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By Electronic Filing and By E-mail

July 21, 2010

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

Dear Ms. Walli,

**Notice of Proposal to Issue a New Code
Conservation and Demand Management Code for Electricity Distributors
Board File No.: EB-2010-0215
Our File No.: 339583-000076**

As solicitors for Canadian Manufacturers & Exporters (“CME”), we are submitting this letter to provide comments on the Board’s June 22, 2010 Notice under Section 70.2 of the *Ontario Energy Board Act, 1998* (the “*OEB Act*”) of the creation of a proposed Conservation and Demand Management Code for Electricity Distributors (the “Proposed CDM Code”).

In preparing these comments, CME has reviewed the Notice provided by the Board, the Directive from the Minister of Energy and Infrastructure dated March 31, 2010, and the draft CDM Code. Furthermore, CME has also cooperated with CCC, LPMA, SEC and VECC. The cooperation between these parties has included the exchange of various draft submissions. CME believes that the cooperation between these parties has materially increased the cost effectiveness of the process. Furthermore, where possible, CME has referenced the submissions of these other parties rather than unnecessarily repeating the same argument.

CME has addressed its comments on the CDM Code under the headings used by the Code itself. However, prior to addressing CME’s specific concerns with the CDM Code, CME will first address two preliminary matters. The first relates to a threshold question on the jurisdiction of the Board to authorize the recovery of costs associated with the Board-Approved CDM Programs through the global adjustment mechanism (“GAM”) in the absence of a hearing. The second relates to whether the Board and interested parties would benefit from a technical conference on the proposed CDM Code.

The Jurisdiction of the Board

CME has had the benefit of reviewing a letter to the Board prepared by Mr. Warren on behalf of CCC. CME will not repeat the arguments set out by CCC in that correspondence, however, wishes to emphasize the following:

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- (a) The Minister's directive of March 31, 2010 does not address whether Board-Approved CDM Programs delivered in a specific distributor service area will, or will not, be funded through the GAM;
- (b) In the Board's Notice of June 22, 2010, under Section 5, Accounting Treatment, the Board asserts that all direct and indirect costs associated with CDM Programs, including staffing costs should be included in the program budget for recovery through the GAM, and not through a distributor's distribution rates. In this regard, the Board confirmed that it believes that this separation in costs is required to establish distribution rates by eliminating any cross-subsidization between activities associated with OPA contracted province-wide CDM Programs and Board-Approved CDM Programs, and those activities funded through distribution rates;
- (c) The CDM Code itself does not explicitly address the allocation of Board-Approved CDM costs through the GAM. The only reference to the GAM is in the Definitions section of the CDM Code, specifically:
 - (i) "Board-Approved CDM Programs" are defined to mean a distributor's CDM Programs that had been approved by the Board in accordance with this Code and for which the distributor has received approval to recover the costs of the CDM Programs from the GAM; and
 - (ii) "CDM Programs" are defined to mean programs that are designed to reduce electricity consumption and/or provincial peak electricity demand behind customers' meters, are GAM funded, and are either Board-Approved CDM Programs or OPA contracted province-wide CDM Programs.
- (d) While the definition of "Board-Approved CDM Programs" contemplates that a distributor must receive approval to recover the costs of the CDM Programs from the GAM, the CDM Code does not set out, in detail, the procedural steps of that approval process.

As CCC points out, neither the *OEB Act* nor the Directive give the Board jurisdiction to order or direct the recovery of costs of CDM Programs through the GAM, and to do so without a hearing. CME supports CCC's observation that, pursuant to Sections 21 and 78 of the *OEB Act*, no distributor of electricity is entitled to charge for the distribution of electricity, except with an Order of the Board, and that the Board is not entitled to make an Order until it has held a hearing. Therefore, CME is concerned that if the Board were to approve CDM Programs, which include the approval of recovery of costs without a hearing, the Board would be acting without authority and in excess of its statutory jurisdiction.

In raising these concerns, CME is not taking the position that it is inappropriate for distributors implementing Board-Approved CDM Programs to recover the associated costs through the GAM. It may be that this is the appropriate manner of cost recovery. Nevertheless, it appears to CME that the statutory matrix which governs the recovery of electricity costs in the Province of Ontario demands that that determination be made within the context of a hearing. For these reasons, CME supports CCC's request that the Board determine the threshold issue of its jurisdiction to allow for the recovery of costs related to the CDM Program from the GAM, and to do so without a hearing. By doing so, the Board will ensure that the Minister's Directive is implemented in a manner consistent with the statutory obligations imposed by the *OEB Act*.

All Interested Parties Would Benefit From a Technical Conference

The second preliminary issue which CME wishes to raise is the need for a technical conference.

As set out above, CME has cooperated with other Intervenor groups, in particular, CCC, LPMA, SEC and VECC in developing its comments on the CDM Code. What has become clear in the discussions between these parties is that there exists significant confusion arising from the draft CDM Code. CME believes that much of the confusion arising out of the draft CDM Code could be addressed in a cost-effective manner by conducting a one day technical conference.

