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VIA EMAIL AND COURIER

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
26th Floor
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

Re: EB-2006-0266: Board Staff Discussion Paper-Proposed Regulatory Framework for Conservation and Demand Management by Ontario Electricity Distributors in 2007 and Beyond

Comments of the Vulnerable Energy Consumers' Coalition (VECC)

As Counsel to VECC, I am writing to provide our comments on the Board Staff proposals regarding a Regulatory Framework for Conservation and Demand Management by Ontario Electricity Distributors in 2007 and Beyond.

VECC supports creating clarity between OPA-funded CDM programs and LDC/ratepayer CDM Programs. The potential for overlap/duplication and consumer confusion is real.

With regard to its particular constituency, the major issue continues to be accessibility of a suite of programs that will overcome the significant barriers to participation and lead to reduced electricity costs for the consumers.

VECC has significant comments about coordination and common approaches. As Shakespeare notes:

“**T**here is tide in the affairs of men, which, taken at the flood, leads on to fortune;.....”

There is an important opportunity to coordinate the approach to CDM between OPA and LDC-funded CDM. This requires common general framework “rules” such as TRC Guidelines, Accounting Treatment of costs and revenues and Audit and Evaluation protocols. The approach taken by the Board now and under its IPSP Review is central to achieving this goal.

Detailed comments on the Board Staff Discussion Paper are attached.

VECC appreciates the opportunity to provide comments. If there are any questions or if clarification is required regarding the Comments please contact either Roger Higgin (416-348-9391), Bill Harper (416-348-0193) or myself (416-767-1666).

Yours truly,

A handwritten signature in blue ink, appearing to read 'M. Buonaguro', is positioned below the text 'Yours truly,'.

Michael Buonaguro
Counsel for VECC

Cc All Intervenors of Record

**Board Staff Discussion Paper:
Proposed Regulatory Framework for Conservation and Demand
Management by Ontario Electricity Distributors in 2007 and Beyond**

Comments of the Vulnerable Energy Consumers' Coalition

Introduction

The Vulnerable Energy Consumers Coalition represents Tenants, Low income Families, Senior Citizens, and other vulnerable consumers of energy in Ontario. These groups are most likely to be impacted positively or negatively by the framework for Conservation and Demand Management for the future.

If the regulatory framework does not promote participation of these vulnerable electricity consumers in CDM programs delivered by either by the OPA directly, or by LDCs, either on behalf of the Ontario Power Authority or on their own, then these customers will pay for the programs either through the Global Adjustment or through electricity rates and receive few of the benefits.

The most fundamental issue is one of accountability and responsibility to the electricity consumers of the Province, including vulnerable electricity consumers.

Given its extensive involvement in CDM, the OEB is uniquely positioned to help coordinate various facets of the province's CDM activities in order to avoid duplication of effort and ensure consistency in approach so as to benefit electricity consumers, while achieving government CDM policy.

The IPSP Review afford the OEB an opportunity to recommend a Common framework and general "rules" Such as TRC Guidelines, Accounting, Audit and Evaluation protocols that will ensure the efficient delivery of all OPA programs whether delivered by OPA agents other than LDCs or by regulated LDCs.

Structure of VECC's Comments

Part A addresses certain Board Staff proposals in the Paper. and Part B provides a Tabular Reference to the Board Staff Summary proposals, identifies Issues and provides VECC's Comments opposite these.

PART A

Specific Comments on Board Staff Proposals

Guiding Principles

1. Implementation of government policy should be facilitated.

Government policy includes: giving the OPA responsibility for organizing delivery and funding of CDM; optimizing conservation as a tool for resource planning; and, identifying and developing innovative strategies to accelerate the implementation of conservation, energy efficiency and demand management measures (as required in the integrated power system plan (“IPSP”) regulation).

Comment

The OEB is involved in a number of facets of the CDM issues including:

- **Approval of LDC CDM programs (including the establishment of program approval criteria (e.g. prescribing use of TRC) and maintenance of a TRC Guide.**
- **Review of the IPSP and input on appropriate criteria for OPA-sponsored CDM activities**
- **Reporting requirements for LDC CDM program activities**
- **CDM impact evaluations (for purposes of vetting LDC load forecasts and consideration of LRAM applications)**
- **Review of IPSP and potential impact of future CDM activities.**
- **Costing of CDM activities both for individual program approvals and determination of LDC revenue requirements**
- **Treatment of revenues received by LDCs for CDM delivery activities, as part of the rate setting process**

Given this extensive involvement, the OEB is uniquely positioned to help coordinate various facets of the province’s CDM activities in order to avoid duplication of effort and ensure consistency in approach so as to benefit electricity consumers while achieving government CDM policy.

