EB-2010-0377
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Submissions of Building Owners and Managers Association, Greater Toronto ("BOMA")

Introduction

1. BOMA and the Commercial Building Sector in Ontario

Our member companies comprise most of the owners and managers of commercial real estate property in Ontario, and allied professionals. They range from owners and managers of large portfolios of office buildings, shopping centers, warehouses, and institutional buildings, to server farms, small commercial landlords, strip malls, and owners of main street retail facilities. They also include corporations in various businesses which own and operate their own head offices and regional headquarters buildings. For example, the current Acting President of BOMA is the senior official at the Management Board of Cabinet, responsible for building operations of the Ontario Government. Collectively, the sector consumes a great deal of both natural gas and electricity. Natural gas for heating, and electricity for cooling, lights, computers, and other office equipment. For many utilities, the commercial sector represents, next to the residential load, the largest single category of load. For example, in both the Union and Enbridge franchise areas, commercial customers use more gas than the industrial sector.

Some of the buildings are owner occupied, some are leased to a wide variety of tenants under many types of leases, which deal with energy costs in different ways. While some of the larger companies have highly expert energy managers, many of the smaller ones do not.

BOMA members are very interested in energy efficiency. They have been active participants in Ontario Power Authority ("OPA") and LDC programs. They have had considerable success in reducing their energy costs from what they would otherwise have been by introducing best energy management operating practices and the purchase of more energy efficient equipment, including lighting, HVAC systems, and digital energy control systems. The potential remains for even greater savings. Energy is one of the largest expense categories of the large commercial building sector. They need to keep energy costs as low as practicable in order to compete for tenants. Many large corporations, when seeking rental space, will specify that they will only rent in a LEED certified – gold (silver) – building (either new or retrofitted). That trend is likely to increase over the next few years.

Being energy efficient is an important selling point for those building owners. Being green is part of their brand.

2. What do Commercial Building Owners Want From Their Electric Utilities (and from the Ontario Energy Board)

First, they want reliable power. Many buildings contain millions of dollars worth of computer and related equipment, and sophisticated climate control systems, as well as elevators. Outages are disruptive and costly, in terms of lost productivity. They are by and large obtaining reliable power now.

Second, they want better information about their energy costs, including all elements of the bill. Most members have a very elementary understanding of their energy bills. They are not in the electricity business. BOMA supports the CME proposal that a report of the type, prepared by Bruce Sharpe for the CME et al to the conference, be prepared by the Ontario Energy Board, updated on an annual basis, and widely disseminated. Such a report would be of great value to BOMA members, in understanding their current energy bills, in assessing likely future energy price scenarios, in planning the energy budgets for their buildings, and for educating their tenants as to likely future direction of prices. The Board has the credibility, which derives from its independence and status as a quasi-judicial tribunal at arms length from all parties, to produce, and to be perceived as having produced, a fair, unbiased report – a good start. It is unlikely that either the government or the OPA could or would ever produce such a report. BOMA urges the Board to take up the challenge proposed by Mr. Thompson in his presentation at the Conference on behalf of CME. With such information available, the Board would be better equipped to make its decisions on utility rates in a more transparent manner, including rate increase mitigation measures, with the total bill in mind.

BOMA also agrees with CME that such a report would be an important education tool for the Board, the LDCs, consumers, and related parties, and a platform for engagement of the Board with consumers, and LDCs. It should put everyone with a stake in Board ratemaking on a more even playing field.

More generally, BOMA agrees with the idea expressed by the Chair that the Board, when deciding utility rates, should do so with the total customer bill in mind. Customers do focus on bills as well as utility rates and, sometimes, more on total bills than rates.

However, rate setting with the total bill in mind, has certain corollaries, to which the Board should pay attention.

