



July 21, 2010

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge St., Suite 2700  
Toronto, ON, M4P 1E4

Dear Ms. Walli:

**RE: Creation of the Conservation and Demand Management Code for Electricity Distributors - Board File Number EB-2010-0216**

I am pleased to provide the enclosed comments of the Coalition of Large Distributors ("CLD") on the proposed Conservation and Demand Management Code for electricity distributors, as detailed in the Ontario Energy Board's (the "Board") notice dated June 22<sup>nd</sup> 2010.

Do not hesitate to contact any of the CLD representatives referenced below should you have any questions on this submission.

Yours truly,

*Original signed on behalf of the CLD by*

George Armstrong  
Manager of Regulatory Affairs and Key Projects  
Veridian Connections Inc.

Gia DeJulio  
Enersource Hydro Mississauga Inc.  
(905) 283-4098  
[gdejulio@enersource.com](mailto:gdejulio@enersource.com)

Indy Butany-DeSouza  
Horizon Utilities  
(905) 317-4765  
[indy.butany@horizonutilities.com](mailto:indy.butany@horizonutilities.com)

Lynne Anderson  
Hydro Ottawa  
(613) 738-5499 x527  
[lynneanderson@hydroottawa.com](mailto:lynneanderson@hydroottawa.com)

Colin Macdonald  
PowerStream  
(905) 532-4649  
[colin.macdonald@powerstream.ca](mailto:colin.macdonald@powerstream.ca)

Colin McLorg  
Toronto Hydro-Electric System Limited  
(416) 542-2513  
[regulatoryaffairs@torontohydro.com](mailto:regulatoryaffairs@torontohydro.com)

George Armstrong  
Veridian Connections Inc.  
(905) 427-9870 x2202  
[garmstrong@veridian.on.ca](mailto:garmstrong@veridian.on.ca)

## **Introduction**

The Coalition of Large Distributors (CLD) is pleased to respond to the Board's June 22<sup>nd</sup> 2010 invitation to comment on the proposed Conservation and Demand Management (CDM) Code for electricity distributors. The CLD consists of Enersource Hydro Mississauga, Horizon Utilities Corporation, Hydro Ottawa, PowerStream, Toronto Hydro and Veridian Connections.

The members of the CLD have collaborated in the delivery of CDM programs since 2005. Coalition members have also been leaders in implementing the provincial government's mandate for smart meters and time-of-use (TOU) rates. This tradition of working together to efficiently pursue common goals makes CLD members very well positioned to take on the challenge of meeting impending mandatory CDM targets.

However, the impending targets are substantial, and represent a significant increase from Ontario's past CDM accomplishments. Compounding the challenge is the fact that baseline energy efficiency standards for appliances, buildings and equipment are continually improving through more rigorous codes and regulations. For example, the Ontario government has announced that it will ban the sale of inefficient light bulbs during the timeframe that mandatory targets are being pursued. This, along with the fact that much of the more easily sought energy savings have already been claimed by previous CDM programs, will create formidable challenges for electricity distributors and the Ontario Power Authority (OPA) in meeting the provincial savings targets.

Given these challenges, it is critical that the Board's CDM Code requirements be well aligned with OPA business and reporting processes. Efficient and effective regulatory oversight will help focus efforts on the achievement of conservation targets, while minimizing administrative costs. Further, the CLD believes it is crucial that a regulatory environment be established that encourages innovation and creativity. Distributors must be given the flexibility to identify and pursue conservation opportunities through clear, prompt and efficient regulatory processes.

For these reasons, the CLD is very appreciative of the opportunity to provide the following comments on the Board's draft CDM Code.

The first section of this submission contains a number of general comments, followed by specific comments aligned with each of the main sub-sections of the draft Code.

## **General Comments**

### Efficiency Incentives:

While not provided for in the CDM Code, the Board has asked for proposals on cost efficiency incentives. The Board's Notice of Proposal states that the inclusion of an efficiency incentive framework in the Code would be funded through a commensurate reduction in the allocation of performance incentive funds. The CLD respectfully suggests that adopting an incentive that displaces another incentive would be ineffective.