2. Regulatory certainty and predictability should be provided. The framework should allow LDCs to plan and to make investment decisions.

3. Confusion in the CDM marketplace should be minimized. The framework should ensure that the respective roles of all CDM market participants (including LDCs), the OPA, the Board and consumers are clearly defined and understood.

4. Administrative efficiency should be attained to minimize regulatory burden to LDCs, and costs to ratepayers. The framework should provide for processes that are as streamlined as possible and that avoid any unnecessary duplication of requirements on LDCs by the Board and the OPA. The costs imposed on all participants should not exceed the benefits achieved.

Comment

Accountability to electricity consumers that pay for the programs is the primary requirement. This requires Evaluation, Audit and Reporting protocols that are transparent and provide consumer confidence in the results being achieved with their dollars. While administrative efficiency is important, the integrity of regulatory process must be maintained.

Section 3.2- Policy Framework

Once the LDC CDM Fund is up and running, it is expected that funding for, and delivery of, the majority of LDC CDM activities will be coordinated by the OPA through procurement processes. The Directive sets out the respective roles and responsibilities of the OPA and LDCs. According to the Directive, responsibility for the design of standard programs will lie with the OPA. These standard programs may include consumer awareness and education programs, market capacity building, and market transformation programs.

Pursuant to the Directive, the OPA will be responsible for ensuring that all areas of the province have access to an appropriate set of CDM programs. This means that where an LDC has not entered into a contract with the OPA or where the OPA sees a need to deliver one or more specific CDM programs not being implemented by the LDC, the OPA may either directly, or through a third party, deliver the CDM programs to consumers in the LDC's service area.

Comment

Universality of CDM programs is critical. All electricity consumers should have access to cost effective CDM programs that are accessible on reasonable terms and provide real benefits. If this onus is not met, then some consumers will pay the costs of CDM programs but will not directly benefit due to barriers to participation. These barriers are particularly important to address for vulnerable consumers that will not be able to access programs by virtue of income, domicile, language and age.

The Directive also states that the OPA will be responsible for implementing an accountability framework and for reviewing the activity and results achieved by LDCs against that framework.

Under the model laid out in the Directive, LDCs will contract with the OPA for delivery of CDM programs. LDCs will be important delivery agents of OPA-funded CDM programs.

LDCs are regulated by the Board and the framework for their participation in OPA CFDM should be approved by the Board. This will provide certainty about the rules for LDCs and ensure consumer benefits are delivered.

As set out in section 4.1.1 of this Paper, LDCs would also be able to apply to the Board for funding through distribution rates, for initiatives with a local benefit or that are more appropriately funded through distribution rates.

The framework that staff is proposing for the dual funding model implicitly encourages LDCs to seek funding from the OPA, and to rely on funding through distribution rates where OPA funding is not available or where funding through distribution rates is more appropriate.

Comments

Complementarities are the “gold” standard. The OPA will provide standard “Programs in a Box” for LDC delivery. In addition, it will develop a suite of programs for direct delivery by other agents. Duplication and overlap between OPA Programs and LDC CDM funded from Rates is a matter that requires the Board to review all LDC programs against OPA programs.

As noted in Section 4.1

The OPA has four mechanisms for funding CDM activities: the recently announced LDC CDM Fund; the Conservation Fund; the Technology Development Fund; and OPA procurement needed to implement the IPSP and any other Ministerial Directives.

There is a heavy onus on all parties, including OPA and the OEB, to ensure that duplication and overlap are avoided and also that the most cost effective programs are provided to electricity consumers. The potential for customer confusion is significant. Consumers could be offered similar programs by various agents of OPA and by LDCs. The issue will become even more complex, if as expected, the Federal Government reinstates conservation programs for the residential commercial and industrial sectors.

To ensure effective use of OPA funding and to minimize duplication, there should be some restrictions as to the types of programs for which LDCs may apply to the Board for recovery through rates. Funding through distribution rates should be restricted generally to initiatives targeted to consumers within the LDC's

licensed service area, and to initiatives that neither the OPA nor any other entity is already delivering within the LDC's service area. Board staff believes that these criteria are appropriate, in that they recognize the OPA's primary responsibility for funding CDM programs in the province, and encourages participation in the OPA's CDM

Comment

The potential for overlap and confusion is real given Board Staffs proposed criteria. There is a need to review LDC initiatives against OPA programs not delivered by LDCs and against Federal Government Programs targeted at the same sectors.