First, in order to understand the importance of, and the impact on customers of energy costs, the Board and its staff must know the facts about how different customers groups consume energy, for what energy services, how much of it they use, for what purposes, in other words, what specific energy services are being utilized, at what growth rates, and what percentage of the different types of customers' total costs do energy costs constitute. For example, a handful of industrial sectors, including pulp and paper, steel, foundries, use very large amounts of energy per unit of output. They are referred to as energy intensive industries. However, many manufacturers' energy costs are, as a percentage of total operating costs, similar to that of large office buildings or shopping centers. Some of these large industrial energy users have been the recipients of substantial government grants, or OPA grants, to convert the manufacturing processes to more energy efficient ones, develop in-house generation using the waste products (forest industry), or retrofit or purchase new boilers, motors, pumps, heat traps, valves, and other energy savings equipment. The Board should have the related background data. It should regularly commission studies of energy use in various end use sectors, and maintain the material up to date. In summary, it needs to have at its fingertips a detailed comprehensive profile of energy use in Ontario, including by sector, function, and energy service (for example, lighting, motors, etc.). It should be detailed information, not high level information. Many of these studies are now done when assessing the potential for pursuing energy efficiency savings in a particular sector [See, for example, a recent study by Marbek on energy efficiency potential in the Ontario manufacturing sector, filed by Union Gas in its

2012-2014 DSM Plan]. They should have staff who are intimately familiar with this material. The OPA may also be a source for some of this material for the Board.

Second, such material will help the Board assess the "affordability" of rate increases for different consumer groups, and will assist efforts at rate mitigation. The Ontario High Court of Justice in "Advocacy Centre For Tenants – Ontario and Income Security Advocacy Centre, on behalf of Low-Income Energy Network and Ontario Energy Board" has recently decided that the Board may consider "affordability" and the economic status of different consumer groups where setting rates. While the decision was taken in the context of whether the Board could set a special rate for low income customers, the decision has broad application for rate-setting in general. But in considering "affordability" of a proposed rate increase for rate class, the Board should be careful to take into account all of the government policies, agency decisions, cost allocation decisions, such as the recent changes to the allocation factor for the global adjustment in favour of large industrial (and/or large institutional) high load factor customers, and authorized by Ontario Regulation 429/04, availability of energy efficiency, in-house generation, demand response, and other options that particular customers, or groups of customers, may have.

Third, if the Board in making rate decisions with the whole bill in mind, it must encourage energy efficiency, demand response, and smart grid measures, much more effectively than it has done to date. To date, their attitude has been one of grudging acceptance of the need for, rather than positive encouragement for, these measures.

Fourth, the Board needs to interpret the CDM Code in a more purposeful manner (or perhaps amend the Code) to allow LDCs to develop their own energy efficiency programs that compliment, extend or build upon OPA province-wide programs. The word "duplicate" in reference to LDC and OPA DSM programs should be interpreted liberally. BOMA believes the Board has the discretion to do this. After all, the Minister's CDM directive to the Board stated that the CDM program it directed the OPA to adopt was a floor, not a ceiling. Moreover, the LDCs are in the best position to craft conservation and demand management programs for their customers. The peak-saver program, developed by Toronto Hydro and later adopted by many other distributors, is a prime example of what can be accomplished distributors' initiative. It has been stalled in the OPA. However, BOMA recognizes that the government's CDM directive to the Board could have been more clearly drafted.

Fifth, the fact that the OPA is financially responsible for province-wide energy efficiency programs, gives the LDCs the opportunity to focus on "retail" programs, where extensive load knowledge and customer engagement, including through the utility bill, is critical. The Electricity Act mandates that the Board must approve the annual budgets of the OPA and the Independent System Operator. In last year's decision on the OPA budget, the Board took an important initial step to require the OPA to improve its management of its energy conservation and demand management programs, use more results-oriented, rather than activity-oriented milestones, and be more transparent in its dealings with customers. The Board should continue with, and build upon this approach and ensure that the OPA measure its progress towards meeting the province-wide conservation targets (and targets for each LDC that the Government set out in its Long Term Energy

Plan and its CDM Directive). As BOMA stated in its presentation to the conference, energy efficiency measures, widely adopted, are an important mitigation measure to offset higher energy bills. This fact has been well documented in authoritative studies. For example, Eric Hirst, of Berkley, has demonstrated in the study of rate and bill impacts of energy efficiency measures in California that bill reductions from energy efficiency are far greater than the rate increases necessary to fund the measures, for utilities at all stages of their growth cycle (with the most favourable ratio in higher growth utilities).

