

September 21, 2007

**VIA EMAIL AND COURIER**

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2701  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms Walli:

**Re: 3<sup>rd</sup> Generation Incentive Regulation for Electricity Distributors/  
Ontario Energy Board File No. EB-2007-0673**

By letter dated August 2, 2007 the Ontario Energy Board (“Board”) initiated a consultative process on the development of the principles and methodology for the third generation incentive regulation mechanism (“3G IRM”) for electricity distributors. As a part of that consultation Board Staff released a scoping paper entitled, “3<sup>rd</sup> Generation Incentive Regulation for Electricity Distributors” (“Scoping Paper”). The Board is seeking comments from interested stakeholders on the Scoping Paper.

These are the comments of the Consumers Council of Canada (“Council”). The Council will first provide some general comments on the process and then address some of the key issues identified in the Scoping Paper.

**General Comments:**

The Board has indicated that the 3G IRM will first apply in the 2009 rate year for those distributors whose rates will be rebased in 2008. The 3G IRM will apply to additional distributors as and when their rates have been rebased. The Board expects that completion of the development of the 3G IRM will be in the summer of 2008 with filing guidelines established in September 2008.

From the Council’s perspective in order to adhere to that timeline it will be imperative for the Board to indicate as soon as possible how and when it intends to incorporate the results of the related initiatives identified in the Scoping Paper into the 3G IRM framework. Those initiatives include the review of cost allocation filings, comparative utility cost analysis, work related to

conservation and demand management (“CDM”) incentives and barriers, the potential “fundamental” redesign of electricity distribution rates and the review of service quality indicators and standards.

The Board has established a stakeholder working group (“WG”) to provide assistance to Board Staff during the consultation process. From the Council’s perspective the Board should make it clear as to what the role of the WG is and how its work will be incorporated into the broader stakeholder process to develop 3G IRM. In addition, the Council would find it useful for the Board to give the WG direction in the following areas:

1. What is the starting point for the WG? Is it effectively a “clean slate”, implying that the working group must consider all of the incentive regulation models and identify the model most appropriate for the Ontario electric LDCs? If not, what is the expected scope? Should the WG focus specifically developing a form of price cap?;
2. Is there an expectation that the WG will propose a number of different models for the Board’s consideration?;
3. What are the Board’s primary goals in establishing the 3G IRM? Is it regulatory efficiency, essentially finding a way to manage the regulation of over 80 LDCs? Is it to promote consolidation in the distribution sector? Is to create a model that will encourage efficiencies within each LDC to benefit both ratepayers and shareholders? The Scoping Paper identifies a number of principles, but how, from the Board’s perspective should they be prioritized? The WG deliberations may differ depending upon how the Board prioritizes its goals;
4. What is the expected term of the 3G IRM? Given the need to potentially incorporate other Board initiatives like rate redesign should the term be limited to three years? Is the intent to put something in place for 5 or more years?;
5. Will the 3G IRM approach be mandated by the Board or will it be optional for each LDC?;

From the Council’s perspective the above list is not exhaustive. It will be critical for the Board to identify for the WG and the broader consultative process what the expected parameters are for the development of the 3G IRM. Once those parameters are established the work will ultimately be more focused.

## **Comments on the Scoping Paper:**

### **Principles:**

The Scoping Paper identifies “principles” underlying the development of 3G IRM. These are:

1. The financial viability of the electricity distribution sector should continue to be balanced with the interests of consumers;
2. The pursuit of economic efficiency should be encouraged;
3. The incentive regulation framework must be sustainable; and
4. Rate volatility should be minimized;
5. The rate-setting methodology should be predictable, understood, open and transparent.
6. The costs of administering the methodology should not exceed the benefits.

The Council is generally supportive of the above-noted principles, but would add that the following considerations are also important:

1. The interests of consumers go beyond “rate adjustments”. Issues like ensuring adequate quality and reliability of service are very important considerations for utility customers that should be considered in the context of an IRM plan development;
2. The pursuit of economic efficiency is important, but in the context of an IRM regime does it refer to economic efficiency of the LDC, of the distribution sector or of the broader electricity sector? Depending upon who might benefit initiatives to promote economic efficiencies may need to be funded in different ways. Initiatives to reduce demand, for example, that potentially benefit the sector as a whole may be more appropriately funded through the OPA.
3. With respect to sustainability the Council supports the development of a three-year plan in order to ensure that there is the flexibility to allow for changes in the industry to be considered in rate-making going forward. Longer term plans may preclude that. As noted above the Board should be explicit about what time frame it believes would be appropriate.

**Issues:**

Board Staff has identified, within the Scoping Paper, a number of issues that should be explicitly dealt with in the development of a 3G IRM. The Council supports the inclusion of these issues. With respect to the “Necessary Elements”, as noted above, the WG must be informed by the Board as to what models are to be considered, or if for example, the WG should focus on developing the elements of one model. The Council is of the view that if the WG is effectively starting from a clean slate the work of the group will be far more extensive.

With respect to the issue of “Lost Revenue Due to Changes in Consumption” the Council supports inclusion of this issue as long as it becomes symmetrical. To the extent revenue decreases or increases occur model should identify how these changes should be reflected in rates. It would be unfair to customers to only consider issues related to revenue erosion.

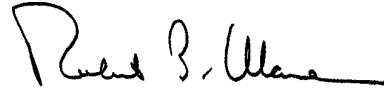
“Distributor Diversity” is an important issue for the Board’s consideration. It is not at all clear how the current benchmarking initiative will feed in to the development of the 3G IRM. As noted above, this is something the Board should clarify. In addition, the Council would support a model that may differentiate between like LDCs. For example, is there merit in having a more simplified form of IR for the smaller LDCs? Should the larger LDCs be subject to a more comprehensive approach? If the Board considers such differentiation important it should inform the WG that this is the case.

An additional issue that the Council believes should be explicitly addressed is the issue of productivity. Productivity is a key element of any IR plan. How does the Board intend to consider productivity in developing the 3G IRM? On what basis will it be measured? To the extent a Total Factor Productivity (“TFP”) analysis is required how will it be undertaken? When will it be undertaken? The Scoping Paper refers to the fact that Board Staff will work with an expert consultant to carry out any supporting data analysis. Will this include a TFP study?

Overall, the Council supports the development of a 3G IRM and appreciates the opportunity to participate in that development. In order for the WG to be productive, as well as the broader consultation process to be meaningful, the Board should provide as much guidance as possible. The Council would prefer an approach that has the Board narrowing the scope of the issues rather than relying on the WG to begin with a clean slate.

Yours very truly,

**WeirFoulds LLP**

A handwritten signature in black ink, appearing to read "Robert B. Warren". The signature is written in a cursive style with a long horizontal stroke at the end.

Robert B. Warren

RBW/dh

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