The CLD does not support the inclusion of efficiency incentives in the CDM Code. For OPA-Contracted province-wide CDM programs, the CLD believes that such incentives would be best placed within OPA-Distributor contracts, as the OPA has overall responsibility for the cost-effectiveness of its programs. With regard to Board-approved CDM programs, the CLD submits that efficiency in program design and delivery will be appropriately tested through the Board application and approval process, as is done for all other aspects of a distributor's business.

#### CDM Strategy and Program Development Costs:

The CLD requests the immediate establishment of a deferral or variance account to capture costs (for future Global Adjustment Mechanism (GAM) recovery) related to the development of a distributor's CDM strategy. The eligibility date for expenses accrued to this account should be no later than March 31<sup>st</sup> 2010 – the date of the Minister's CDM Directive to the Ontario Energy Board. However, many utilities incurred costs prior to this date, particularly in connection with their participation in the OPA working group, and should therefore be permitted to record these costs in the deferral account and provide documentation as to their eligibility for this purpose. This would recognize that distributors have been responsibly pursuing CDM plans at least since the time that the Directive was released, and in some cases earlier.

It is the view of the CLD that IRM Z-factor materiality limits should not apply for the purpose of CDM strategy cost recovery, as it has been proposed that all CDM activity is to fall outside of a distributor's distribution revenue requirement.

#### Remedies for Material Exogenous Events:

The CDM Code does not currently present a provision to deal with events beyond the distributor's control, and which have a material impact on the distributor's ability to meet its mandatory targets. Such events may include, but should not be limited to the following:

- Loss of a large customer representing a large proportion of total load;
- Lack of success of OPA province-wide programs;
- Material changes to the input assumptions used by the OPA in developing province-wide programs
- Restricted access to OPA province-wide program incentives (i.e. if programs target savings in certain geographic areas due to transmission constraints, etc.);
- Change in government policy; and
- Change in regulatory codes and standards (e.g. Provincial and/or Local building codes, etc).

In order to address this issue, the CLD suggests a process through which a distributor can apply to have targets met on a 'deemed' basis. For example, if a distributor loses an account representing a significant portion of their total load, this distributor should be deemed to have met that same proportion of their conservation demand target since these savings are now unlikely to be achieved. This would avoid the need to reallocate

province-wide targets amongst distributors, which would create uncertainty in CDM planning and program management.

Coordination with Existing Guidelines for Electricity CDM (EB-2008-0037):

The CLD understands that the proposed new CDM Code would supersede the existing 'Guidelines for Electricity Conservation and Demand Management' dated March 28<sup>th</sup> 2008 (the "2008 Guidelines"), for all CDM activities undertaken during the January 1<sup>st</sup> 2011 to December 31<sup>st</sup> 2014 timeframe. It is further understood that the 2008 Guidelines would continue in force for the purpose of all CDM activities undertaken up to and including December 31<sup>st</sup> 2010.

In order to avoid confusion, the new CDM Code should include a clause referencing the 2008 Guidelines, along with an explanation of the ongoing applicability of its provisions.

Treatment of Lost Revenue:

The proposed Code does not address distributor lost revenue associated with the delivery of CDM programs. The CLD acknowledges that the Board has commenced a consultation on revenue decoupling and that this issue may ultimately be addressed through rate design. In the meantime, however, the CLD submits that the Lost Revenue Adjustment Mechanism (LRAM) provisions of the 2008 Guidelines should continue to apply, with an explicit reference in the new Code.

Ratio of GWh to MW Demand Savings:

Assessment of the OPA program results reported up until 2008 indicates a ratio of 1076 GWh: 801 MW saved or 1.34. The new targets have a ratio of 6000 GWh : 1330 MW or 4.5. Unless the 2009 OPA program final results differ significantly, this change in ratio puts a greater emphasis on programs that deliver kWh reductions. A proportionate amount of program funding and development needs to be recognized to accomplish the GWh targets.

## **Comments on the Proposed Code**

### **1. GENERAL AND ADMINISTRATIVE PROVISIONS**

#### 1.7 Timeframe for the Code:

While not a matter to be addressed by the Board's proposed CDM Code, the CLD submits that the success of distributor CDM efforts will be significantly influenced by transitional arrangements that bridge the 2011-2014 business/ policy framework to that which replaces it for subsequent years. In order to maintain program momentum and maximize customer engagement during 2014, transition plans must be developed and in place by early 2014. Otherwise, CDM programs and related promotional activities will have to be wound down during the course of the final year covered by the CDM Code, thereby jeopardizing the achievement of energy and

peak demand reduction targets. The same concerns also apply to the transition between 2010 and 2011.

