



July 21, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th floor
Toronto, ON M4P 1E4

Re: Submission re EB-2010-0215
Creation of CDM Code for Electricity Distributors

Dear Ms. Walli:

The Building Owners and Managers Association of the Greater Toronto Area ("BOMA Toronto") is pleased to provide these comments in response to the Board's June 22, 2010 invitation.

Background:

BOMA Toronto represents more than 400 companies serving the commercial real estate market. Member companies manage over 150 million square feet of industrial, commercial and institutional properties throughout the Greater Toronto Area and beyond. BOMA Toronto has consistently represented the voice of large commercial energy consumers in Ontario.

We have long advocated that demand side management resources be considered as an equivalent resource to new generation supply. CDM, as it is now generally referred to in Ontario, should be achieved through well designed programs, delivered cost effectively and ensuring verified, sustainable results.

BOMA Toronto members, and the broader constituency they represent, are active and involved participants in energy management and cost reduction initiatives. Indeed, with energy being the second largest operating cost (and arguably the largest manageable cost) it behoves BOMA members to actively pursue energy efficiency as a matter of competitive advantage.

General Comments

BOMA Toronto has significant concerns about the CDM Code for Electricity Distributors as presently proposed. These concerns can be summarized as:

1. Overly restrictive limitations on the development of Board Approved CDM programs, such that, in practice, LDCs may have little motivation to pursue development or approval of such programs, despite that they may be best suited to achieve results specific to the LDCs' territory and customer base.
2. Fundamental reliance on OPA Contracted Province Wide Programs – none of which appear to be subject to the same level of review and scrutiny as will be required of LDCs for their Board Approved programs.
3. Further reliance on OPA defined Cost Effectiveness tests, Measures and Assumptions, and protocol processes for EM&V – most of which are not clear, or not currently available.
4. Excessive reporting and accounting obligations on LDCs, which may detract from the achievement of CDM results and the pursuit of innovative program design and delivery.

Further to point #2 above, we also provide here some comment on the OPA Contracted Province Wide Programs, as they are currently understood, based on the limited public information available.

Specific Comments on the Code:

1.1 The Purpose of the Code

We note that the scope, as stated, only applies to obligations and requirements of LDCs. We are not sure if this may be a misinterpretation of the Minister's Directive that requires "The Board shall issue a code that includes rules relating the reporting requirements and performance incentives associated with CDM Programs...." If the majority of CDM results are expected to be achieved through delivery of OPA Contracted Province Wide Programs, and these programs are not subject to this proposed Code, we wonder where the review of such programs will occur.

1.2 Timeframe for the Code

Recognizing a need for a defined start and end date, we believe that the long implementation times associated with large CDM projects must also be taken into account. Annual budget cycles and approvals for capital projects means that initial decisions to undertake energy management investments may not result in completed installations until over a year or more. We suggest there should be some practical way to address this reality. For example, projects must be completed within 6 months of the end date, with evaluation occurring up to 3 months after that.

In the broader sense, if we are to truly achieve a culture of conservation and ongoing savings we hope that the next generation of CDM funding occurs such that there can be a proper transition, without the ‘stop / start’ market perception that has proven so counterproductive to the momentum of a conservation ‘industry’.

2.1 CDM Strategy Requirements

The outline of required information, including the template in Appendix B, seems fair and reasonable, with two notations:

- i) It does not seem right that LDCs are obliged to document OPA Province Wide programs with respect to purpose, target market, and costs. Certainly this information can be provided by the OPA for the benefit of all LDCs to reduce unnecessary duplication of documentation.
- ii) The initial deadline of November 1, 2010 would, at this time, seem unreasonable given that the OPA’s Province Wide Programs are not yet finalized and may not be released in a final form in sufficient time for LDCs to assess and develop their own Board Approved programs.

2.2 Annual Reports

Again, we question why LDCs are obligated to provide documentation on OPA Province Wide Programs when this should more properly be provided by the OPA in a standard format.

2.3 Co-ordination with the OPA

Section 2.3.3 elaborates on features of CDM Programs that would be considered duplicative of OPA Province-wide programs and therefore ineligible for consideration as LDC Board Approved programs. Respectfully, we suggest this list of ineligible program features is so broad and generic as to essentially render many, if not all, LDC program innovations as ineligible for consideration.

We recommend that this list be substantially revised to allow LDCs to propose reasonable variations on program design to best suit their specific market needs.

3. Board Approved CDM Programs

The proposed code requires that any Board Approved LDC program adhere to OPA EM&V Protocols for program evaluation, OPA’s Cost effectiveness Tests for a cost-benefit analysis, and use of the OPA’s Measures and Assumption Lists. We have reservation regarding all of these mandated OPA ‘protocols’, as outlined in subsequent comments.