Such a meeting would permit interested parties to better understand the implications of the CDM Code, as well as resolve existing ambiguities. It has become clear to CME in its review of the CDM Code that the “devil is in the detail”. CME is hopeful that a technical conference could alleviate many of the concerns that interested parties may have with respect to the CDM Code, and in so doing, materially assist with the Board’s implementation of the Minister’s Directive.

General and Administrative Provisions

LPMA has raised concerns with respect to the reference throughout the CDM Code to “customer type”, “customer types” and “customer type(s)”. CME supports LPMA’s recommendation that the phrase “residential, commercial, institutional and industrial” either be added following each of these references, or in the alternative, that there be a specific definition added to Section 1.2 that defines “customer type”, “customer types” or “customer type(s)” to explicitly include residential, commercial, institutional and industrial customers.

CME also suggests that the definition of “CDM Targets” be modified to reflect the Minister’s Directive that in establishing CDM Targets for each distributor, the Board must ensure that the total of the CDM Targets established for all distributors is equal to 1,330 MW of provincial peak demand persisting at the end of the four-year period. In this regard, CME believes that the definition should read as follows:

“CDM Targets” means the targets for reduction for underlying persisting reductions in provincial peak electricity demand and electricity consumption established in a distributor’s license.

Similarly, Section 1.7.1, which addresses the timeframe for the Code, should also be amended to read as follows:

This Code applies to CDM Programs that start on January 1, 2011 and end on December 31, 2014, or occur anytime in between those two dates. All electricity savings kWh and persisting peak demand savings (kW) resulting from CDM Programs must occur within that timeframe.

In adding the word “persisting” to these two definitions, the Board will clearly establish that short-term peak demand savings shall not be included in the CDM Targets. In this regard, CME submits that the Minister’s Directive contemplates that only ongoing long-term peak demand savings will be included in the calculation of CDM Targets

CDM Strategy and Annual Reports

CME supports the requirement that distributors develop a CDM strategy to be filed with the Board by November 1, 2010. That said, CME urges the Board to explicitly confirm that the filing of the CDM strategy will not, in and of itself, result in Board approvals of any “Board-Approved

CDM Programs” or for funding of such CDM Programs. In doing so, the Board would clearly separate the CDM strategy process from the Board approval process set out in Section 3 of the CDM Code. From CME’s perspective, the strategy process and the approval process should remain separate and distinct.

Section 2.1.1(c) of the CDM Code requires that the CDM strategy include confirmation that CDM Programs will be offered for all customer types (“residential, commercial, institutional and industrial”) in a distributor service area, as far as is appropriate and reasonable having regard to the composition of a distributor’s customer base. CME urges the Board to expand this requirement to not only require confirmation that CDM Programs will be offered for all customer types, but to also require that the distributor provide a forward-looking estimate of the percentage of CDM Programs to be offered for each of these customer types. This type of breakdown is regularly provided by the natural gas distributors in respect of their DSM Plans. CME believes that the percentage of CDM Programs offered to various customer types in a distributor service area is material and relevant information that should be required in the CDM strategy filing.

On a related matter, CME also supports the proposal at 3.2.2 of SEC’s submissions that the CDM strategy also contain an analysis of the unique aspects of the distributor’s service area that may present either barriers to or opportunities for success in achieving their CDM Targets. This type of information is relevant, particularly where one customer type is receiving a disproportionate level of CDM in a particular distribution area. CME believes that such information is essential to the evaluation of each distributor’s CDM strategy.

CME also supports LPMA’s proposal that Section 2.1.1(b) of the CDM Code be expanded to include industrial associations. Many organizations such as CME have actively participated in the delivery of various conservation programs. For instance, CME has administered funding provided by the Government of Ontario through its “Smart Program”. The Smart Program assisted small and medium sized manufacturers to improve their productivity so that they could compete more effectively in the global economy. CME’s Smart Program assisted manufacturers in improving their energy efficiency by providing 50% funding for approved upgrades up to \$50,000. CME has also offered resources to review manufacturing operations in order to identify areas where energy efficient improvement is possible. CME believes that such activities should be, where available, identified and considered in the context of distributors’ CDM strategies.

Finally, CME supports the concerns raised by SEC that the proposed CDM Code does not contain a review and/or approval process for a distributor’s CDM strategy. For the reasons set out in Section 3.3 of SEC’s comments, CME believes that the CDM Code should provide a process whereby filed CDM strategies are reviewed, interested parties are afforded an opportunity to provide comments, and if the strategy is accepted by the Board, that approval of the strategy be granted. Board approval of the CDM strategy would not, however, displace the requirement that distributors obtain subsequent Board approval of their actual Board-Approved CDM Programs.

Board-Approved CDM Plans

The Minister’s Directive requires the Board to approve CDM Programs delivered in the distributor service area (Board-Approved CDM Programs) and to approve the funding of such Board-Approved CDM Programs. Section 8 of the Minister’s Directive goes on to explicitly require that the Board, in approving Board-Approved CDM Programs, continue to have regard to its statutory objectives, including the interests of consumers with respect to prices. Section 8 of the Minister’s Directive reads as follows:

The Board shall, in approving Board-Approved CDM Programs, continue to have regard to its statutory objectives, including protecting the interests of consumers with respect to prices.