For the purpose of measuring CDM program results for accrual against distributor targets, the CLD submits that the Code should apply to all energy and peak demand savings measures implemented during the time period of January 1, 2011 to December 31, 2014. Specifically, conservation measures implemented during this time period as a result of OPA program activity during 2010 and earlier should be regarded as valid contributions to a distributor's targets. This would encourage distributors to continue to actively support CDM activity during 2010 to ensure that important program momentum is not lost. For example, if a customer applied for CDM program incentives prior to January 1, 2011 but implemented the related measures after this date, the savings should be considered eligible. The CLD suggests that this treatment is appropriate for the following programs, all of which often include projects with extended timelines:

- Electricity Reduction Incentive Program (ERIP);
- High Performance New Construction Program (HPNC);
- Multi-Unit Energy Efficiency Program (MEER);
- Toronto Directive CDM Programs for BOMA, the City of Toronto, and Toronto Hydro; and
- Demand Response 1, 2 and 3 Programs

The CLD acknowledges that distributors are not currently the delivery agents for all of these OPA programs. This fact should not preclude the proposed treatment of the savings as distributors have been actively promoting these programs to customers and responsibilities in all of these program areas will be assigned to distributors as of January 1<sup>st</sup> 2011.

The CLD also proposes that CDM program momentum would be assisted by providing distributors with the ability to accrue 2010 program savings related to overachievement of OPA targets. Without such a provision, the regulatory framework would reward distributors for the deferral of CDM activity to 2011. Such an unintended consequence of the proposed CDM code would be unfortunate.

Further, the CLD understands that the CDM targets assigned to distributors include the OPA's projected savings related to smart meters and time-of-use (TOU) rates. So as not to penalize those distributors that were early implementers of TOU rates, the CLD submits that the Code should recognize TOU related savings realized prior to January 1<sup>st</sup> 2011.

## 2. CDM STRATEGY AND ANNUAL REPORTS

### 2.1 CDM Strategy Requirements:

The CLD requests that the Code include a clause to recognize that a CDM Strategy submission could potentially include commercially sensitive or confidential customer information, thereby requiring a filing under the Board's confidentiality guidelines.

## 2.2 Annual Reports:

In order to ensure that sufficient time is provided for the preparation of Annual Reports, the CLD suggests that the filing deadline should be tied to the release date of full and complete Evaluation, Measurement and Verification (EM&V) results by the OPA. For example, annual reports should be due on the later of:

- September 30<sup>th</sup> or
- 60 days after release of OPA EM&V data for the previous calendar year

The timing of the EM&V process for more complex OPA Contracted provincial programs may not give LDCs sufficient lead time to perform the quality control checks and reporting for 2014. The last report for the 2014 year should be required by Dec 31<sup>st</sup>, 2015 or when the final OPA results have been received and accepted by LDCs. Given the volume of active programs in the market, the availability of EM&V resources at the OPA may inhibit their ability to allow LDCs to meet the OEB reporting timeline.

The content descriptions for the CDM Strategy document and the Annual Reports should explicitly include TOU rate deployment plans and accomplishments, to reflect the fact that CDM savings related to time-of-use rates are included in distributor CDM targets.

## 2.3 Coordination with the OPA:

The proposed OPA-contracted province-wide CDM program duplication test as provided in Section 2.3.3 of the Code is too restrictive and will stifle innovation in the development of Board-approved programs. The CLD suggests that the following alternative language for the duplication test be adopted:

2.3.3 CDM programs that will be considered duplicative of OPA-contracted province-wide CDM programs include CDM programs that have:

- (a) different customer incentive levels for efficiency measures or services already offered through the OPA-contracted province-wide CDM Programs;
- (b) different qualification requirements to receive customer incentives or services already offered through the OPA-contracted province-wide CDM programs;
- (c) different marketing tactics for promoting customer incentives or services already offered through the OPA-contracted province-wide CDM programs; and
- (d) different budgets for delivering customer incentives or services already offered through the OPA-contracted province-wide CDM programs. Notwithstanding, discretion will be applied if the LDC can demonstrate a

lower overall fixed budget program costs and higher TRC.

