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February 14, 2011

By Electronic Filing and By Email

Kirsten Walli
Board Secretary
Ontario Energy Board
27th Floor, 2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli

Demand Side Management ("DSM") Guidelines for Natural Gas Distributors
Staff Discussion Paper and Revised Draft DSM Guidelines
Board File No.: EB-2008-0346
Our File No.: 339583-000030

I am writing on behalf of Canadian Manufacturers & Exporters ("CME") to provide comments on Board Staff's Discussion Paper and Revised Draft DSM Guidelines which were issued on January 21, 2011.

BACKGROUND AND CONTEXT

In its submissions of February 20, 2009 and June 7, 2010, CME urged the Board consider the pace at which the landscape of conservation and energy efficiency in Ontario has changed since the Board's Decision in the DSM Generic Hearing (EB-2006-0021). In those submissions, CME noted that since the existing DSM Framework was approved by the Board:

(a) There has been an increase in the number of parties that deliver energy efficiency initiatives or other conservation activities, some of which overlap with natural gas distributor sponsored DSM programs;

(b) The Federal Government and Ontario Government have become increasingly active in conservation activities;

(c) The Ontario Power Authority has increasingly undertaken a variety of energy efficiency initiatives;

(d) Electricity LDCs increasingly deliver CDM;

(e) Municipalities offer conservation and energy efficiency programs; and

(f) Industry associations have become more involved with the delivery of conservation activities. For instance, CME administered funding through its "SMART Program", to help small and medium sized manufacturers improve their productivity so that they can compete more effectively in the global economy. CME also prepared a report entitled *Advancing Opportunities in Energy Management in Ontario Industrial and Manufacturing Sector* [CME wishes to acknowledge that both Enbridge and Union made significant contributions to that report]. That study determined the current energy management performance of the industrial sector; estimated the economic potential for energy management along with the associated greenhouse gas ("GHG") and criteria air contaminants ("CAC") emission reduction; benchmarked the GHG and CAC emissions associated with energy use in Ontario's industrial sector; and developed a framework to accelerate the implementation of best practices and increase industry's energy management performance.

In our submission, the landscape of conservation in Ontario remains in a state of flux. CME urges the Board to ensure that the new DSM framework is capable of reacting to ongoing changes. To this end, CME notes that "Flexibility is the cornerstone of staff's proposal" [Board Staff Proposal, page 11]. The revised DSM Guidelines should be sufficiently flexible to permit natural gas distributors the ability to quickly respond to changing economic conditions, and to provide the Board with the ability to balance rate affordability with the objectives of cost-effective conservation activities.

With respect to the latter objective, CME notes that Board Staff's Discussion Paper does not explicitly address is the need to balance the costs of DSM with rate affordability. The revised DSM Framework should explicitly require that the benefits flowing from DSM activities demonstrably outweigh the corresponding DSM costs. The revised DSM Framework should also include a mechanism that enables the Board to balance DSM costs with the need to maintain rate affordability on an ongoing basis. Such an assessment should not be limited to an isolated assessment of only the rate impact of DSM on the natural gas distributors. Rather, the costs should be considered in a broader total bill impact analysis of the costs of all conservation activities that impact customers of both electricity and gas. Such an analysis would be consistent with the Board's recent consideration of total bill impact analysis in the Renewed Regulatory Framework for Electricity Consultation (EB-2010-0377-0379), and would permit the Board to ensure that the global costs for DSM and CDM in Ontario remain appropriate.

THE DSM FRAMEWORK

At page 8 of its Discussion Paper, Board Staff observes that no new significant evidence has been provided on the appropriateness, or lack thereof, of the natural gas utilities undertaking DSM activities as part of their regulated business. To this end, CME agrees with Board Staff that consideration of a fundamentally different framework is not warranted at this time.

That said, CME notes that when Board Staff issued its initial Draft DSM Guidelines for Natural Gas Distributors in EB-2008-0346, it identified a number of disadvantages with the existing DSM Framework. In particular:

(a) It requires an enormous amount of time, effort and money on the calculation of, and debating of numbers;

(b) It is quite complex and the complexity promotes game playing on the part of the utility and stakeholders;

(c) It can, under certain circumstances, create unnecessary distrust or animosity between utilities and stakeholders; and

(d) At certain times, it may make ratepayers cynical about DSM activities.

At that time, CME agreed with Board Staff that these were shortcomings of the existing DSM Framework. These challenges remain today.

Board Staff's recommendations, if adopted by the Board, should alleviate some of these shortcomings. For example, if the Board agrees that LRAM and SSM should be determined on the basis of actual measured amounts instead of "locked-in" input assumptions, then ratepayer concern over utility gaming should be materially reduced. To this end, CME urges the Board to remain cognizant of these shortcomings when considering how the existing DSM Framework should be modified.

