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***BY E-MAIL AND COURIER***

July 21, 2010.

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

**Re: Electricity Conservation and Demand Management Code  
EB-2010-0215**

Dear Ms. Walli:

In response to the above-referenced matter, we are submitting this letter on behalf of Erie Thames Powerlines Corporation, West Perth Power Inc. and Clinton Power Corporation (collectively, the “LDCs”). Please accept the comments herein regarding the proposed Electricity and Conservation Demand Management (CDM) Code (the “Code”).

General Comments

We appreciate the Board’s effort to develop the Code in a timely manner that ensures distributors understand the Board’s expectations when developing their CDM strategies and programs. However, we believe that many critical elements related to the Code are undetermined or unclear and therefore it is difficult for us to comment in a substantive and comprehensive manner. More importantly, we feel that the Code, in its current form, requires additional information in order to provide the clarity distributors require to both understand and meet the expectations of the Board and their CDM Targets by the end of 2014.

Timing and Third Parties

A significant concern we have is related to timing and third parties. There are three issues addressed in the Code that may significantly impact a distributor’s ability to meet their reporting deadlines and CDM targets, including (i) the release of the OPA-Contracted CDM set of programs, (ii) the Board approval process for proposed CDM programs, and (iii) the third-party Evaluation, Measurement and Verification (EM&V)



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requirements,. For example, distributors cannot begin to substantively develop their CDM Strategy until the OPA releases its set of OPA-Contracted CDM Programs. If the OPA does not release its set of CDM Programs in a timely manner, distributors may not have sufficient time to develop alternative CDM Programs for Board approval or finalize its CDM Strategy by the November 1, 2010 deadline. As another example, if there is insufficient access to third-party EM&V providers due to a supply and demand imbalance, distributors may not be able to meet annual reporting deadlines.

It is unclear in the Code whether these types of delays will impact a distributor's access the performance incentives described in Section 7 of the Code or make them subject to sanctions or penalties. Therefore, with respect to issues related to timing and third-parties, we respectfully request that the Board provide further direction regarding:

- How the issue of third-party delays that are outside a distributor's realm of control, yet impact a distributor's ability to meet specified CDM deadlines, will be addressed to ensure distributors are not negatively impacted;
- If known, the date by which the OPA will release its set of OPA-Contracted CDM Programs and the process and any guidelines it will use to develop the list;
- The process, timelines and guidelines the Board will follow in the approval process for proposed CDM programs; and
- The manner in which the Board will address any shortages/delays in access to third-party EM&V providers.

### OPA Programs and Deadline Extension

We also respectfully request the Board consider revising the deadline by which distributors must submit their CDM Strategy beyond November 1, 2010. At the time of writing, the OPA has not finalized its list of Contracted CDM Programs, and we are concerned that the OPA will not be able to finalize it in sufficient time to allow distributors to develop a comprehensive CDM Strategy that will satisfy the requirements of the Board.

### Penalties

Another issue with respect to the Code relates to the punitive action the Board may take against a distributor not making sufficient progress in meeting its CDM targets. As described in our submission on the CDM Targets (EB-2010-0216), the materials distributed to date regarding the CDM Targets and the Code have not been clear regarding the consequences associated with a failure to achieve, or make sufficient



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progress in achieving, the CDM Targets. The Minister’s Directive gives instruction to the OEB to “take steps to encourage distributors to improve CDM Program performance”, however the Code does not address the type of action, if any, the OEB will take. Therefore, we respectfully request that the Board provide more information regarding the following:

- The types of penalties the Board may impose on distributors;
- Specific reasons/instances in which the Board may impose penalties (e.g. not meeting reporting deadlines, unmet targets, etc.); and
- The process for distributors to appeal any decision by the Board with regard to the imposition of penalties

#### Accounting Treatment

Section 5 of the Code requires that distributors use a fully-allocated costing methodology, which results in the allocation of direct cost and a proportional share of indirect costs. Given that International Financial Reporting Standards (“IFRS”) will govern distributors shortly, the fully allocated costing model will require that distributors maintain two sets of accounting records for capital expenses. Based on the definition of “Marginal Costs” in Appendix A to the Code (i.e. “costs that would be eliminated or reduced if non-regulated activities were no longer undertaken”) and the contents of Section 2.5 therein, it appears that the additional accounting costs associated with an additional set of books would be recoverable. We ask that the Board confirm our interpretation that these additional accounting costs would be recoverable as a Marginal Cost under Appendix A to the Code.