Revenue Protection

Staff Proposal

Board staff recommends that the Board continue to make the current form of LRAM available to LDCs to address revenue erosion resulting from LDC CDM activities, regardless of whether the programs are funded by the OPA or through distribution rates.

The LRAM would apply to programs implemented by the LDC, within its licensed service area, including programs delivered by the LDC itself and/or programs delivered for the LDC by a third party (via contract with the LDC, where the LDC has contracted with the OPA but has outsourced CDM program delivery to a third party). Board staff recognizes that an LDC may be affected by CDM programs delivered by other entities within the LDC's service area. However, staff believes that those impacts can continue to be factored in the rate setting process.

Comment

There are two issues –what measures are included in the LRAM and-who should compensate the LDC for the Lost Revenue.

Board Staff suggest that LDCs should be compensated for lost revenue, regardless of whether the program is funded by the OPA or by ratepayers.

The Board staff also suggest that the LDC's ratepayers should be responsible for the providing the LRAM compensation. If ratepayers are responsible for revenue loss due to OPA Programs, then ratepayers should share in the net income realized by the LDC from these Programs. Using the Board Decision regarding Gas Utility involvement in CDM as the precedent, 50:50 sharing of net revenue would be appropriate.

It is unclear how factoring of the impacts of Non LDC programs into rates through prospective forecasting would work. LRAM as currently structured is retrospective, since it is based on actual results of LDC CDM programs post-audit.

Incentives

Staff Proposal

Staff recommends that the Board should not provide a shareholder incentive mechanism for CDM activities funded by the OPA.

Comment

It is assumed that the intent is for the OPA to provide performance incentives as part of its LDC CDM procurement. Since the OPA-funded programs are non-utility activities, it would be inappropriate to provide an incentive through rates. However it is suggested that the form of incentive should be similar in order to create a level playing field for OPA-funded and LDC funded CDM Programs.

However the Paper notes:

“In its 2006 EDR Report of the Board, the Board reported the views of some parties that the SSM formula could be enhanced to encourage superior performance. To date, the Board has not received any applications from LDCs for an SSM. Staff believes, therefore, that it would be premature at this time to define a more refined incentive mechanism. Once experience is gained with the current formula, a review and reconsideration may be warranted.”

Cost allocation

Staff Proposal

Board Staff recommends that a fully allocated costing methodology be applied to all LDC-delivered CDM activities. Capitalized assets associated with distribution rate funded CDM activities could be included in rate base. Assets purchased with funds from the OPA would not be eligible for inclusion in rate base.

Where the funding is coming from the OPA, the separation in costs will appropriately establish distribution rates. Where the funding would be from the LDC's rates, fully allocated costing will ensure that the CDM programs are cost effective.

Consistent with the separation of costs, staff also believes that any penalties imposed on LDCs by the OPA would not be eligible for recovery through distribution rates.

This approach is consistent with the basic ratemaking principle of preventing cross subsidization while at the same time facilitating the OPA's long-term goals for a competitive CDM marketplace.

Comment

The Accounting separation of costs is required for input to the CDM Evaluation and Audit Process of both the OPA and LDCs. Common approaches to audit and evaluation for OPA and LDC programs is highly desirable so that Apples to Apples comparisons will be facilitated

Revenue Allocation

Staff Proposal

Consistent with staff's recommendation for the treatment of costs associated with OPA-funded CDM activities, Board staff recommends that revenues earned from OPA CDM contracts be kept separate from the LDC's distribution revenue requirement. Staff believes that this will best facilitate implementation of Government policy and provide LDCs with regulatory certainty and predictability. Any net revenues generated by a shareholder incentive for distribution rate-funded CDM would be separate from (i.e. over and above) the LDC's distribution revenue requirement.

Comment

Board Staff propose that, first, the revenue is separated from the utility revenue requirement. This is appropriate. The revenue and costs (fully allocated) should be recorded in a deferral account for review and disposition by the OEB.

