



July 21, 2010

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

Via web portal and by courier

Dear Board Secretary,

RE: Board File No. EB 2010-0215 Creation of the Conservation and Demand Management Code for electricity distributors

The Electricity Distributors Association (EDA) is the voice of Ontario's Local Distribution Companies (LDCs). The EDA represents the interests of the over 80 publicly and privately owned LDCs in Ontario.

The EDA appreciates the Board's initiative to launch a consultation process to allow LDCs to comment on the proposed Conservation and Demand Management Code. The attached submission has been prepared in consultation with the EDA's CDM Caucus, Regulatory Core Council and the EDA Board's CDM sub-committee.

The EDA would like to thank the Board for giving the opportunity to provide comments on this important initiative and looks forward to working with Board members and staff in this regard.

Yours truly,

"original signed"

Guru Kalyanraman
Policy Director, Conservation and Energy Management

*Attached: EDA Submission

EDA's comments on the proposed CDM Code

General Comments:

1. Provisions for treatment of conditions requiring review/modifications and adjustments to LDC targets & LDC CDM Strategy

Given that the achievement of energy consumption and peak demand reduction (i.e. LDC CDM targets) will be added as a condition to the LDCs' licenses, it is essential that any proposed regulatory framework provides LDCs all opportunities necessary to pursue CDM programs to meet their targets. We are concerned that despite the need for both the OPA-Contracted Province-Wide CDM Programs and the OEB-Approved CDM Programs to meet the provincial CDM Target, the proposed Code poses considerable restrictions on LDCs ability to pursue OEB-Approved CDM Programs. While specific concerns with the proposed Code regarding restrictions on LDCs ability to pursue OEB-Approved Programs along with our recommendations are addressed later in this document, we consider that the key stakeholders and partners in achieving CDM in the province including the provincial government, the OEB, the OPA, and the LDCs should be jointly responsible for ensuring the success in designing and delivering CDM.

Further, LDCs should be provided the opportunity during the multi-year CDM period to request a review and/or modification of CDM targets. Conditions under which LDCs may seek such a review are essentially those that are likely to be beyond the control of LDCs and exogenous to the implementation of CDM. Such conditions could include, but are not limited to, the following:

- a. material load loss such as a Large Use customer in the LDC(s) service territory winding up its business;
- b. significant changes to input assumptions that lead to material change in CDM potential for LDC(s) and/or impact delivery of OPA-Contracted and/or OEB Approved programs;
- c. changes in government policies (local or provincial), including changes through Ministerial Directives, building codes and regulations etc. that impact LDCs potential ability to deliver CDM; and
- d. changes in consumer adoption of CDM programs. For example, the forecast customer participation in a certain lighting technology could be significantly reduced if a consumer group raises concerns over the health and/or environmental effects of the specific technology.

Recommendations:

We recommend that a key principle underpinning the development of a regulatory framework for CDM should be the need for key stakeholders involved in achieving CDM in the province including the provincial government, the OEB, the OPA, and the LDCs to be jointly responsible for ensuring the success in designing and delivering CDM. We submit that the CDM Code should reflect the fact that the achievement of CDM targets is wholly dependent on the activities of multiple agencies and accordingly the Code should provide LDCs with the flexibility to seek relief when conditions, such as those outlined above that are beyond the control of LDCs, adversely impact the achievement of LDC CDM targets.

We note that the proposed CDM Code does not make provisions for LDCs to address such conditions that could require an LDC to seek a review and/or adjustment to their CDM targets.

We recommend that this issue could be addressed by specifically including provisions within the CDM Code for LDCs to seek a review/ modifications to their CDM targets and the CDM Strategy (in light of changes that will be required to the CDM Strategy due to the changes to the LDCs CDM target). We recommend that any such change to distributors' targets should not result in further shifting or re-allocation of CDM targets among distributors. Given the timeline and magnitude of the allocated CDM targets, distributors are not likely to have the ability to respond to further changes in their CDM targets. To that end, we recommend that in cases where ability of an LDC to meet its CDM target is significantly impacted, the LDC should be provided relief for achieving the portion of the target by considering that the LDC has deemed to achieve the portion of the target that was planned to be achieved.