TERM OF THE PLAN

So long as the Board develops a mechanism that enables it to balance DSM costs with the need to maintain rate affordability on an ongoing basis, then CME supports Board Staff's proposal that the review of the natural gas DSM framework continue for a three-year plan term.

PROGRAM TYPES AND DESIGN

As set out above, CME agrees with Board Staff that the DSM framework must maintain a degree of flexibility that allows the utilities and the Board to respond to changing circumstances in a timely manner. To this end, CME agrees that the three generic types of programs described at pages 9-10 of Board Staff's Discussion Paper, in conjunction with the availability of pilot programs, provides a sufficiently broad spectrum of DSM activities for the natural gas utilities to undertake.

In discussing program and portfolio design, Board Staff recommends that the DSM portfolio should include programs that 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.

CME believes that, to the extent that it is not encompassed in the objective to maximize cost effective natural gas savings, the Board should recognize a fifth objective that all DSM benefits demonstrably exceed the corresponding DSM costs. If the Board agrees, then this further objective can be solidified through the creation of a mechanism that enables the Board to balance DSM costs with the need to maintain rate affordability on an ongoing basis.

PROGRAM SCREENING

Board Staff's initial Draft DSM Guidelines for Natural Gas Distributors in EB-2008-0346 continued to rely upon the Total Resource Cost ("TRC") test. At page 17 of its most recent Discussion Paper, however, Board Staff proposes a "modified TRC test" which includes a value for reduction of greenhouse gas ("GHG") emissions as measured in tonnes of carbon dioxide equivalent emissions. In proposing the modified TRC test, Board Staff suggests that the inclusion of GHG would provide an appropriate balance between the desire to reflect certain externalities without unduly increasing the complexity of the screening test. In determining whether to modify the TRC test, CME urges the Board to take into account four considerations.

First, moving to a modified TRC test, at this time, may introduce unnecessary complexity. The natural gas utilities and interested parties have over the past decade gained significant experience with the traditional TRC test. While the existing TRC test is complex, the experience that parties have accumulated allows for its application in a relatively straight forward and uncontroversial manner. Modifying the TRC test will result in incremental complexity – which in the context of DSM, may lead to incremental controversy. The goal should be to simplify the DSM Framework – not to make it more contentious. Modifying the TRC test may not achieve this goal.

Second, there is limited evidence available on how the proposed modifications to the TRC test will affect the screening of DSM programs. CME is concerned that the introduction of carbon as an element of the TRC test may, whether intentionally or unintentionally, artificially increase the apparent cost effectiveness of various programs. If the modified TRC test increases the likelihood that programs are deemed cost effective, it may be inconsistent with the principle that CME urges the Board to accept, being that the benefits of DSM must demonstrably outweigh the costs of DSM.

Third, market potential studies recently undertaken by regulated and non-regulated entities have used the TRC test. For example, on March 17, 2010 CME issued *Advancing Opportunities in Energy Management in Ontario Industrial and Manufacturing Sector*. That report adapted the TRC test approved by the Board to determine the economic feasibility of various "Technical Best Practices". Use of the traditional TRC test provides for continuity in such assessments.

Finally, Board Staff's proposal requires the Board to establish a value for carbon dioxide equivalent emissions. CME questions the appropriateness of the Board establishing carbon value. Furthermore, even if the Board concludes it should attribute a value to carbon dioxide equivalent emissions, there is currently limited evidence filed in this proceeding upon which the Board can rely on to assess whether the value of $15 per tonne proposed by Board staff is appropriate. The fact that this amount is less than the current British Columbia carbon tax rate of $20 per tonne does not, in itself, provide the level of evidence necessary to make such a finding. As such, if the Board concludes that it is appropriate to include an amount for carbon dioxide equivalent emissions in a modified TRC test, then CME urges the Board to establish an independent proceeding, which includes an evidentiary phase, to determine the appropriate value for carbon dioxide equivalent emissions in Ontario.

USE OF INPUT ASSUMPTIONS

CME supports Board Staff's recommendation at page 25 of the Discussion Paper that the utilities update input assumptions based on the best available information to determine both the LRAM and SSM. In coming to this conclusion, Board Staff is of the view that using a consistent set of input assumptions for LRAM and incentive amounts would address some of the criticism about DSM activities raised throughout the consultation. Further, using updated input assumptions would also reward natural gas utilities that maintain a flexible approach and react to current information during the program year. Such an approach would support the achievement of greater savings to everyone's benefit.

While the existing DSM Framework calculated LRAM on the basis of best available information, it did not calculate SSM in the same manner. Instead, SSM input assumptions were "locked-in" at the beginning of the year. CME supports changing the DSM Framework so that SSM is also calculated on the basis of best available information. This will increase the likelihood that natural gas distributors receive incentives only for savings that are actually achieved. In this regard, Board Staff notes at page 25 of its Discussion Paper that from 2007-2009, the audited total natural gas savings used to determine the SSM have in all years and for each natural gas utility been greater than the audited total natural gas savings used to determine the LRAM. Within this context it is important to note that the programs underpinning both the LRAM and the SSM are identical – the only difference is the use of "locked-in" assumptions for SSM and "best available" assumptions for LRAM.