To this end, CME notes that the CDM Code is silent on the steps the Board shall take to protect the interests of consumers with respect to prices arising out of the Minister's Directive.

CME agrees with the position set out by SEC in Section 5.1.1 of its submissions and urges the Board to set out, in the CDM Code, the manner in which it will assess overall CDM budgets, determine appropriate budget levels and how it will otherwise exercise its responsibility in protecting the interests of consumers with respect to prices. CME agrees with SEC that in order to protect the interests of consumers with respect to prices, the Board must undertake an overall cost/benefit analysis that considers not only how much will be spent to achieve these goals, but also, ways in which that spending can be minimized so that prices are controlled. In so doing, CME urges the Board to not only assess the overall reasonable level of spending over the four-year period beginning January 1, 2011, but also to set out in the CDM Code a process for reviewing individual budgets of distributors to ensure they are reasonable and prudent for that distributor.

Furthermore, CME is concerned that Section 3 of the CDM Code does not establish an adequate framework for that approval process. CME urges the Board to expand this section of the CDM Code to specify the process and procedures that distributors will need to follow in order to obtain the requisite Board approvals. For instance, will distributors be required to file separate applications for Board approval of their CDM Programs (including funding) in a manner similar to the Applications filed by natural gas distributors when seeking approvals for their respective DSM plans or for approval of DSM input assumptions? What would the timing be for such a proceeding? Would such a proceeding include a written or oral hearing? By expanding this section of the CDM Code, the Board will provide distributors with guidance on how they can obtain the requisite approvals, and in doing so, also provide stakeholders with guidance on how they can participate in the Board's approval process, if they deem it necessary.

The Board should also clarify when the prudence and cost effectiveness of Board-Approved CDM Programs will be assessed. Will the prudence and cost effectiveness of proposed CDM Programs be assessed only during the initial application process, or alternatively, will prudence also be examined at the time of disposition of the balance of the CDM variance account referred to in Section 5.5 of the CDM Code?

On another matter, Section 3.1.3 of the CDM Code states that Board-Approved CDM Programs must end by December 31, 2014. CME recognizes that this is the period which the Minister's Directive covers. However, it may not be in the interest of the Province of Ontario to have all Board-Approved CDM Programs expire on December 31, 2014. To this end, CME suggests that the Board alter the language of 3.1.3 to read as follows:

Board approval obtained under this Code for Board-Approved CDM Programs shall expire no later than December 31, 2014. Any distributor that wishes to continue Board-Approved CDM Programs after December 31, 2014 must apply to the Board for further approval of the continuation of those programs beyond December 31, 2014.

CME believes that this revised wording would provide distributors with the flexibility necessary to ensure that CDM achieved over the next four years persists beyond 2014.

Accounting Treatment

CME supports the use of a fully allocated costing methodology for all CDM Programs. That said, CME shares the concerns raised by CCC with respect to the need for further guidance from the Board on exactly how the fully allocated costs will capture reductions in the rate regulated revenue requirement. To this end, CME support the proposal by CCC that a deferral account be established to allow for the results from any fully allocated costing approach to flow through to distribution rates. By implementing such a deferral account, the Board will ensure that those costs are properly treated.

CME also supports the concerns raised by LPMA that there be a reporting requirement for distributors in relation to the earned revenues and incurred expenses related to CDM. In CME's view, the additional information identified by LPMA will assist all parties in assessing the extent to which CDM Programs over the next four years have been a cost effective success.

Performance Incentives

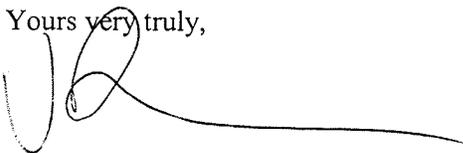
More than any other section of the CDM Code, it is the proposed provisions of the performance incentive section that would most benefit from a technical conference.

On the limited information available, CME cannot assess whether the global incentive of \$72 million proposed by the Board is too much or too little. While the fact that this amount is proportionate to the incentive funds available to gas distributors for DSM may provide some comfort, there are many differences between electricity and gas distributors that could affect the appropriateness of the proposed amount. For instance, it is not a condition of licence for the gas distributors that they achieve specific DSM Targets, but it is a condition of licence for electricity distributors that they achieve their respective CDM Targets. The gas distributors' DSM Programs can also be generally described as "mature" because they have been delivering DSM for more than a decade, whereas many of the electricity distributors have very limited experience, if any, in delivering a portfolio of CDM Programs.

CME has reviewed the proposals of both LPMA and SEC on performance incentives, and can see merit in elements of both proposals. CME is not, at this time, in a position to prefer one proposal over the other. However, what these two approaches demonstrate is that further information is required on performance incentives, and that further consideration of these issues is called for before the Board finalizes the CDM Code. In this regard, CME reiterates its request for Board Staff to facilitate a technical conference to further explore the implications of the CDM Code.

CME thanks the Board for providing an opportunity to provide these comments. If you have further questions or concerns, please do not hesitate to contact me.

Yours very truly,



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c. Paul Clipsham (CME)

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