Comments specific to sections of the proposed Code:

2. Definitions (section 1.2)

The definition of CDM Programs in Section 1.2 of the proposed CDM Code requires that the programs be GAM funded. The definition therefore excludes reduction in electricity consumption and/or peak electricity demand as a result of smart meters which are not GAM funded. However, the OPA's report "Establishment of LDC Conservation Targets under the Green Energy Act" included in the OEB's consultation on the CDM Targets (EB-2010-0216) notes that Smart meters/TOU rates have been specifically included in the Provincial Aggregate LDC Conservation Target. Since the CDM Target for LDCs includes savings targeted through Smart Meters, the definition of "CDM Programs" should be revised to include energy savings and peak demand savings from smart meters/TOU.

3. Timeframe for the Code (section 1.7)

The Code proposes that electricity savings and peak demand savings resulting from CDM programs must occur within the timeframe of January 1, 2011 and December 31, 2014. This would suggest that CDM programs that, as of December 31, 2014, have been contracted with customers but have not yet delivered results would not be considered to be within the timeframe of the Code and thus not count towards achievement of LDC CDM targets. If energy savings and peak reduction results are required to occur within the proposed time frame, it would have the unintended consequence of restricting the time frame to a period less than 4 years to allow for the time required to verify savings through EM&V prior to program end date.

To be consistent with the policy objective of fostering a culture of conservation among Ontarians and to build on the momentum already gained towards CDM delivery, we support the need for continuity in availability of all CDM program offerings to customers. This would require creating a smooth transitioning from CDM programs offered under the current framework to the CDM programs offered under the multi-year GEA enabled framework. Similarly, transitioning of CDM program offerings from the proposed 2011-2014 time frame to any future time frame would need to be considered.

Recommendations:

We recommend that all CDM programs in the pipeline (i.e. contracted with customers for delivery) as of December 31, 2014 to be counted towards targets as and when verified program results are made available. To that end, the end date of the proposed timeframe (December 31, 2104) should be extended to allow a period for delivery/verification of programs that are contracted for delivery as of December 31, 2014. Similarly, energy savings and peak reduction

results from CDM programs offered under the current framework that are contracted for delivery in 2011, should be included in the timeframe for CDM programs and counted towards LDC CDM targets. Further, in order to foster a culture of conservation and to build on the momentum in CDM program delivery, energy savings and peak reduction achieved from CDM programs delivered in 2010 in excess of contracted targets, i.e. overachievement of targets contracted with the OPA, should be included in the timeframe and counted towards LDC CDM targets.

4. CDM Strategy and Annual Reports (section 2)

The proposed Code requires LDCs to file details of verified electricity savings and peak demand savings based on OPA EM&V protocols. Further, the proposed Code requires that annual reports for each year to be filed by September 30 of the following year. Since the annual reports are highly dependent on EM&V results for OPA-Contracted programs being made available, the date for LDCs to file the annual reports should be set to be at least 60 days after the final EM&V reports are made available to LDCs.

The proposed code requires LDCs to make the CDM Strategy and the Annual Reports available for public review as well as to post on their websites. To the extent that the information in these reports contain commercially sensitive information that could prejudice RFPs that the LDC may be pursuing for procuring services for CDM delivery, such information must be protected through provisions in the Code.

We note that the agencies other than the OEB such as the OPA, Environmental Commissioner of Ontario (ECO) etc. will require LDCs to provide CDM reports. To promote regulatory efficiencies and to reduce costs to ratepayers in Ontario, we encourage that the OEB work with other agencies to harmonize CDM reporting requirements so that a single Annual Report meets requirements of multiple agencies.

Recommendations:

We recommend that the dates for Annual Reports be set so as to allow at least 60 days from the date of final EM&V results being made available by the OPA. Further, we recommend that provisions similar to those currently in place for LDCs to file confidential information related to rate application filings be included in the CDM code so that information that could potentially be commercially sensitive to prejudice procurements by LDCs is adequately protected. We encourage the OEB to work with other agencies such as the OPA and ECO to harmonize LDC CDM reporting requirements so that a single LDC CDM Annual Report meets the requirements of multiple agencies.

5. Coordination with the OPA (section 2.3)

The EDA notes with concern that the requirements contained in the proposed Code on determining whether a CDM Program is considered to be duplicative of OPA-Contracted Province-Wide CDM Program is very restrictive for LDCs to pursue OEB-Approved Programs. The code proposes unreasonable and harsh restrictions on LDCs which will prevent them from performing their duty to implement programs unique to their market in order to achieve the aggressive targets established by the OEB. The LDCs target set by the OEB is a condition of license and represents a critical business objective which must be met. Sole dependency on OPA Province Wide programs is therefore a major risk for LDCs when these programs fail to attract local markets and eventually fail in delivering the required savings to meet the set

targets. Further, we are concerned that the restrictions on LDCs could have the adverse consequence of stifling creativity and innovation in designing CDM programs.

