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January 26, 2012

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Our File No.: 121446

VIA ELECTRONIC MAIL AND COURIER

Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Attention: Ms. Kirsten Walli,
Board Secretary

Dear Ms. Walli:

**Re: Board File No. EB-2012-0003: Conservation and Demand Management (CDM)
Guidelines for Electricity Distributors**

Please find attached the comments of the Building Owners and Managers Association Toronto on the Board's Guidelines for Electricity Distributors dated January 5, 2012.

Yours sincerely,

FOGLER, RUBINOFF LLP

A handwritten signature in black ink, appearing to read 'Thomas Brett'.

Thomas Brett

TB/dd

CC: Marion Fraser, Fraser & Company (*by e-mail*)
Chris Conway, BOMA (*by e-mail*)

Comments by the Building Owners and Managers Association Toronto with respect to Guidelines for Electricity Distributor Conservation and Demand Management, EB-2012-0003

Introduction

BOMA Toronto is pleased to submit comments on the Guidelines for electricity Distributor Conservation and Demand Management. BOMA Toronto was eligible for costs in EB-2010-0215 which, we understand makes it eligible for costs in this process.

Background

BOMA Toronto represents over 800 of Toronto's Property and Facility Managers, Developers, Leasing Agents, Service Providers, Industry Influencers and Commercial Real Estate Professionals membership roster. Its members account for 80 per cent of all commercial and industrial real estate companies in the Greater Toronto Area. Over the years, BOMA Toronto has been active in protecting and advancing the interests of its members on such important policy issues as energy pricing and supply, property taxes, labour requirements, building materials and equipment regulations. BOMA Toronto continues to work at all levels of government providing a voice for Commercial Property owners in Ontario.

BOMA has been a major and constructive participant in numerous previous cases and believes that it has much to offer in this application.

BOMA and Conservation

BOMA Toronto stepped up to Ontario's energy challenge by proposing a unique Conservation and Demand Management Program that would not only serve its membership but also serve the real-estate industry at large. The OPA-funded BOMA Toronto CDM Program ran from March 2007 until the end of 2010. The program was directed at large commercial properties, over 25,000 square feet, in the City of Toronto. The BOMA Toronto CDM Program successfully delivered over 50 MW of conservation through a multitude of projects spanning a variety of commercial properties.

BOMA Toronto remains fully committed to Conservation Demand Management (CDM) in Ontario. Although BOMA Toronto is no longer involved directly in the delivery of project incentives, moving forward, we will continue to work with the Ontario Power Authority (OPA), Toronto Hydro and other utilities to promote CDM to our members.

As BOMA Toronto was directly involved in delivery of a CDM program, we believe that the comments below reflect a unique perspective on the Guidelines. Our comments are organized as general or specific and are meant to be helpful to the Board in developing a market based approach to CDM.

General Comments

BOMA is concerned that these guidelines will continue to discourage electricity distributors from applying for Board Approved Programs. According to the Board's web site, CDM Strategies, Board-Approved CDM Programs and Annual Reports, only three distributors have applied for Board Approved

Programs and of those two have withdrawn their applications and the third was given limited approval for some pilots which it has chosen not to pursue.

The value of conservation is undisputed. The *Green Energy and Green Economy Act* continued the spirit of earlier Ontario government policy which was based on the acknowledgement that conservation is least expensive energy supply option as well as it delivers significant benefits to customers as well as the environment. Our members consistently find expanded opportunities to save more energy and reduce their buildings' environmental footprint. Well designed, targeted CDM programs are an important element in these efforts.

We had looked forward to assisting Toronto Hydro in targeted delivery to our members where 2 per cent of Toronto Hydro's customers account for over 60 per cent of the electricity use in Toronto.

The CDM Code, and now the reinforcement in these guidelines restrict innovation and creativity of distributors. By having to serve the whole province, the Ontario Power Authority programs by definition have to be one size fits all. Toronto, on the other hand has many unique characteristics which require targeted approaches which do not seem to be accounted for in the province wide programs.

