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Kirsten Walli
Board Secretary
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Dear Ms Walli

Consultation on Energy Issues Relating to Low Income Consumers
Board File No.: EB-2008-0150
Our File No.: 339583-000003

We are writing on behalf of Canadian Manufacturers and Exporters ("CME"). CME participated in the September 22 –25, 2008 stakeholder consultation process to examine issues associated with low income energy consumers in relation to their use of natural gas and electricity. Please consider this letter as a summary of CME's views after having the benefit of the listening to the other participants in the consultation.

CME has focussed its comments on the aspects of the consultation that it believes could, directly or indirectly, affect its members. CME's members represent approximately 75% of manufactured output in the Province of Ontario, and approximately 90% of all exports. In this regard, manufacturing is the single largest sector of the economy (17.5% of Gross Domestic Product or about $300B) employing, directly, over 1 million people in the Province. Both electricity and natural gas are sources of energy for the manufacturing sector. As a result, the members of CME are affected by electricity and natural gas rates.

It is not clear at this stage the extent to which the policies, programs or other measures designed to assist low income consumers, which were discussed at the consultation, will necessitate inter-class and/or intra-class subsidies. At least one proposed measure, the "rate affordability plan" raises the important question of the extent to which rates charged by OEB regulated electricity distributors and natural gas distributors should be cost-based.

When reviewing the policies, programs or other measures designed to assist low income consumers, CME urges the Board to consider and apply the following guiding principles:

- The rates the Board fixes and approves should continue to be cost-based or cost-related. In recent decisions, the Board has reiterated its adherence to cost-based ratemaking principles. This means that the costs attributable to actions which a utility needs to take to provide regulated services to its customers are recovered from the various rate classes in a manner which reflects the extent to which the different rate classes have caused the costs to be incurred;

- Social welfare "costs" are not an item of expenditure which a utility incurs to provide regulated services. Social welfare "costs" are not attributable to any action a utility needs to take to provide regulated services. Rather, the matters giving rise to the incurrence of social welfare "costs" relate to the impecuniosity of particular consumers of utility services;

- The recovery and allocation of responsibility for paying social welfare "costs" and the distribution of such funds to those determined to be in need are matters which lie outside the ambit of utility ratemaking;

- Costs attributable to actions a utility needs to take to provide regulated services should be recovered from the customer class which causes the utility to incur those costs. Interclass costs subsidies are to be avoided. While cost allocation is an art, rather than a science, once the regulator has established the cost allocation rules that are to be applied, the revenue to cost ratios of the rates charged to different rate classes should be targeted at unity.

It is with these guiding principles in mind that CME has prepared these comments. CME urges the Board to ensure that any approved low income policies or programs comply with these guiding principles.

CME's comments which follow reflect an application of these guiding principles.

In CME's view, the policies, programs or other measures designed to assist low income consumers that were discussed throughout the consultation can be broadly classified into the following four categories:

(a) DSM, CDM and other energy efficiency programs;

(b) Consumer protection;

(c) Customer service issues and arrears management; and

(d) The introduction of a "rate affordability plan".

DSM, CDM and Other Efficiency Programs

The first three categories generally do not represent a departure from traditional ratemaking principles. Further, to a large extent these programs already exist. With respect to the first category, DSM and CDM programs are, by their very nature, targeted at specific segments of a utility's customer-base. Existing DSM/CDM programs are already targeted at agriculture, manufacturing, public institutions, multi-residential building, new residential construction and existing residential housing. Furthermore, both Union Gas ("Union") and Enbridge Gas Distribution ("EGD") already have Board-approved DSM programs specifically focussed on assisting low income customers (EB-2006-0021).

CME does not oppose the continuation, and potential expansion, of DSM, CDM and other energy efficiency programs that assist low income and other consumers so long as they continue to be funded by the rate class to which the program is delivered. This is the Board approved methodology applied by both Union and EGD: residential rate classes pay for residential DSM programs, commercial rate classes pay for commercial DSM programs and industrial rate classes pay for industrial DSM programs.

Consumer Protection

With respect to consumer protection, most participants' comments focussed on increasing access to information about customers' rights and obligations, as well as better information about the availability of policies, programs or other measures designed to assist low income consumers. In this regard, the Board Chair confirmed that over the next few months the Board would be thinking about how to communicate more effectively with consumers [Transcript Vol. 1, pp.136-137]. As Mr. Wetston said:

> "And I guess, in thinking about this, we have been giving thought, and we will continue to give thought, to how we can communicate more effectively with the public about everything from energy-related rights through to what it is exactly that consumers are paying for and why."

CME supports the principle that the Board should, to the greatest extent possible, educate ratepayers, particularly the smaller and less sophisticated consumers.

Customer Service and Arrears Management

Costs a utility incurs with respect to customer service and arrears management are items of expenditure which a utility incurs to provide regulated services. Accordingly, they are recoverable from ratepayers.

With respect to customer service issues and arrears management, it does not appear to CME that any parties are proposing changes that would result in an inter-class subsidy. As such, CME takes no position on this issue. CME does observe, however, that the manner in which disconnection charges, reconnection charges and late payment penalties are enforced, and more specifically the circumstances under which these charges are waived, appears to be applied in a somewhat *ad hoc* manner. The Board may wish to provide further guidance on this matter.