LDCs should not be forced to be unable to mitigate the risk and allowed to fail in meeting their targets by withholding the opportunity for LDCs to implement programs that satisfy their markets. LDCs must be allowed to design and implement programs that satisfy their market needs and should not be restricted to implement only OPA Province-Wide programs that may not achieve the LDCs targets.

The restrictive criteria in section 2.3.3 of the draft Code will not only have the undesired effect of preventing LDCs from pursuing creative and innovative CDM programs but goes even further to potentially prevent LDCs from even pursuing improvements to OPA-Contracted CDM programs. Section 2.2.3 considers CDM programs proposed by LDCs to be duplicative of OPA-Contracted Program if the proposed CDM program includes “different customer incentives”, “different qualifications”, “different technology specification”, “different marketing approaches”, or “different budgets” from what is offered through OPA-Contracted Programs. Such a requirement stifles the opportunity for LDCs to propose improvements to OPA-Contracted Programs, regardless of the benefits contained within those proposals.

We note that section 2.3.2 requires distributors not to apply for Board approval for CDM Programs that duplicate existing OPA-Contracted province-Wide CDM Programs. We submit that this requirement not to duplicate, which as defined in the Oxford’s online dictionary http://oxforddictionaries.com/view/entry/m_en_gb0249900#m_en_gb0249900 to mean “exactly like something else, especially through having been copied” is sufficient to meet the intended purpose of the Code.

Further, it is unreasonable to hold LDCs from submitting applications for Board Approved programs until after OPA Province Wide programs are implemented. Since commercial and industrial markets represent a significant share of the established targets it is unreasonable to consider introducing new programs that will be late to market. The programs will not achieve their full potential given the long business cycle of the market sectors and length of time required to implement commercial and industrial projects. Typical business cycles commence in the fourth quarter of the year and missing the window of opportunity will reduce the effective program opportunity to two years i.e. 2012 and 2013 for effective marketing.

Recommendations:

We recommend that Section 2.3.3 of the Code be deleted. Further, LDCs be allowed to submit proposals for Board-Approved CDM Programs to the OEB as and when they are ready to do so, without having to first wait for OPA-Contracted Province-Wide CDM Programs to be finalized.

6. Board-Approved CDM Programs (section 3)

The proposed Code does not allow a distributor to apply for CDM programs that relate to any measures a distributor uses to maximize the efficiency of its distribution infrastructure. We note that these requirements of the Code could prevent LDCs from pursuing CDM programs that could in addition to providing energy savings and peak reduction savings also contribute to maximizing efficiencies of distribution infrastructure. As a result opportunities for leveraging CDM programs to maximize or improve distribution infrastructure could be lost. For example, the proposed design of Residential DR program that will allow utilities to manage residential loads such as central air conditioners, water heaters, pool pumps etc. to target system peak

demand reduction could also be used to manage loads to meet LDC system reliability requirements, Emergency Response programs, improved customer service, engagement in TOU rates, etc.

The proposed Code requires LDCs to include a benefit-cost analysis of each program using the OPA's Cost Effectiveness Test. We note that the draft version of the OPA's Cost Effectiveness Tests Guide posted on the OPA website

(http://www.powerauthority.on.ca/Storage/68/6328_OPA_Cost_Effectiveness_Guide-Draft_Version.pdf accessed July 14, 2010) includes five different tests (Participant Cost Test (PCT); Ratepayer Impact Measure (RIM); Utility Cost Test (UCT) or Program Administrator Cost Test (PAC); Total Resource Cost Test (TRC); and Societal Cost Test (SCT)). However, the OPA guide does not provide specific details on which of these tests are to be used for OEB-Approved CDM Programs. Further comments on cost effectiveness tests are provided in the paragraph below.

7. Cost Effectiveness (section 4)

The proposed Code requires that the cost effectiveness of Board-approved CDM programs be measured by using the OPA's Cost Effectiveness Tests.

As noted earlier in this document, the OPA's Cost Effectiveness Tests does not provide guidelines on which of the five tests are to be used. We also note that the OPA guide suggests that for some of the tests, namely TRC, RIM, PAC and UCT, the discount rate typically used is the LDC's Weighted Average Cost of Capital (WACC) - the WACC being the individual LDCs cost of borrowing for utility resource investments. Since, by definition OEB- Approved Programs are GAM funded and are intended to promote a culture of conservation across all ratepayers in the province, the appropriate discount rate to be used should be the societal discount rate that is used in the OPA-Contracted Programs.

