



By E-mail

May 20, 2008

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

Dear Ms Walli

**3rd Generation Incentive Regulation for Electricity Distributors
Revised Proposal for an Incremental Capital Module**

Board File No.: EB-2007-0673

Our File No.: 339583-000003

The Board's May 16, 2008 Decision denying the request of Canadian Manufacturers & Exporters ("CME") for Cost Award eligibility precludes us from participating in the final stages of this Consultative.

Prior to receiving that Decision, and with an expectation that CME would be accorded Cost Award eligibility, we reviewed the compatibility of the current status of the 3rd Generation Incentive Regulation ("IR") proposals for Electricity Distributors (including Board Staff's correspondence of May 15, 2008, containing a new Incremental Capital Module ("ICM") proposal) with the multi-year rate-making and IR regimes which the Board recently approved for Enbridge Gas Distribution Inc. ("EGD") and Union Gas Limited ("Union"). We provided our comments on this compatibility comparison to CME for its consideration.

CME has suggested that we communicate these comments for consideration by those engaged in this Consultative process, even though CME is not participating in the Consultative.

The comments we submitted to CME are set forth below.

Earnings Sharing Mechanism ("ESM")

Since some LDCs remain opposed to the inclusion of an ESM in a 3rd Generation IR Plan, CME wishes to record its support for the ESM proposed by Board Staff which mirrors the ESMs in the IR Plans of EGD and Union.

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An asymmetric ESM, which calls for 50/50 sharing of non-weather normalized earnings more than 200 basis points above the calculated ROE, protects ratepayers and concurrently provides some incentive for the LDCs to optimize their operations.

Off-Ramp Review

We believe that the provisions of this feature of Board Staff's proposal can be strengthened. We suggest that the Off-Ramp Review provisions be expressed in a way which parallels the provisions of the EGD and Union IR Plans. If there is a 300 basis points or greater variance in utility earnings, above or below the calculated ROE in any year, then the LDCs should be required to file an application with the Board for a review of the continuing appropriateness of the provisions of the multi-year plan.

Since ratepayers groups do not have the resources to proceed before the Board as Applicants, we suggest that, as in the EGD and Union IR Plans, there should be a mandatory requirement on the Electricity LDCs to commence the review process if the earnings threshold is exceeded.

However, as in the EGD and Union IR Plans, the initiation of such a review application does not necessarily mean that the provisions of the Plan are no longer appropriate. Rather, the Board reviews the Plan provisions to determine whether they remain appropriate and if not, then the Board determines the nature of the required modifications. As in the EGD and Union Plans, all stakeholders should be free to take any positions they consider to be appropriate in an Off-Ramp Review application.

Incremental Capital Module ("ICM")

We believe that, ideally, a multi-year IR Plan should not contain provisions which permit what amounts to Capital Expenditure Z Factor Applications during the term thereof. At a conceptual level, we believe that the parameters of a multi-year IR Plan should cover foreseeable Capital Expenditures over the duration of the Plan. We question whether the Board has sufficient resources to accommodate a plethora of mid-term ICM applications by the many electricity distributors it regulates.

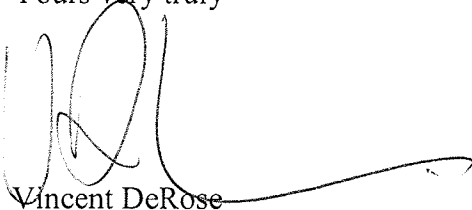
Instead of attempting to design an appropriate ICM, we suggest that consideration be given to requiring LDCs to present their multi-year Capital Expenditure budgets, which show the year by year anticipated Capital Expenditures and any incremental Capital Cost Allowance ("CCA") tax savings related thereto. If the capital budget reflected in base rates provides inadequate coverage for the capital expenditures expected in the future years of the IR Plan, then an approach which adjusts the Base Rates to reflect "smoothed" multi-year capital expenditures and the multi-year incremental CCA savings related thereto should be considered. This is an approach which is similar to that adopted in the Board approved settlement of EGD's CIS/Customer Care multi-year capital spending Plans. There, 5 year capital spending plans were smoothed after taking into account CCA related tax savings.

If midstream ICM applications are to be a feature of the 3rd Generation IR Plan for Electricity Distributors, then we suggest that the scope of such applications should not be limited to a determination of whether the proposed Capital Expenditures, in a particular year, exceed a materiality threshold. Rather than merely demonstrating planned Capital Expenditures above a threshold, the LDC should be required to demonstrate why its rates are insufficient to support these Capital Expenditures.

Parties opposite in interest to the LDCs should be free to take whatever positions they consider to be appropriate in response to an ICM application. For example, an LDC which is earning returns which significantly exceed the Board's approved ROE should not obtain approval for incremental capital spending when its rates are sufficient to support these incremental Capital Expenditures.

If the Consultative participants and the Board find that these comments add value and assist them in finalizing the parameters of the 3rd Generation IR Plan for Electricity Distributors, then we respectfully request that the denial of CME's Cost Award eligibility be reviewed and varied to allow Cost Award eligibility for the limited purpose of providing compensation for the time we spent in considering and commenting upon compatibility of the current status of Board Staff's proposals with the provisions of the recently approved multi-year IR Plans for EGD and Union.

Yours very truly



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c. Interested Parties
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