Staff also suggests that the Utility Shareholder keep 100% of the Net income from OPA-funded CDM. This is not appropriate for several reasons

- **The shareholder should be compensated by an SSM- type incentive based on net TRC results**
- **The electricity consumers pay the costs of the programs from the Global Adjustment**
- **LDC ratepayers are responsible for compensating the LDC for all lost revenue, including that resulting from OPA-funded programs**
- **Proper regulatory oversight of the costing of OPA-funded programs could be administratively burdensome. Sharing of "profits" from OPA-funded CDM activities will reduce the need to vet the fully allocated costing methodology employed by the LDC's for OPA-funded programs.**

Accordingly there should be a sharing of any net revenue from OPA-funded programs between Shareholders and Ratepayers. The Board has accepted this approach for Gas Utility participation in Electric CDM Programs.

Audit and Evaluation

Staff Proposal

Staff recommends that LDCs be required to provide audited evaluation results when filing LRAM claims with the Board, and that the audit scope should be limited to confirming that the participation level in the LDC service area is accurate and that the energy savings assumptions used in the calculation of the lost revenue amount are the current ones used by the OPA. An audit will provide all parties with a greater level of confidence as to the accuracy of results.

Comment

OPA should be accountable to electricity consumers for the results of all of its programs.

Audit and Evaluation protocols should be similar for both OPA-funded and LDC/ratepayer CDM. Common protocols should be approved by the Board. A Common TRC guide should be in place for the initial screening and final audit and evaluation of both OPA-funded and LDC-funded CDM programs.

Also, audit results and overall program assumptions regarding freeriders and attrition of results overtime will be required by the OEB and LDCs to perform LRAM calculation for OPA-funded programs. These are all areas where the OEB can play a key coordination role to ensure consistency in approach and avoid duplication of efforts.

Reporting

Staff Proposal

Board staff recommends that the Board limit its reporting requirements for CDM programs funded by the OPA to only the information that the Board needs to assess an LRAM claim, and that the information only is required when such a claim is filed.

Comment

The OPA should report to the electricity consumers of Ontario and the Government. The OEB should use these reports as a basis to assess whether the CDM component of IPSP is meeting objectives and as a basis to ensure no duplication and overlap with LDC programs and also to assess the relative cost effectiveness of the programs

Minimizing Customer Confusion

There may be a number of parties delivering CDM programs to electricity consumers in Ontario, which may cause confusion for customers who have generally been accustomed to receiving CDM services from the LDC licensed to deliver electricity in the service area where the customer lives, and/or has an

account for electricity service. Customers have a high level of trust with their local LDC and may be concerned to discover that the service they are receiving is not from their LDC but is instead being provided by an unaffiliated third party. Staff understands that the OPA plans to use the powerWISE brand, currently used cooperatively by the Ministry of Energy and several LDCs, as the “voice” of CDM in Ontario. Staff also understands that the OPA intends to develop brand standards and guidelines to ensure consistency in branding and messaging for users of *the powerWISE* brand, including LDCs.

Comment

There is significant potential for consumer confusion especially if the Federal Government re-enters the Conservation program field. Consumers will be faced with choices between the offers of the various players.

This is not likely to be the case for vulnerable consumers. Although confusion may exist, accessibility and affordability of CDM will be a more serious concern unless OPA and LDCs address the barriers to participation by these consumers.

Other Issues --Cost Allocation to Customer Classes

- **One issue that is not addressed by the Staff Paper is the question of the allocation of the cost of CDM programs to customer classes. In the case of OPA-funded programs the costs of the entire program (including development, design, incentives, delivery and evaluation) are allocated to ALL customers in the province on the basis of energy use either through the Global Adjustment or the OPA’s fees. However, in the case of LDC-funded programs, the costs are recovered only from the LDC’s customers and a portion of the costs may be directly allocated to the customer class associated with the program. This discrepancy begs the question as to why the costs of LDC-funded programs should not also be allocated to customers based on energy use. It also gives rise to a need to ensure that LDC-funded programs provide a clear benefit to LDC customers (as well as a benefit to the province overall).**