We note that in regard to the cost effectiveness of pilot or educational program section 4.1.4 requires distributors to demonstrate adequate evidence that the program will likely result in peak demand savings and electricity savings. This would have the unintended consequence of limiting such programs to only those that demonstrate both energy savings and peak demand savings.

Recommendations:

We recommend that the Societal Cost Test be used for demonstrating cost-effectiveness of OEB-Approved Programs. Alternatively, TRC tests could be used. In any case, only one test specified in the OPA EM&V guidelines should be identified for demonstration of cost effectiveness of LDC CDM programs. Further, we recommend that the discount rates to be applied for cost effectiveness tests should be the societal rate and not LDC specific discount rates/WACC.

We recommend that proposed requirement for educational and pilot programs be revised to include programs that deliver energy savings or peak demand savings.

8. Accounting Treatment (section 5)

There is a concern around the treatment and recovery of costs for CDM activities that are not associated with either OPA-Contracted programs or OEB-Approved Programs. Such pursuit

costs include costs for activities such as development of CDM Strategy, CDM potential assessment undertaken by LDC, CDM reporting requirements, etc. that do not necessarily fall into revenues and expenses associated with either the OEB-Approved Programs or the OPA-Contracted Programs. Such costs that occur irrespective of whether the Board-approved or OPA-Contracted programs take place are similar to the cost of service application costs that are eligible and allowed for recovery by the OEB.

The proposed Code does not address the timing of release of funding to LDCs for OEB-Approved Programs. Further, we note that the Code does not address the treatment and recovery of capital costs (expenses amortized over period > 1 year) associated with OEB-Approved programs, including the return of, and return on such capital. The proposed Code does not allow an LDC to be the owner of the beneficiary of Environmental Attributes. We note that in order to address the marketability of CDM programs to achieve desired customer take-up, LDCs should be permitted to propose program design that allows customers to own or benefit from Environmental Attributes of the program. The allocation of such Environmental Attributes could be based on being proportional to the customer's cost contribution to the program.

Recommendations:

We recommend that the OEB provide details on the timing of release of funding for OEB-Approved Programs. We also recommend that the release of such funding be based on principle of providing LDCs with up front funding for CDM related expenses to avoid higher LDC working capital requirements. We request that the OEB set up accounts for recovery of capital expenditures associated with Board-approved programs, similar to the mechanism set up for Smart meter implementation. Further, we request that a variance account for CDM related costs from GAM be set up and that the materiality test as applied for Z factor (for distribution rates) should not be applied to these costs. The details of setting of the variance account should include provisions to allow LDCs to accrue costs related to CDM from January 1, 2010 to recognize the LDC costs associated with CDM programs from the time when program design work commenced through establishment of working groups on the OPA-Contracted Province-Wide Programs.

We further recommend that LDCs should be permitted to propose program design that allows customers to own or benefit from Environmental Attributes of the program, with the allocation of such Environmental Attributes being proportional to the customer's cost contribution to the program.

9. Program EM&V (section 6)

We note that the proposed Code requires results of OEB-Approved CDM programs to be verified by third party using OPA's EM&V protocols. The OPA's EM&V Framework addresses the need for validating input assumptions including free-ridership, Net-to-Gross ratio etc. through the EM&V process but does not provide details on when any adjustments should be made to multi-year CDM program.

Also, further to our comments on the definition of CDM provided earlier in this document, savings related to smart meters/TOU should be accrued towards LDC CDM targets.

Recommendations:

We recommend that LDC achievements towards CDM targets be accrued as and when the verified savings through EM&V results are made available and reported by LDCs to OEB through the Annual Reports. Further, we recommend that consistent with adjustments to SSM provided in section 7.3 of the OEB's Guideline for Electricity Distributors CDM (EB-2008-0037), adjustments to input assumptions be made prospectively, i.e. only on a going forward basis for the period after the EM&V results are released. An example of adjustments being made on a prospective basis, similar to the example provided in EB-2008-0037 Guidelines for Electricity Distributor Conservation and Demand Management p 27, is relevant:

Assume a program is designed to be delivered from January 1, 2011 until December 31, 2014 based on input assumptions available as of July 2010. The distributor obtains a third party review of its evaluation of program results for the period January 1, 2011 to December 31, 2011 in April 2012 leading to a higher free rider rate than what was previously assumed in July 2010. The input assumption that will apply in relation to the free rider rate for the program delivered from January 1, 2011 to December 31, 2011 should be those that were in effect in July 2010. The new free rider rates would only apply for verified savings purposes to the program beginning January 1, 2012.