CME recognizes that when input assumptions which form the basis of SSM incentive earnings are subject to change based on best available information, it becomes difficult for utilities to treat the financial incentives as a predictable stream of shareholder earnings. Nevertheless, the value of predictable earnings must be balanced with the goal that utilities only be rewarded for savings that are actually achieved. CME is concerned that to do otherwise could result in ratepayers bearing the cost of incentive payments for savings that did not actually occur.

ADJUSTMENT FACTORS

CME agrees with Board Staff that free ridership and spillover should be assessed for reasonableness prior to the implementation of a multi-year plan and annually thereafter, as part of each gas utility's ongoing program evaluation and audit process. CME also supports the inclusion in the Revised Draft DSM Guidelines of a mandatory requirement that each utility file information on free ridership for all of its programs.

With respect to spillover, CME agrees with Board Staff's recommendation that requests to the Board for consideration of spillover need to be supported by comprehensive and convincing empirical evidence which clearly quantifies the effects that the spillover of a specific program has had on program savings in the natural gas utility's revenue.

As for attribution, CME is concerned by Board Staff's recommendation that attribution of savings between rate-regulated and non-rate-regulated entities be based primarily on the sharing established in the partner's agreement. Many non-rate-regulated are not offered financial incentives based on attribution of savings. As such, they have no incentive to ensure that attribution is accurately reflected in the partner's agreement. For this reason, some non-rate-regulated entities may not vigorously negotiate attribution in their respective partner's agreements – because there is no commercial necessity to do so.

CME submits that attribution should be determined primarily by the program partners' contributions to the program budget The percentage of total dollars spent on designing, developing and delivering joint DSM programs is a readily observed factor. While there are many other factors that can be considered in determining attribution, percentage of financial contribution is an equitable default. If accepted by the Board, it would establish a easy means to determine attribution. In this context, CME suggests that distributors be granted the opportunity to provide evidence supporting a different percentage. If this were permitted, there would be a rebuttable presumption that attribution is based on total dollars spent.

DEVELOPMENT OF THE DSM BUDGETS

The determination of what constitutes an appropriate DSM budget is highly subjective, and as such, controversial. The natural gas utilities will spend as much or as little is provided for in their respective DSM budgets. Within this context, DSM budgets are dramatically different than OM&A budgets needed to operate the utility in a safe and reliable manner.

CME is opposed to establishing DSM budgets as a percentage of total distribution revenue. Particularly in light of the rapidly changing energy efficiency landscape in Ontario, the establishment of DSM budgets through a percentage formula would be arbitrary and not reflective of market conditions, customer needs or rate affordability.

Board Staff has submitted three budget options for the Board to consider. The annual budgets under Board Staff's proposed options range from $27M to $76M. In the end, Board Staff recommends increasing Enbridge's DSM budget from $28M in 2011 to $62M in 2014, and

Union's DSM budget from \$27M in 2011 to \$42M in 2014. This represents a 121% increase for Enbridge and a 55% increase for Union.

CME does not believe that the Board has sufficient evidence at this time to determine three year budgets for Enbridge and Union. In CME's view, distributors should propose as part of their DSM plans separate budgets and targets. The proposed budgets and targets should be justified on the basis of historic results of DSM programs in conjunction with market potential studies, and also be consistent with the most recent government policies on conservation. Proposed budgets and targets should also take into consideration economic conditions, rate affordability, and the availability of other energy efficiency programs being delivered by governments, utilities, municipalities and/or industry associations. In undertaking this analysis, CME urges the Board to ensure that the benefits demonstrably outweigh the DSM Costs.

EVALUATION, MONITORING AND VERIFICATION

CME has been a member of Union's Evaluation and Audit Committee ("EAC") for the past few years. CME's experience with the Union EAC leads it to conclude that, while not perfect, the EAC increases transparency and allows for increased cooperation between Union and its stakeholders. For this reason, CME is of the view that the EAC should continue to provide advice and maintain transparency.

COST ALLOCATION

Board Staff's Discussion Paper does not address the allocation of DSM costs as between rate classes. CME submits that this issue should be explicitly addressed in the revised DSM Framework.

CME understands that under the existing DSM Framework there is no inter-class subsidies. Each rate class is allocated the costs associated with delivering DSM programs to that class. Similarly, SSM payments are allocated on the basis of the TRC savings achieved by each class. This approach to DSM cost allocation has historically worked, and as such, CME sees no reason to make changes at this time.

If you have any questions or concerns, please do not hesitate to contact me directly.

Yours very truly

Vincent J. DeRose
VJD/kt

c. All Interested Parties
Paul Clipsham (CME)