Sixth, Jack Robertson, of Elster, noted in his presentation to the conference that recent studies have shown that consumers energy information systems installed together with smart meters resulted in bill reductions from eight to fifteen percent of residential consumers' energy bills (check authorities). Whether categorized as a smart grid measure or an energy efficiency measure (and it should not matter what the label is, given that a primary purpose for the development of the smart grid is to encourage energy conservation) that percentage savings is very high, and results in a very attractive payback.

Seventh, the Board needs to take a similar approach with other smart grid investments. As Jack Robertson also noted, given the enabling platform that the LDCs have created with the province-wide deployment of smart meters, it makes sense to add smart grid capabilities to those meters immediately. Investments in smart grid technology will result in both rate reduction and customer bill reduction in the short, medium, and long term, due to improved utility operating efficiencies, such as less costly disconnect and reconnect procedures, reduced losses, and more energy efficiency and demand response

measures. Moreover, the policy directive from the government is crystal clear. The smart grid is not only defined in the Electricity Act[1], but the government has issued a detailed directive as to what steps the Board should take to encourage the LDCs to implement smart grid measures. If and when the Board finds ambiguity, it should interpret the provisions liberally and encourage the implementation of smart grid measures, as contemplated by the directive. These measures, widely adapted, will reduce customer bills. What could be better demonstration of setting rates, with the total bill in mind, reflecting a "holistic" view of the "energy system". The Board's role should include the strong encouragement of both smart grid measures and DSM measures. It must lead in these areas. The recent decision of the Board in the Guelph Hydro 2012 rates case (EB-2011-0123) seems to discourage smart grid initiatives by Guelph Hydro, and is not consistent with the spirit and the letter of the smart grid directives. More decisions like that will frustrate smart grid development, not encourage it. There are many other ways the Board might have resolved the issues presented in that case. It could have, for example, approved Guelph Hydro's proposal to demonstrate the home display system with the proviso that Guelph Hydro might in the future be required to transfer the system to an affiliate. Put another way, smart grid investments are common sense.

Finally, the Board should avoid taking decisions, when setting rates with the total bill in mind, that exceed its jurisdiction. For example, as BOMA noted in its presentation to the Conference, the Board should not attempt to affect the pace of connections of renewable generation projects, or any other generation project, by refusing to approve utility

[1] "smart grid" means the advanced information exchange systems and equipment described in subsection (1.3)

proposals to expand or reinforce their network, to accommodate the connection of renewable and other generation projects. The connection costs are paid by the generators, who are also responsible for distributor's enabling network expenditures, above a cap. Put another way, while the Board can pace the utilities' overall capital expenditure decisions, in accordance with their approved capital expenditures plans, the OEB's decision on the plans and the expenditures should not reflect any effort to delay or constrain the connection of renewable, gas-fired, or nuclear generation.

As BOMA stated in its presentation, the "generation mix" has been set by government, and the accountability for the price consequences of those decisions should remain with the government. With respect to renewable energy, the government, through the OPA, is currently investing billions of dollars to increase the share of renewable energy sources in the total generation mix, both through the Feed-in Tariff program and many other complimentary programs, such as the Aboriginal Loan Guarantee Program. In addition, the government has included the facilitation of renewable energy distributed generation, in its definition of the smart grid in the Electricity Act. Any attempt by the Board to "throttle down" the growth of such generation through not approving the required LDC or transmission infrastructure would contravene both the Electricity Act, and the Ontario Energy Board Act, the latter of which makes promoting both smart grid projects and renewable energy projects Board objectives.