#### Cost Recovery and Lost Revenue Mechanisms

We appreciate that the Board recognizes that lost revenues resulting from CDM Programs should not act as a disincentive to distributors and that the Board has initiated a consultation process to review appropriate revenue and cost recovery mechanisms. However, we feel that it is unreasonable to ask a distributor to comment upon the proposed Code and contemplate making CDM Targets without a clear view of the risks and benefits associated with the same. Further detail regarding the lost revenue mechanism is necessary to allow distributors to provide fully informed comments on the draft Code and make prudent business decisions about the matters to be contained in their CDM Strategy. Therefore, we recommend that the Board delay requesting final comments from distributors on the Code, or requiring distributors to submit their CDM



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Strategies, until a clearer picture of the appropriate cost and revenue recovery mechanisms are developed and disclosed.

On a related note, we request that the Board provide direction about whether a distributor would be able to apply for CDM revenues and costs via the regular rate-making process in the event that the cost recovery and lost revenue mechanisms do not allow a distributor to recover all CDM costs and revenues. Also, we would ask the Board to comment on whether the intention is that the distributors need to meet their targets in order to recover their costs.

### Performance Incentives

In the Notice of Proposal accompanying the Code, the Board contemplates a performance incentive mechanism that includes a cost efficiency element. Due to the different locations, sizes and customer profiles of the distributors in Ontario, we are reluctant to support a cost efficiency element as part of the performance incentives.

Our concern stems from the fact that factors beyond distributor's control (e.g. cost-effective and ready access to independent third party service providers) may affect a distributor's ability to access the performance incentive fund. We are concerned that smaller rural distributors may already be on an uneven playing field as they try to meet their CDM targets due to factors beyond their control and irrespective of their CDM activities and performance. It is our submission that the cost effectiveness test in Section 4.1 of the Code are sufficient to ensure and encourage the cost effectiveness of a distributor's CDM Programs.

### Excluded Activities

Section 3.1.5 of the Code excludes initiatives that relate to a distributor's investment in new and replacement infrastructure, and any measures that a distributor uses to maximize the efficiency of its infrastructure. These exclusions divorce this CDM initiative from other pressing needs and government initiatives, including the development of a smart grid and the need to upgrade Ontario's ageing electricity infrastructure. While it makes sense to exclude the OPA's Feed-In Tariff ("FIT") Program projects as these projects are already subsidized, infrastructure development and upgrades do not receive similar incentives. In addition, the Minister's Directive explicitly excludes only FIT projects and not infrastructure projects.

We would be interested in the Board's rationale for separating the CDM initiative from other seemingly related initiatives. As the Board is aware, distributors are facing very



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difficult challenges ahead (such as meeting CDM Targets and supporting the development of a smart grid) and it is our opinion that disconnecting these initiatives would make these important undertakings much more difficult, if not impossible, to achieve. It is our opinion that distribution system upgrades reduce losses and therefore result in reduced energy consumption on behalf of all customer classes. Therefore, we respectfully request that the Board consider eliminating the exclusions in section 3.1.5 (a) and (b) from the Code.

As an alternative, we would propose that the Board consider introducing a mechanism into the Code whereby distributors may apply for special exemptions, including distribution system conversion projects that convert 4kV distribution systems to 27.6kV systems. These conversion projects would reduce distribution system losses which would then translate into GWh reductions and allow distributors an additional mechanism to achieve the onerous CDM targets.

In light of the amount of outstanding information described above, we expect and look forward to further opportunities to comment on the Code in its revised form.

Thank you for the opportunity to submit this response on behalf of the LDCs.

Sincerely,

Jeff Quint, MBA, BESC.  
Managing Director  
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