We also recommend that an administratively simplified mechanism for verifying energy savings and peak savings results of smart meters/TOU be applied for counting such savings towards achievement of CDM targets for each LDC.

10 (a) Performance Incentive (Section 7)

We note with concern that the proposed Code requires an LDC to demonstrate that its role was central to the CDM programs in order to achieve performance incentive. We strongly believe that the *Green Energy and Green Economy Act, 2009* makes the role of LDCs central to delivery of CDM in the province. Further, the province-wide CDM target that will be allocated to LDCs has been determined based on total contribution of all LDC implemented CDM resource savings including, as outlined on page 14 of the OPA's "Advice to the OEB: CDM Target Allocation for Ontario LDCs" (EB-2010-0216), the complete suite of LDC delivered CDM resources such as Residential energy efficiency; Commercial energy efficiency; Residential & Commercial DR; and LDC connected industrial energy efficiency and DR.

As proposed in the Code, the requirement to demonstrate centrality could have the unintended consequence of incenting an LDC to pursue only those programs that account for the LDC's budgetary contribution being more than 50% of the program funding thus potentially excluding some OPA-Contracted Programs. As a result, LDCs could be discouraged from pursuing such programs where the LDC budget is less than 50% of the funding as they are likely to provide no performance incentives. We submit that as proposed, the requirement of demonstrating centrality does not meet one of the key directions to the OEB contained in the Minister's Direction section 6(b) requiring that the Board encourage opportunities for coordinating CDM Programs between the distributor and other relevant entities such as other distributors, natural gas distributors and the OPA.

On the Board's proposal to include a cost efficiency element in the performance incentive, we suggest that cost efficiency element should not be included in the performance incentive. We do not support the proposal to reduce the total funding for performance incentive (\$72 million as proposed) for funding any cost efficiency element, as we believe that to be effective incentives

for achieving CDM target should be treated separately from incentives for cost efficiencies. We recommend that consistent with the OPA’s responsibility under the Minister’s Direction to the OPA to pursue cost and/or delivery efficiencies in OPA-Contracted Province-Wide CDM Programs, incentives for cost efficiencies should be included in those programs or in contracts between LDCs and the OPA. In the case of OEB-Approved CDM programs we consider that the OEB’s approval process, especially through the requirements to demonstrate cost effectiveness as part of the approval process, will be appropriate to test and achieve cost efficiencies.

As noted previously in this document, we support the need for energy savings and peak demand savings from smart meter/TOU to be counted towards LDC CDM target.

10 (b) Calculation of the Performance incentive (section 7.2)

The EDA supports the need for a performance incentive structure that is aligned with the need to motivate achievement of CDM targets by LDCs. The proposed CDM targets for LDCs are aggressive and in order to effectively meet their CDM targets and to mitigate any risks, LDCs will in reality aim to deliver higher than their targets. For example, since the CDM targets are net of free ridership, for an LDC to achieve 100% net target results would mean aiming to achieve more than ~130% of target.

We consider that the proposed incentive structure does not provide adequate incentives for LDCs to pursue achieving 100% of their target. The proposed incentive structure provides incentives comparable to what is currently paid out for OPA programs (\$ 50 per Kw for ERIP) only when the performance tier exceeds 120% of the target (\$47.25 per Kw).

We propose a performance structure that is better aligned to motivate LDCs to achieve a 100% of what is already an aggressive target, as follows:

Performance Tiers			Performance Incentives	
Range	Range begins	Range ends	c/kwh	\$/kw
1	80%	100%	0.8	40
2	100%	120%	1.0	50
3	120%	150%	1.5	60

Note 1: Performance incentives accrue when distributor meets 80% of either of the two targets.

The proposed structure allows LDCs to be provided incentives for achieving their targets, while ensuring that achievements surpassing the CDM target are provided marginally higher incentives.

Appendix D of the draft Code proposes that a distributor is eligible for a performance incentive when it has reached 80% of **both** of its CDM target (i.e. 80% of its energy savings target and 80% of its peak demand target). We note that the Minister’s Directive requires performance incentives to be accrued once a distributor meets 80% of each CDM target and interpret it to mean that incentives should be accrued once a distributor achieves 80% of either target. Accordingly, we recommend that the performance incentive calculation be revised to allow distributor to accrue performance incentive once it meets either 80% of energy savings target or 80% of its peak demand savings target.