Included among recent cost allocation measures is a recent regulation passed in OR 429/04, at the behest of the Association of Major Power Consumers and the IESO without any significant consultation with other interested parties, to allocate major power consumers' (over 5 MW demand) share of the Global Adjustment on a "peak demand"

basis rather than a commodity basis, as had been the case up until then, and remains the case for all the other utility customers. This change has been a major benefit to large power consumers. See Bruce Sharpe's presentation to the Conference, an illustration of the impact on the Global Adjustment (and total electricity bill) for the privileged group.

In addition to reliability, BOMA members are interested in electricity rates and bills that are predictable and as low as practicable.

BOMA members want the lowest cost of power possible, consistent with the reliability of the power supply and the viability of the LDC. It also wants power prices to be as predictable as possible. 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, after existing rates have been made interim. 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 and unable to deal with the case in a timely manner. Many building owners have obligations to tenants under their leases which can be disruptive to one or other of the parties if energy bills or rates are spiking, unpredictable, or have retrospective effect.

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.

BOMA is supportive of a number of measures proposed in the five papers and the straw-man proposal which, if implemented properly, will tend to lower costs from what they

otherwise would have been, and to make any necessary rate and total cost impacts more predictable. In addition to the desirability of a current energy price cost forecast, described above, these proposed integration of LDC plans into one plan, which covers an agreed multi-year period, should be helpful. The plan would include the capital plan for necessary equipment replacement, expansions, and include mandated renewable connections, smart grid, and CDM components. BOMA understands that these latter three categories of expenditures are mandated by statute, but it is important for LDCs to integrate these initiatives into their business plan and estimate what the rate impacts would be, given the latest available Board report.

At least in the initial years, the plans should be more, rather than less, detailed descriptions of the various components of the plan, demonstrate that the LDC has planned for the necessary mandated investments in renewables, smart grid, and CDM, and explored different investment scenarios, to ensure that intervenors and the Board can analyze each component of the plan, as it relates to the utility's current circumstances. It would contain up to date asset management plans.

The plan should be for a term of five years, with more emphasis on the first three years, and it should be renewed annually. The plan should be filed at the earlier of cost of service proceeding after the requirement has been set by the Board or an alternative date set by the Board.

The plan should also be a fully integrated resource plan. It should discuss in some detail the alternatives the LDC considered to deal with the need for reinforcements or expansions, and in particular, an assessment of what role DSM measures and distributed

generation will play as alternatives to grid infrastructure investment. It should also include a detailed discussion of the "smart grid" measures the LDC will introduce over the plan period and the steps it will take to accommodate and anticipate renewable energy projects (whether distributed generation or larger projects) in its service territory.

It should also discuss procurement options for its capital projects over the plan period. The discussion should provide information on how the LDC allocates construction and maintenance work between its own staff and outside contractors, the criteria that it uses, the history of its practices, and the estimated cost differential, if any, in using the different options for different tasks. It should describe any collective agreement issues related to contracting out work and indicate how it will deal with these issues. In addition, as noted by Mr. Thompson, the justification for construction using either internal resources or external contractors, and the method for procuring the outside contractors could be required to be made at the leave to construct proceeding for projects that require leave to construct.

The plan should also identify the specific characteristics of the LDC that lead to higher or lower than average costs for the capital projects included in its plan, and for its planned OM&A expenditures. It should note projects that are unusually complex or costly, such as, for example, proposals for new distribution cables or maintenance work on lines under the 401 highway in Toronto.

The LDCs should also do, in effect, a zero-based budgeting exercise at the time of rebasing to determine ways in which costs can be reduced.

BOMA agrees that the Board needs to deal with the limitations in the LDCs' capital investment module in the third generation IRM plan. If nothing else, the current definition of the eligible projects under the IRM appear to exclude some LDCs' infrastructure renewal projects. The Board should hold a separate proceeding, to deal with the need for multi-year capital plans and how they would determine proposed capital budgets for the test year and beyond, and how they would be regulated under cost of service or IRM. This matter is discussed further in the section on Rate Setting, below.