2.3.4 Notwithstanding 2.3.3 (b), (c) and (d), LDCs are encouraged to develop complementary marketing tactics and program delivery mechanisms utilizing the LDCs' OPA province-wide program budget to target specific market sectors and /or segments, unique customer groups and constrained areas.

It is the view of the CLD that this proposed Code language complies with the Minister's Directive and will effectively coordinate Board-approved and OPA CDM programs, without unduly restricting the ability of distributors to pursue the CDM programs necessary for the achievement of targets.

### 3. BOARD-APPROVED CDM PROGRAMS

#### 3.1 Requirements:

Contrary to sections 3.1.5(a) and 3.1.5(b) of the CDM Code, the CLD suggests that the Code should not restrict a distributor from bringing forward an application that includes investments in new infrastructure. With the expected growing integration of smart grids and customer energy management systems, such a provision is restrictive and may hinder both the development of CDM programs and the effective utilization of the Smart Grid.

#### 3.3 CDM Programs for Low-Income Customers:

Since the time that the Board issued the draft CDM Code for stakeholder review and comment on June 22<sup>nd</sup>, the Minister of Energy and Infrastructure has issued a Directive to the OPA for the design, implementation and funding of a province-wide CDM program for low-income residential consumers. Given this development, it is appropriate to retain section 3.3.1 of the draft Code, to acknowledge that a portion of a distributor's targets may be met through programs targeted to low income consumers.

### 4. COST EFFECTIVENESS

#### 4.1 Cost Effectiveness Tests:

The draft Code does not clearly stipulate the OPA cost effectiveness tests that are to be used to support Board approved programs. The specific tests to be used should be identified in the Code. The CLD suggests that the Code stipulate that either the Total Resource Cost test or the Societal Cost test must be used, whichever is in use by the OPA for the purposes of the Province-Wide programs at the time of application.

In response to section 4.1.3 of the Code, the CLD accepts the proposed use of the OPA's input assumptions, but suggests that distributors should be given the flexibility to modify these assumptions where justified by evidence.

Section 4.1.4 of the draft Code requires that applications for pilot or educational CDM programs include evidence that they will likely result in peak demand savings (kW) and electricity savings (kWh). The CLD suggests that such programs should not be limited to combined energy and demand savings; there may be valid and valuable programs that are designed to achieve only energy or demand savings. Therefore, this proposed Code requirement should be changed to require evidence of peak demand and/ or electricity savings.

## 5. ACCOUNTING TREATMENT

The CLD requests that the Code include a description of the accounting treatment of CDM expenses that can be amortized over a multi-year period. The CLD suggests that the recovery of such expenses should include a return of and return on capital, plus provision for taxes.

Further, the Code should confirm the timing and source of funds to support OPA province-wide and Board-approved programs. The CLD submits that the timing of program funding must be aligned with planned expenditures, to minimize variance account balances and working capital impacts on distributors.

The draft Code does not specifically address the treatment of CDM program development expenses that will be incurred by distributors as they prepare applications for Board approval. Such costs should be recoverable in the same way that a distributor's cost of service application costs are eligible for recovery. The CLD requests that the Board immediately release details of the Board-approved CDM variance account referenced in section 5.5 of the draft Code, along with accounting instructions that explicitly permit the accrual of CDM program development costs.

With regard to section 5.6 of the Code, the CLD accepts that a distributor may not be the owner of environmental attributes. However, the Code should permit a distributor to propose a program design under which environmental attributes are awarded to customers, in proportion to their contribution to the cost of the efficiency measures. As a general principle, the CLD supports this approach for all conservation initiatives, and suggests that this design provision is essential to the marketability of programs within many market segments.

## 6. PROGRAM EM&V

### 6.1 Independent Review:

For the purpose of establishing verified savings for accrual against CDM targets, changes to input assumptions for the OPA EM&V protocols should be made on a prospective basis only. The CLD submits that the input assumption update protocols established for Shared Savings Mechanism calculations should be adopted from the 2008 Guidelines, section 7.3.