Conversely, many of our members may be headquartered in Toronto, but have buildings across Ontario – some of which are large and others which are small. Yet the OPA's programs segregate the commercial market by size with no mechanism to coordinate on a portfolio basis. BOMA recognizes that the Board has no regulatory powers over the design of the OPA programs, but these guidelines appear to make it even more difficult for distributors to serve their customers or even to find co-operative ways to assist multi-location customers across Ontario.

Specific Comments

Timeframe

While BOMA understands that the guidelines need to be formally linked to the CDM Code, BOMA would have expected the guidelines could have made it easier for distributors to address the needs of their customers. There is no magic in artificially established timeframes and deadlines with respect to CDM. Our members understand that conservation is a continuous improvement process – this is the whole approach underlying our BOMA BESt program which is the leading environmental certification program for commercial buildings which address an industry need for realistic standards for energy and environmental performance of existing buildings based on accurate, independently verified information. The program provides a blueprint for making properties more environmentally responsive and energy efficient while reducing operating costs. This is not a time bound process. BOMA has seen firsthand and more than once, the disastrous impacts resulting from a stop-start-stop approach to CDM in Ontario. BOMA urges the OEB to assist the distributors in finding ways to ensure continuity after December 31, 2014 for the benefit of consumers.

Time of Use Pricing

BOMA Toronto suggests that the Board may wish to rethink its guidelines with respect to duplication of Evaluation, Measurement and Verification (EM&V) embedded in these guidelines. BOMA strongly supports EM&V both as a matter of value for ratepayers' money, but also as an important input into any good building management system. However, should a distributor go the extra mile to assist customers by developing a program related to time of use rates, it appears that these guidelines expect that a customer's results will have to be subjected to two evaluations. We suggest that customers should not have to become a de facto coordinator between the Ontario Power Authority and its distributor, nor

should it be forced to pay for two separate evaluations – one via the Global Adjustment and one via distribution rates. In the case of a BOMA member with facilities in multiple service territories, the theoretical impact on launching a portfolio wide program and having all facilities subjected to detailed EM&V would render the program unfeasible.

BOMA is also unclear as to how the EM&V will be done for the implementation of time of use rates at the provincial level. Given that the Board has established time of use rates, BOMA would expect that it would also establish the manner of EM&V and could readily include any EM&V for any distributor's potential program that would be less intrusive to each customer and more cost effective for customers overall. Any distributor's efforts to reinforce or intensify the impact of time of use rates should be considered a part of the overall program and encouraged, rather than discouraged.

Duplication with OPA Programs

BOMA is concerned that the original CDM Code itself provides a much too broad characterization of what constitutes a duplicated program and the added features in the Guidelines continue to narrow the room for distributor innovation and leadership. For example, all of the OPA programs are unilingual - English. Yet a program that translated an existing OPA program to French or Mandarin, i.e., another target market appears to be duplicative under the Code/Guidelines and not eligible for costs.

OPA Program Establishment

BOMA has concerns that using the posting of the program schedules on the OPA website is an imprecise method for determining the establishment of a program. Given that the OPA has already indicated its willingness to check a distributor program for duplication, it could also include a notation of the date the program is deemed to have been established.

Reporting

BOMA is concerned that resulting duplication of reporting inherent in the Guidelines will add costs to both the global adjustment and distribution rates but no added value.

Educational CDM Programs

BOMA is concerned that the characterization of Educational Programs as "increased awareness" confuses educational programs with advertising programs or communications programs. CDM is a highly technical complex field of endeavour. Education in this field is much more than awareness building.

Program Development Costs

Neither the code nor the guidelines makes it clear how the costs of the significant amount of work prior to getting Board approval of a program can be recovered by distributors. It is true that the bulk of a good program costs are manifested in the program implementation phase. However, the hallmarks of good programs include appropriate market research, market planning, and thorough program development all before approval. The CDM Code also requires that the EM&V plan be mostly completed before approval. In addition, these guidelines require distributors to prepare a detailed, analytical comparison of the proposed program with the OPA Province Wide program or programs. While the guidelines appear to imply that these costs can be recovered from the Global Adjustment mechanism, what happens when a program does not receive Board approval? How are these costs treated? How can distributors minimize their risks under such Guidelines?