3. Measures of Utility Performance

BOMA agrees that utilities should be encouraged to develop a performance-based culture, if they do not already have one. If the utilities are to be compared one with another, whether by benchmarking or otherwise, BOMA believes that it is important that:

- their different characteristics be taken into account in assessing what constitutes good performance. For example, the response time to emergency calls will be longer in a large rural area than they are in a medium sized city; Metro Toronto may be a special case because of the traffic congestion. Ontario utilities, with the exception of Hydro One, are <u>local</u> and their characteristics and costs will to some extent reflect their location. Hydro One Distribution is mainly a rural and small town utility;

- apples be compared with apples, not oranges; for example, the Board needs to ensure that utilities are using more or less identical capitalization practices when comparing OM&A costs, or make adjustments for the differences. The Board needs to determine to what extent the shift to IFRS will result in the prescribed

uniform capitalization practices for all utilities. In comparing utilities using IFRS to those utilities permitted to use US GAAP, at least temporarily, they must make any warranted adjustments;

- Ontario derived indices should be used in any proposed IRM schemes where possible, and an effort should be made to develop indices that match the costs faced by the utilities, taking into account relevant regional or local factors;

- ensure adjustments are made in computing capital costs per kwh for differences in the amount of capital contributions received by the different LDCs per unit of expenditure, and the different amounts of electric infrastructure relocation expenditures necessary, as a result of decisions of municipalities or other transportation or planning authorities;

- ensure that local differentials in labour costs, travel costs, etc. are reflected;

- ensure that different climate regimes are accounted for; some are much more benign than others, with respect to their impacts on capital and operating costs;

- ensure that different levels of the complexity of utility operations are accounted for; for example, necessary underground construction and maintenance of infrastructure below downtown city core areas, under major transportation corridors or under water;

- the utility's history of capital and maintenance expenditures on assets over the last two decades.

4. Regional Planning

BOMA agrees that regional plans can be useful in certain circumstances, provided that they are done in an inclusive fashion and made widely available. So far as BOMA is aware, to date, these plans, or planning activities, have not been disclosed to energy consumers. BOMA would like to see the regional plans (or reports of regional planning activities) that have been done to date made public. OPA had mentioned such efforts in its recent Annual Reports but BOMA has yet to see any of them. The emphasis of the discussions on regional planning at the conference was on the interplay between the transmission plan and the plans of the LDCs in the region. BOMA believes the LDC should also engage in joint planning activities with one another, where appropriate.

BOMA agrees that section 6.3.6 of Transmission System Code ("TSC") should be amended to remove the impediment to the LDCs jointly paying for critical regional transmission infrastructure.

While the regional plans are more general in nature than the LDCs own plan, the plan should nonetheless be consistent with the structure of the LDCs' multi-year plans described above. That is, they should not make assumptions that are at odds with the amount of LDC planned activity in CDM, smart grid, and distributed renewable generation. They should not be confined to large scale regional solutions such as new generation plants to serve the region or new transmission projects. While each LDC has received an allocation of the government's provincial CDM target, that is meant to be a floor, not a ceiling. So the OPA and the LDCs should not simply take a slice of those LDCs' shares of the OPA's total authorized CDM expenditures for the plan period. LDCs

may wish to do much more LDC in their local area, and any regional planning activity, whether led by the OPA or otherwise, should acknowledge that activity, encourage rather than discourage it, and take it into account in proposing a "regional" solution. Finally, it should analyze whether other LDC measures would be preferable to new transmission or large scale generation in order to deal with the regional requirement for more supply.

The Board should insist that any regional planning initiatives be agreed by all regional LDCs and that all relevant LDCs be invited into the planning exercise prior to using the plans in any proceeding.