



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

Mr. Howard I. Wetston, Q. C.
Chair, Ontario Energy Board
2300 Yonge Street
Suite 2601
Toronto Ontario

February 1, 2004

Dear Mr. Westston,

On behalf of the Canadian Environmental Law Association, I am writing to express our significant concerns regarding the Staff Report to the OEB. We are concerned not only with the technical content of aspects of the report related to our earlier submission, but also how material related to the choice between two governance models under study, the Central Agency Model and the OEB - Utility Model, was presented in the report. The presentation of the material brings into question the fairness of the treatment of the issues.

Energy Savings Programs Specifically for Low Income Customers are Needed

The Board Staff report cites market transformation as the “longer-term policy objective” of DSM. While we agree that market transformation¹ (i.e. removal of market barriers and to improve energy efficiency) is an important long-term objective it should not be the only one. The achievement of energy savings for certain customer groups (referred to as resource acquisition programs²) through the purchase or investment in energy efficient materials, equipment or appliances is as important and should also be included as an equally key policy objective, for both the short-term and long-term.

An August 2003 US report by the University of California Energy Institute on energy efficiency programs across US jurisdictions supports the need for both market transformation and resource

¹ Market transformation is an energy efficiency objective to change the market for energy efficiency goods and services. Different jurisdictions have adopted different market transformation definitions. For example, in Massachusetts, market transformation is defined as “market transformation efforts are designed to create long-term changes that reap continuous energy efficiency savings at low cost.” C. Blumstein, C. Goldman, G. Barbose. *Who Should Administer Energy-Efficiency Programs?* University of California Institute. August 2003.

² Resource acquisition programs (a term common to DSM in the US) are energy efficiency programs that provide technical assistance, information, and financial incentives to purchase or invest in energy-efficient building materials, equipment or appliances. They were referred to as resource acquisition programs because they were expected to meet energy service demand more cheaply than new generation. Ibid.

acquisition as complementary objectives of energy efficiency. The report concludes: “Third, market transformation and resource acquisition, two program strategies that were once seen as alternatives, are increasingly coming to be seen as complements. Energy-efficiency programs going forward are likely to include elements of both strategies.”³

In the CELA report submitted to the OEB, *DSM for low income consumers in Ontario*, we demonstrate the need for DSM programs for low income households. Low income residential utility customers face a much higher energy burden than median and higher income households (refer to pp. 4-7 of our report).

Our report shows that there are at least two factors that contribute to this higher energy burden. The first is that there is relatively inelastic demand for household utilities; that is regardless of the price, there is a certain amount of energy required to heat and light a household. Second is the high proportion of household income spent by this group on energy relative to other income groups. Moreover, the lowest income quintile has a far greater proportion of electric space heating, with equipment that is more than 10 years old and electric water heating, making low income households in Ontario likely paying more per unit of energy (since electric heating is more expensive than other fuels for heat) and may be using more energy per household (due to older appliances).

Low income households will be the slowest to benefit from market transformation programs as these customers do not have the resources to benefit in the short or medium term from market transformations in equipment, materials or appliances on the market or from higher standards in new household construction. In fact, a low income customer forced to replace existing equipment because of equipment failure may not even buy new equipment, but purchase cheaper second hand equipment at a lower efficiency standard. This group has special needs that will not be adequately addressed by market transformation programs, alone. Resource acquisition programs targeted at these customers are also needed.

Moreover, in addition to the benefits of energy reductions to these customers of resource acquisition programs, there are non-participant benefits that arise: reductions of costs to utilities with late or non-payment of bills, reductions in costs associate with emergency calls, and reduced need for public expenditures such as health, fire, building inspections, homeless shelters, and housing programs. These non-energy benefits have been estimated to equate to an adder of between 17% and more than 300%. (p. 8, CELA report).

The special needs of low income households was recognized in E.B.O. 169-III. The E.B.O. 169-III report indicates that a DSM portfolio approach that “allows groups that might otherwise be precluded from participating, such as low-income customers, tenants, Aboriginals and farmers to participate in these programs, while minimizing the rate impact on customers.” Because programs for low income customers was singled out as a need in the E.B.O. 169-III, it is surprising that Board Staff report did not acknowledge the significant opportunities for energy savings and other benefits from resource acquisition programs for this group. In fact, low income customers were not mentioned at all in the Board Staff report.

³ Ibid.

For the above reasons, we urge the Board to reject Board Staff’s recommendation that market transformation be the prime objective for DSM and replace this recommendation with the following:

Recommendation 1: The OEB recommends to the Minister of Energy that DSM have two prime objectives – market transformation and the achievement of energy savings for specific customer groups.

Recommendation 2: The OEB recommends to the Minister of Energy that it make the design and implementation of energy savings programs specifically targeted at low income groups a mandatory requirement.

Rejection of Existing Framework for Natural Gas DSM is Inappropriate

CELA was surprised to see the Board Staff recommendation to dispose of the existing natural gas DSM framework within 3 years. We are aware of the success of the DSM governance model for the natural gas utilities in achieving energy efficiency. We note that Union Gas has reduced natural gas consumption for its customers since it instituted DSM programs in 1997 by more than 200 million cubic meters, compared to what it would have been without DSM; Enbridge Gas Distribution has saved its customers more than \$650 million dollars on their utility bills since the company introduced its DSM program in 1995. Because of this success, CELA had assumed in our earlier submission that the natural gas governance model would be extended to the electric LDCs because of its success.