Rate Affordability and Rate Assistance

The "costs" associated with rate affordability and rate assistance programs are social welfare "costs" in that they are not attributable to any action the utility needs to take to provide utility service. The recovery of these social welfare "costs", the allocation of responsibility for paying such costs, and the distribution of the funds to those determined to be in need are matters which the Board should find lie outside the ambit of "cost-based" utility ratemaking.

CME agrees with Union that regulated rates should continue to be designed and approved in accordance with established ratemaking principles. Rates should not be based on income. Wealth re-distribution should not be accomplished through regulated utility rates. Any rate design change or custom discount that reduces the bill of a specific ratepayer group will result in increased rates to others (Union slide 4), and in CME's respectful submission, will violate cost-based ratemaking principles.

CME also agrees with the submissions of LPMA and BOMA that public policy should be publicly funded by the entire society, not just a subset of society, such as customers that purchase energy services from regulated corporations. Social welfare is not within the mandate of the Ontario Energy Board. Any rate assistance programs which result in interclass subsidies by one set of ratepayers to another set of ratepayers based on need should be funded through general revenue and delivered by existing social assistance agencies (CCC slide 3, and the written submissions of LPMA and BOMA).

CME urges the Board to refrain from being lured into considering the recovery of social welfare "costs" related to rate affordability and rate assistance considerations, when fixing and approving utility rates, on the grounds that there is a possibility that such programs can be structured to be revenue neutral. As CCC indicates in its submission, the recovery of and the allocation of responsibility for paying social welfare "costs" (regardless of the presence or absence of revenue neutrality with respect to the arrangements) are matters which should be mandated by the provincial and federal governments. We reiterate that social welfare "costs" are not items of expenditure which a utility incurs to provide regulated services.

CME listened with interest to the presentation by representatives from the Pennsylvania Public Utility Commission with respect to the "special rate" programs it provides. The concept guiding the Pennsylvania PUC is to the effect that "special" non cost-based rates (sometimes referred to as "decremental" rates) can be rationalized as an exercise of just and reasonable ratemaking authority. Some jurisdictions have found that special non cost-based or "decremental" rates can be approved where such rates allow the utility to retain customers and a portion of the profit margin that it would otherwise lose as a result of the inability of a customer or group of customers to pay the applicable cost-based class rates.

The regulatory determination of the level of such "special" non cost-based "decremental" rates is not based on considerations of social welfare. Rather, it is based on considerations of partial profit margin retention so that, as a whole, utility customers are better off than they would be in the scenario where the customers paying special rates would otherwise be lost to the system and, as a result, would be making no contribution to system costs.

Years ago, Cyanamid Canada Inc., an ammonia producer in Ontario, asked the Board to approve a "decremental" rate for service it was then receiving from the Consumers Gas Company Ltd., the predecessor of Enbridge Gas Distribution Inc. ("EGD"). Amongst other things, Cyanamid contended that it would likely go out of business and be lost to the system if its special rate request was not granted. The Board denied Cyanamid's request.[1]

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[1] Counsel for CME believes that Cyanamid's presentation of principles with respect to decremental rates was made in EBRO-341-II a case which the Board decided in the mid 1970s. Board Staff will need to check the Reasons for Decision in that case to verify this recollection. We are having difficulty locating this firm's copy of the Decision.

Thereafter, Cyanamid, and Nitrochem Inc., another ammonia producer in Ontario sought a special non cost-based feedstock rate on grounds, *inter alia*, that such a rate was needed to prevent them from going out of business. These two chemical companies were in effect presenting themselves as "low income" consumers.

In July of 1983, more than 25 years ago, the Board conducted a hearing, at the request of the Government of Ontario, into the appropriateness of the special non cost-based feedstock rate being requested by Cyanamid and Nitrochem. At the conclusion of the proceedings, the Board recommended in its report to the Lieutenant Governor in Council ("LGIC") dated February 10, 1984 under Docket No. E.B.R.L.G. 26 as follows:

> "That the proposal by Nitrochem and Cyanamid for a common feedstock rate be rejected by the Government.
>
> That if it is deemed appropriate by the Government to assist ammonia producers in Ontario a direct subsidy be considered by the Government in preference to the indirect subsidy by means of a common feedstock rate."

From that time forward, cost-based or cost-related ratemaking regimes have prevailed for the utilities the Board regulates.

Those advocating special rates for low income consumers are, in essence, seeking the same relief Cyanamid and Nitrochem sought more than 25 years ago. The relief requested is as inappropriate now as it was then.

In these circumstances, the Board should refrain from diluting the cost-based ratemaking principles which it has consistently applied for some 25 years. Departing from cost-based ratemaking principles to adopt "decremental" ratemaking concepts, is regressive rather that progressive.

In the alternative, if the Board decides to further examine matters pertaining to "decremental" ratemaking, then it should proceed cautiously to assure that any special "decremental" rate measures it invites utilities to propose fall well within the narrow limits of the partial profit margin retention principles applicable to the design and approval of "decremental" non cost-based rates.

Please contact Mr. DeRose if you have any questions about these comments.

Yours very truly,

Peter C.P. Thompson, Q.C. / Vincent J. DeRose
PCT/VJD/kt

c All Interested Parties
Paul Clipsham (CME)

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