We note in Section 3.1.5 that LDCs are not permitted to include LDC capital or operational improvements with respect to efficiency. The reason for this exclusion is not apparent to us. Certainly investments in more efficient equipment and improvements in operational efficiency

are just as valid to the ‘business’ of LDCs as it is to the business of commercial and industrial customers. We should be encouraging pursuit of best practices and optimization of energy efficiency in all sectors. We see no reason to exclude LDC operations from eligibility for Board Approved programs.

4.1 Cost Effectiveness Tests

The requirement that “cost effectiveness shall be measured by the using the OPA’s Cost Effectiveness Tests” lacks clarity. The applicable OPA document lists a number of possible tests. Presumably the determining test will be some variation on Total Resource Cost tests. As this by definition requires fundamental assumptions regarding avoided system costs, societal benefits, and customer participation (including free rider determination), we suggest that much greater clarity and specification be provided with respect to the application of cost effectiveness tests. Without this, LDCs will expend needless time and resources to develop and justify their particular interpretations.

4.2 Pilot CDM Programs

BOMA Toronto sees tremendous merit in conducting carefully selected pilot programs to test both technologies and market response. We are, however, concerned with the apparent requirement that a pilot program must demonstrate both kW *and* kWh savings. As the overall goal is to achieve both kW and kWh savings, it would appear overly restrictive to limit pilot programs only to those that satisfy both requirements. In doing so, projects would be excluded that potentially could:

- i) reduce peak demand through load shifting , without an associated reduction in energy use; or
- ii) reduce off peak kWh energy use, without an associated reduction in peak demand.

Both such types of projects would, in our opinion, have merit and would contribute to overall CDM targets, and should not be excluded.

Also we have concern with the apparent requirement that, to be eligible for approval, the LDC must have already applied to the OPA for pilot program funding and have been denied. This is counterintuitive. Either the pilot program has merit, or it does not. We would expect there to be coordination between approving entities to ensure that valid pilot programs are facilitated without having to pursue multiple approval and paperwork trails.

5. Accounting Treatment

We will defer to the opinion of LDCs as to the viability of the accounting treatment as proposed. However, it would appear that the requirements for complete separation of Board Approved and OPA Province Wide Programs may present some practical difficulties as we imagine that many activities and associated costs will be common to the LDCs’ overall CDM efforts.

Also we note the statement that Environmental Attributes that result from Board Approved programs shall not be owned by the LDC. Are these to be owned by the OPA? Large consumers who participate in capital intensive CDM projects are averse to forfeiting their claim to Environmental Benefits. Such a requirement runs counter to eliciting customer participation. Large consumers would expect to either retain their rights or, conversely, share these rights consistent with the respective contribution to the funding of the project.

6. Program EM&V

LDCs must adhere to OPA EM&V protocols and must utilize OPA Vendors of Record in conducting evaluation of programs.

We have basic concerns regarding the application of 'EM&V' as defined. Fundamentally we see Evaluation, Measurement and Verification as separate and distinct components. To group them together is akin to referring to "Auditing, Bookkeeping and Accounting" as a single function. In the financial sense, *auditing* is performed as a separate function to ensure that proper *accounting* has been done, utilizing accurate and complete *bookkeeping*.

By grouping EM&V as one activity that occurs only at the program evaluation stage, is to ignore the requirement that individual *projects* be properly verified as to their respective measured savings. This specification of M&V protocols that should occur at the project level appear to be absent from program design descriptions. Certainly all projects, especially the larger custom projects, should have their savings verified according to a common protocol. The role of Program Evaluation is then to confirm that such verifications have been properly conducted. It should not be the role of Program Evaluation to create or duplicate verification of savings at the project level. It should be noted that large energy consumers place high value on independent M&V at the project level, as it provides confirmation of the expected savings that will be achieved as a result of their capital expenditures.

We strongly suggest that there should be a better clarification of the necessity for both *program evaluation* (which also includes process evaluation and financial review) and the *measurement and verification of savings at the project level* as part of program design and delivery.

Also, we note that information related to OPA'S Vendors of Record list is not currently available. (in a formal request to the OPA, we were advised "There is not a list to share.... at this time. When one is developed, and when we receive permission from these Vendor of Records vendors to share their names, we will - IF we are directed by the code (or other) to do so.")

7. Performance Incentives

BOMA Toronto supports the notion of performance incentives to motivate LDCs to maximize results through cost effective program delivery.

We note the proposed incentive structure requires that both energy and peak demand targets be achieved before performance incentives accrue. As targets exist for both peak demand and energy we believe the application of incentives should accrue for the achievement of either peak demand or energy savings.

Also our impression is that 6 incentive tiers is overly complex. We believe a clear and acceptable incentive structure could be based on say, 3 tier levels.