Part B Issues and Comments on Board Staff Summary

Board Staff Proposal	Issues	VECC Comments
<p>The framework that staff is proposing for the dual funding model implicitly encourages LDCs to seek funding from the OPA, and to rely on funding through distribution rates where OPA funding is not available or where funding through distribution rates is more appropriate.</p>	<p>Coordination of Regulatory Activities between OPA and OEB LDC “Programs in a Box” are Subset of OPA C&DM All Electricity Users pay for OPA programs out of Global Adjustment Accountability for C&DM to ratepayers/electricity users</p>	<p>The Dual Approach to electricity CDM involving LDC’s requires coordination. The OEB should provide necessary common “rules” including application to LDC Delivered OPA “Programs in a box”. Otherwise duplication/overlap will result to the detriment of electricity customers. <u>Universality</u> of OPA programs must be a major goal, since these are funded by all electricity consumers from the Global adjustment. Vulnerable electricity consumers must have access to a suite of targeted programs. The initial OPA/LDC programs do not provide this.</p>
<p>A fully allocated costing methodology should be applied to all LDC-delivered (OPA) CDM activities.</p>	<p>The Paper suggests Fully allocated costing for OPA Funded programs and LDC Programs Fully allocated costing may be appropriate but is complex and difficult to administer and audit</p>	<p>Fully allocated costing is appropriate, but difficult to implement in practice, to regulate in the absence of COS type rate reviews and to audit. The issue is made more serious by the proposal for LDC’s to retain profits from OPA –funded programs. This creates incentives to understate costs. To protect ratepayers, profit sharing with ratepayers must be required. Also, if ratepayers are responsible for Lost Revenue from OPA programs they should share the net profit from OPA programs. (As per the Gas utility involvement in CDM). This is particularly critical for non-participants in the programs</p>
<p>Revenues earned from OPA CDM contracts should be kept separate from the LDC’s distribution revenue requirement.</p>	<p>If shareholders get all profit, how to ensure <u>all</u> costs are eliminated from utility RR? OEB has required Gas Utilities to share net revenues from Electric CDM with ratepayers Ratepayers are to be responsible for LRAM (see below)</p>	<p>Agree with segregation via a deferral Account that records fully allocated Costs and Revenues from OPA-funded programs. Since ratepayers are responsible for Lost revenue (see below they should share in the net profit from the <u>OPA CDM Programs Deferral Account</u>. This reduces the incentive for the LDC to understate costs and will reduce regulatory burden.</p>
<p>The Board should continue to make the current form of LRAM available to LDCs to address revenue erosion resulting from LDC CDM activities, regardless of whether the programs are funded by the OPA or through</p>	<p>Who pays for the monetized cost of LRAM OPA/global adjustment or LDC ratepayers? If Applied as a Y factor under IRM should ratepayers receive the</p>	<p>It is appropriate to segregate the LRAM effects for OPA funded and LDC/ratepayer funded programs. As noted above, if ratepayers are responsible to compensate the utility for lost revenue, then they should share in the net revenue from OPA</p>

<p>distribution rates. Consideration of alternate mechanisms to address lost revenue due to these changes in demand, including conservation, should form part of the process to develop 3rd Generation IRM or the Board's review of options for the fundamental redesign of electricity distribution rates.</p>	<p>benefit from net revenue in rates?</p>	<p>LDC programs funded by all electricity customers from the Global Adjustment. There should be a matching of costs and revenues on a class basis</p>
<p>The Board should not provide a shareholder incentive mechanism for CDM activities funded by the OPA. The Board should continue to provide an incentive mechanism for CDM activities funded through distribution rates, and this mechanism should be consistent with the model currently in place.</p>	<p>The OPA Programs are funded by all electricity customers. Different Incentives could result in tilting the playing field between OPA- funded and LDC/ratepayer- funded programs.</p>	<p>Different incentives may and create bias toward OPA –funded programs or Vice- versa. Shareholder incentives (e.g. SSM) for Resource Acquisition and Market Transformation should be structured identically and approved by the OEB.</p>
<ul style="list-style-type: none"> • For CDM activities funded by the OPA, LDCs should be required to provide audited evaluation results when filing LRAM claims with the Board • The Board should limit its reporting requirements for CDM programs funded by the OPA to the information the Board needs to assess an LRAM claim, 	<p>Coordination between the OPA and OEB regarding Audit rules/protocols</p>	<p>Verification of results is required to validate costs/revenues (financial audit) and kw/kwh savings (physical) for both OPA- funded and LDC funded CDM programs. OPA should bear primary responsibility for its program results per procurement contracts, but the OEB should approve/coordinate development of common audit rules/protocols</p>
<p>For CDM activities funded through distribution rates, LDCs should undertake program evaluations, and provide audited results to the Board. The information should only be required when a claim is filed. The reporting requirements for CDM activities funded through distribution rates should be based on the current annual reporting requirements for third tranche and 2006 funding.</p>	<p>Common Audit/reporting protocols for both OPA- funded and LDC CDM</p>	<p>Requires Coordination between OPA and OEB</p>
<p>Consideration of LDC CDM activities should form part of the Board's SQR review.</p>	<p>Issue for 3rd Generation IRM</p>	