The CLD also suggests that a standard methodology for accruing savings related to TOU rate deployment is required. This should be done through an administratively efficient process such as dividing the OPA's province-wide projected TOU savings by the number of customer accounts underpinning the savings projections, to establish energy and demand reduction values per TOU account. Distributors would then multiply the number of TOU accounts by these values in order to determine the savings to be accrued against their CDM targets. As stated earlier in this submission, the CLD also submits that pre-2011 TOU rate deployment activity should be eligible for contribution to a distributor's CDM targets. Excluding such activity would unfairly penalize those distributors that were leaders in the deployment of smart meters and TOU rates.

## 7. PERFORMANCE INCENTIVE

### 7.1 Eligible Programs:

The Green Energy and Green Economy Act and the related Ministerial Directives clearly indicate that distributors are central to achieving the province's CDM targets. This is highlighted by the OPA's CDM target allocation methodology as described in documents issued by the Board through its EB-2010-0216 consultation on Electricity Conservation and Demand Management Targets. On page 13 of the OPA's CDM target allocation advice to the Board (Appendix B to the Board Secretary's June 22<sup>nd</sup> 2010 letter), the OPA details the methodology used to determine the aggregate resource savings projections assigned to distributors. It clearly explains that it has subtracted projected savings related to resources that are "outside of the direct control or influence of LDCs" and, in doing so, have included in distributor targets, savings projections related to all of the following resources:

- Residential energy efficiency
- Commercial energy efficiency
- Residential demand response
- Small commercial demand response
- Smart meters/TOU rates
- Fuel switching
- LDC-connected industrial energy efficiency
- LDC-connected commercial demand response
- LDC-connected Industrial demand response

It is clear that it is the OPA's view that distributors are central to achieving targeted savings related to all of the above resources. It is therefore inappropriate to establish a centrality test as provided in 7.1.2. The CLD submits that the Code should make it clear that distributors are central to the success of all OPA province-wide programs. The Code should also clarify that for Board-approved programs delivered by a distributor in partnership with other distributors, each distributor would be considered 'central' to the program for the purpose of recording savings achieved within its service territory. As proposed, the CLD suggests that the centrality test would hinder the desired coordination and synergies amongst electricity and gas distributors.

The CLD also submits that since CDM targets assigned to distributors include the OPA's projected savings related to smart meters and TOU rates, the Code should explicitly include smart meter deployment and TOU rate implementation as an eligible program.

Should the CDM Code maintain the inclusion of the centrality test as presented, and LDCs be judged "non-central" to OPA programs, then the targets assigned to the LDCs would need to be revised as they have been developed based on including programs for which LDCs are central as explained above. The CLD prefers the option of eliminating the centrality test to revising the targets.

## 7.2 Calculation of the Performance Incentive:

Section 7.2.1 of the draft Code proposes that a distributor be eligible for a performance incentive once it meets 80% of both of its CDM targets (energy use and demand). It is the CLD's view that this is overly onerous and not consistent with section 6(d) of the Minister's Directive which states that incentives shall begin "to accrue once a distributor meets 80% of each CDM Target". The CLD interprets the Directive to mean that incentives may begin to accrue once either target is met, and suggests that the incentive schedule be modified accordingly.

The CLD understands the Board's proposal that the performance incentive schedule be based on an aggregate funding pool of \$72 million. However, the proposed tiered incentive structure and payment amounts should be modified to more effectively encourage the achievement of CDM results. The incentive structure must recognize that the proposed mandatory CDM targets that will be assigned to distributors are very aggressive, and that they reflect a step change increase from savings achieved in past years. On this basis, distributors should not be required to significantly surpass their mandatory targets in order to attain performance incentive rates currently earned for the delivery of OPA programs. For example, at the present time the OPA provides distributors with a \$50 per kW performance incentive for all savings achieved through delivery of its Electricity Retrofit Incentive Program. Under the Board's proposed incentive framework, an incentive of this magnitude would only be achieved after having reached 120% of the mandatory target, and the incentive would only be applied to savings incremental to this threshold.

CLD members have worked with the Electricity Distributors Association (EDA) to develop an alternative tiered incentive structure that would more effectively motivate the pursuit of CDM savings. The CLD endorses the proposed EDA model.