With respect to incentives for cost efficiency, BOMA Toronto supports such a notion, if it can be implemented in a clear and fair manner, without creating undue complexities. Presumably this would apply to delivery of OPA Province Wide programs where there is a common denominator in the 'product' delivered, thereby enabling a valid comparison of cost efficiency in program delivery. Notionally this could be structured as follows:

- i) Establish a funding amount separate from the incentive for achieving targets.
- ii) For delivery of OPA Province Wide Programs, provide incentives to those LDCs who achieve program delivery on a cost per kWh basis that is better than the average.
- iii) Incentive funding would be in proportion to the extent that they are better than average.

Comment on OPA Province Wide Programs

As mentioned earlier, we are concerned that OPA Province Wide Programs are not subject to review by the OEB or interested stakeholders. Certainly they do not appear to be subject to the same level of scrutiny as LDC Board Approved CDM programs.

From the public information that is available we have a general understanding of the program elements and that finalized program design will occur sometime Fall 2010. Our primary focus is on the Commercial sector programs.

'Prescriptive' and 'Performance' Incentives

We are concerned that the OPA Province Wide Programs have a disproportionate emphasis on prescriptive incentives. Indeed this permeates the proposed CDM Code which specifies reliance on the OPA Measures and Assumptions List, which addresses only prescriptive technologies.

Good program design should encourage customers to achieve deeper, long term savings. Prescriptive based incentives can work against this objective if improperly applied. Performance based incentives are generally more appropriate for larger projects where customers can optimize savings through intelligent project design.

Prescriptive incentives pay a fixed amount for a particular product (e.g. \$ per Compact Fluorescent lamp or \$ per T8 fixture with electronic ballasts). Performance incentives are based on actual kW or kWh achieved. (\$/kW reduced or \$/kWh saved).

Prescriptive incentives are utilized to:

- Accelerate market awareness and adoption of new energy efficient technologies.
- Achieve program delivery and administrative efficiencies. This is typically the case with smaller projects where the cost of project specific measurement and verification cannot be justified. Instead, the prescriptive incentive is based on ‘deemed’ savings, having assumed a typical retrofit scenario. (e.g. 15 CFL replacing a 60 watt incandescent lamp).

However, if applied broadly to large projects prescriptive incentives have the potential to create suboptimal energy savings by:

- Encouraging simple one-for-one product replacements, rather than consideration of a more efficient project design that may employ fewer products. (e.g. A lighting redesign that utilizes a fewer number of more efficient fixtures).
- Encouraging adoption of the product simply based on the incentive offered, rather than the savings achieved or proper application. (e.g. Adoption of more expensive T5 lighting, although a more efficient application may be achieved using T8 technology).
- Obfuscating the determination of actual results achieved by relying on ‘deemed savings’.

For these reasons we maintain that ‘prescriptive ‘incentives should be confined to select technologies that warrant increased market penetration, and to small projects where the delivery and administration efficiencies can be justified on the basis of practicality.

Prescriptive incentives should not be utilized on larger projects where established technologies can be used to optimize the savings potential. Good program design should provide a rational and clear demarcation between the use of ‘prescriptive’ and ‘performance’ based incentives.

Performance Incentives – Next Generation

Moving from prescriptive technologies, through custom projects, BOMA Toronto believes that as a conserving society we must evolve to true performance based conservation, whereby savings are measured and continuously tracked at the facility level.

Building owners have come to realize that technology fixes are only part of the answer. The value of efficient technologies is lost if the building is not operated in an efficient manner. (e.g. lighting left on when not required). Recent studies have confirmed that the best energy performance is not necessarily related to the newest, most efficient designs, but rather to meticulous attention to building operation.

BOMA Toronto believes that the OPA should embrace this directional shift, by reducing emphasis on prescriptive measures and establishing a framework to measure and improve building performance at the facility level. This can be achieved through benchmarking, monitoring, recommissioning and continuous improvement. Many building owners are already embarking down this path, with motivators such as the BOMA Best program, to have their facilities recognized for maintaining good energy performance. The next generation of CDM programs should embrace and accelerate this trend.

Measurements and Verification

Again, we are concerned that, with the emphasis on ‘EM&V’ at the *program level*, robust measurement and verification is not being properly embedded in program design for application at the *project level*. To perform evaluation after the fact, determining savings from paid projects, rather than to confirm savings according to common protocols as part of project approval, is wasted effort. One of the successes to date, for large CDM projects in the commercial and institutional market segments has been the application of consistent M&V protocols, reviewed by independent project evaluators. This provides for independently verified savings, which can then be subject to review by a program evaluator.

Thank you for the opportunity to provide these comments,

Yours truly,

A handwritten signature in cursive script that reads "Chris Conway".

Chris Conway
President – BOMA Toronto