board have two Vice-Chairs. It has only one now.

Second, the Board needs additional senior level expertise in conservation and demand management. CDM should become more, rather than less important for the Board over time, and it is important that the Board have members and staff with deep practical experience with CDM, and/or who are familiar with the extensive DSM literature, and its use in integrated resource planning.

9. Predictable Rate Increases

BOMA members value predictability of rates. Members set budgets for energy costs well before the year begins. Sudden, unanticipated increases in rates are difficult to manage. These increases sometimes arise from rates being increased to allow the utility to collect 12 months worth of distribution service over a shorter period. This can happen if the rate decision is made after the commencement of the new rates year, which can happen if, among other things, the utility is late filing its case, or the Board is understaffed.

It is important that the utility files its rate case in a timely manner so that the Board's decision can be made prior to the beginning of the next rate period.