Over the years, the gas utilities have achieved major energy savings for their customers based on cost-effective DSM programs. The only reason cited by the OEB Staff for the elimination of the existing natural gas framework in favour of a central model is that “Implementation of DSM should be the same in gas as in electricity. Otherwise gas distributors could structure programs to their competitive advantage.” (p. 22, OEB Staff report). To support this conclusion, one would have expected there to be several occurrences of such a problem over the past eight years since DSM was first implemented by the gas utilities, i.e. gas utilities unfairly structuring DSM programs to their competitive advantage. As well, we would have expected evidence that despite the OEB trying to redress this problem over the years, it was unsuccessful in doing so resulting in the recommendation for a change in the governance model for the gas utilities to level the playing field for the electric LDCs. No such examples were presented in the report and CELA is not aware of any such instances.

In the absence of evidence over the years to clearly demonstrate the existence and importance of this market failure as a result of the natural DSM governance model, and to clearly show that this failure (or any other problems with the natural gas governance model that may be identified in the future) overwhelms the proven success of the LDC model for natural gas, the OEB should not reject the Utility Model for the natural gas LDCs. Moreover, given the success of this model for the gas utilities, it appears on its face to be more reasonable to apply this model to the electric LDCs, rather than the Central Model.

We note that the governance model for natural gas and electricity need not be the same. This is demonstrated in other jurisdictions where the governance model differs between natural gas and electricity. For example, British Columbia, Oregon, Vermont, Connecticut, and Washington have differences in their DSM governance models for gas and electricity.⁴

No governance model will be perfect. Each will have advantages and disadvantages. When a framework is working reasonably well, the focus should be on refinements over time.

For the above reasons, we urge the Board to reject Board' Staff's recommendation to eliminate The OEB – Utility Model for the natural gas utilities and replace this recommendation with the following:

Recommendation 3: In recognition of the success of the natural gas DSM framework in achieving significant benefits to natural gas customers and to society, the OEB recommends the continuation of the natural gas DSM governance model for the natural gas utilities. The focus of the OEB, the natural gas utilities, and stakeholder efforts should be on addressing imperfections in the model through refinements over time.

On the electric side, one challenge for the OEB in recommending a DSM governance model for the electric utilities that is fundamentally different from that which it has applied to the natural gas industry for more than 8 years, is to demonstrate why the gas model would be completely inappropriate for the electric LDCs. While the OEB report goes through in some detail the benefits of a central model and the disbenefits of a LDC driven approach, it does not present a convincing case as to why the specifics of the existing natural gas DSM framework would be inappropriate for the electric LDCs.

For the above reasons, CELA urges the OEB to reject the Board Staff recommendation to adopt the Central Model for electric LDCs and replace it with the following:

Recommendation 4: The OEB recommends to the Minister of the Energy that the OEB test a LDC model for electric utilities similar to that now in place for Ontario's natural gas utilities in a 3 year pilot program. The pilot would apply to the 10 largest electric utilities. The pilot program would yield a set of standard programs that all LDCs could adopt in their service areas as well as standard, simplified approaches to regulatory oversight by the OEB that large and small LDCs could accommodate.

Informal Consultation Processes Must be Fair and be Seen to be Fair

The OEB, a respected quasi-judicial body, is expected to conduct its affairs in a manner that is fair and is seen to be fair. This applies not only to formal proceedings, whether oral or written hearings, but also to informal public consultations. When CELA applies this principle to the OEB Staff report, questions related to the perception of fairness emerge.

⁴ Enbridge Gas Distribution. *Principles and Frameworks for DSM in Ontario A Policy Paper* by Enbridge Gas Distribution. November 17, 2003.

In order to have the appearance of fairness, in selecting the governance model of choice, the report should present a balanced view of the advantages and disadvantages of each model and then reasoned arguments for why the set of advantages and disadvantages of one model is preferable to the other set. This does not appear to have been done based on the documentation in the report.

The rationale for the choice of the Central Agency Model is presented in Section 3.1.1 of the Board Staff report. Pages 13-15 (top line of 15) discuss the Central Agency Model. The discussion describes the advantages of the model in detail, but does not present any disadvantages. It is hard to accept that any model would have no disadvantages especially in light of the Advisory Group report, *Report of the Advisory Group on Demand-Side Management and Demand Response in Ontario*, which cites the pros and cons of the Central Agency Model in Section 4.6 of the report, with the cons discussed specifically on pp. 40-41 of the report. In the presentation of The OEB-Utility Model on pages 15-17 of the Board Staff report, there is one paragraph with a list of advantages (2nd paragraph page 15), however, the remainder of the section presents concerns about the utility model in a long, bulleted list.

We note that there is mention of some “potential concerns” of the Central Agency Model after the section on the rationale for the Central Agency Model, presented in Section 3.1.2, Potential Concerns. Two concerns are discussed – concerns over bureaucracy in the Central Agency Model and the risk of a Central Agency Model becoming self-perpetuating. The rest of the section dealing with these concerns provides opportunities to mitigate those problems. No attempts are made in the section on the OEB-Utility Model to mitigate any of the concerns raised. On its face, the section on the rationale for the Central Agency Model does not appear to be based on a balanced examination.

As well, the Board Staff report should pay better attention to the submissions and presentations that the Board received in addition to the input it received at the Advisory Group table to give the appearance that the views of the participants not on the Advisory Group were sincerely taken into account. As discussed earlier, CELA’s earlier submission appears to have been ignored as there is no discussion of issues facing low income households.

Because of these concerns and the matters raised earlier in this letter, CELA recommends that the Board give little weight to the Staff Report in its deliberations on the appropriate DSM.

Sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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