



July 21, 2010

Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto, ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: Consultation on the proposed Conservation and Demand Management Code for LDCs

EB-2010-0215

In its June 22, 2010 letter, the Ontario Energy Board (OEB) proposed a Conservation and Demand Management (CDM) Code that if implemented, would represent a substantial expansion of distributor obligations.

Please find enclosed *ENWIN's* response to proposed code.

Yours very truly,

***ENWIN* Utilities Ltd.**

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July 21, 2010,

RE: *ENWIN*'s submission on the proposed Conservation and Demand Management Code (EB-2010-0215)

The new Ministry of Energy and Infrastructure mandated Conservation and Demand Management (CDM) initiative represents one of the most significant initiatives in the utility sector in recent times.

The success of the program will be partially conditional on the extent to which distributors are allowed to develop and implement an integrated CDM Strategy and engage in regulatory and accounting requirements that support the "real-world" operational concerns of program delivery.

To this end, *ENWIN* perceives that the proposed code is only partially successful in attaining an integrated approach. *ENWIN* is concerned that the proposed accounting treatment as well as the CDM Strategy will increase administrative burdens and introduce uncertainty to the budgeting and planning process. *ENWIN* notes that the various subsections addressing the issue of performance incentives appear to be contradictory to each other and may reduce the incentive for various distributors to collaborate on CDM programs.

Integrated accounting mechanisms:

The proposed CDM Code would mandate that the expenses and revenues of Board-approved and OPA-contracted programs be recorded independently from each other. This poses a range of operational difficulties for *ENWIN* revolving around cost-allocation, cost-recovery/program funding, and recovery timing which in turn will impact forward planning and budgetary processes.

Cost Allocation: Although LDCs are expected to plan and implement an integrated CDM portfolio, the requirement to separately record the expenses and revenues of Board-approved programs from OPA-contracted programs introduces difficulties in precisely allocating hours

and costs accrued by staff between the two types of programs. The allocation difficulties may be more prevalent during the CDM Strategy planning as well as from a tracking and reporting stand-point. Will costs incurred on strategic planning and reporting (e.g. the CDM Strategy planning prior to program implementation) be allocated as OEB-approved or OPA-contracted or instead be put into rate base?

Furthermore, because of the account separation between the two types of programs, there remains some uncertainty as whether funding received from one entity (OPA or OEB) can be applied to all programs based on need. For example, can an OPA funded energy-efficiency manager also help design, implement and participate in OEB-approved programs, and how is this to be treated from an accounting standpoint?

Program cost recovery/funding mechanisms: According to the June 22, 2010 letter (though not in the proposed Code itself), all CDM projects are to be cost-recovered through the Global Adjustment Mechanism. Will this be set out in the Code? Or will it be set out elsewhere?

It is not entirely clear if the language implies both Board-approved and OPA-contracted projects or if different recovery processes will be used for Board-approved and OPA-contracted programs. The document also lacks any clarity as to when the cost-recovery is to take place, or if cost-recovery timing will be different for Board-approved programs from OPA-contracted programs. Not knowing when and how program funding/recovery will take place poses planning and budgetary problems. In addition, segregating funding/recovery mechanisms and timing according program sponsor (OEB or OPA) will only increase the administrative burden for all involved.

ENWIN urges the OEB to adopt and implement integrated accounting requirements that mirror and support “real-world” operational concerns when delivering CDM programs. Of particular help would be clarity on funding/recovery mechanisms and timing.

Integrated CDM Planning:

The ability of *ENWIN* to reach its CDM targets will be partially conditional on its ability to develop an integrated CDM Strategy that takes into account the full range of measures that allow *ENWIN* to reach its target. As such there are three broad sets of concerns regarding the creation of a fully developed CDM plan:

- The ability of the plan to take into account peripheral measures which contribute to its target;
- The formal classification of Tier 2 and Tier 3 programs and;

- The inclusion of non-LDC entities in creating and implementing CDM plans.

Peripheral measures: *ENWIN* considers it prudent to be allowed to incorporate the impacts of parallel initiatives into its overall CDM Strategy, even if those initiatives have not been specifically designed as a CDM program. A prime example is the issue of mandatory Time-of-Use which is designed to alter system peaks and reduce system usage. Given that these effects are congruent with the CDM targets, *ENWIN* feels that the proposed CDM Strategy should be allowed to take into account these and other programs that contribute towards reaching the overall CDM goals. Presumably the OEB will implement concurrent EM&V initiatives to ensure that these peripheral programs are achieving their stated goals which can then be counted towards LDC CDM targets.

Tier 2 and Tier 3 classification: The OPA is currently in the process of formulating a set of turn-key programs, also called Tier 1 programs, which would become the bedrock of an LDC's CDM Strategy. These would formally be classified as OPA-contracted programs for the purpose of the proposed CDM Strategy. The OPA also makes reference to Tier 2 (that are designed cooperatively between multiple LDCs) and Tier 3 (unique programs designed for individual LDCs) programs. *ENWIN* is seeking clarification on the integration and classification of the so-called Tier 2 and Tier 3 programs and whether they should be considered Board-approved or OPA-contracted programs.

Non-LDC third parties: There is currently little indication if third-parties may be retained or partnered with to create and implement CDM programs. More precisely, can affiliate and other organisations be retained as a part of the program creation and implementation with those outputs to be counted towards LDC goals? *ENWIN's* expectation is that the EM&V results of these joint programs will be allocated among partnering organisations as set out in the applicable joint-programming contracts. Confirmation would be appreciated. These issues have budgetary and planning implications for LDCs.

Performance Incentives:

ENWIN is concerned that section 7 of the proposed CDM Code establishes contradictory and competing requirements to qualify for the performance incentives.

In particular, section 7.1 establishes a cost-based allocation methodology that states distributors will only qualify and receive the performance incentives conditional on the centrality of their role in funding the program. Those distributors that contributed greater than fifty percent of the program costs can claim 100% of the program attributes. This is problematic because it inhibits distributors from collaborating and

implementing joint programs efficiencies, especially if they think that they will not be eligible for any additional incentives due to cost contribution factors.

On the other hand, section 7.2 combined with Appendix D establishes a completely separate target-based incentive allocation methodology. Based on section 7.2, distributors can receive incentives conditional on at least 80% of their CDM targets being achieved and verified. The methodology established is in-line with the stated goal of granting a “performance-based” incentive on achieving measurable reductions (as opposed to cost-contribution incentives). However, when combined with section 7.1, it could produce a powerful disincentive to collaborate with other LDCs, lest the cost-contribution factor limit their ability to collect on performance incentives.

The seemingly conflicted code provisions open up broad questions about the effects and implementation of the performance incentives in relation to joint programs. For example, how will the incentive mechanism allocate benefits of a joint program where one of the program partners is a non-LDC entity? Will benefits be accorded annually, based on stated milestones or will they be based on total targets? How these issues are approached will impact *ENWIN*'s CDM Strategy and asks that the OEB provide clarification.

Non-compliance/inability to hit targets

By changing distributor licenses to include mandatory targets and reporting, the OEB will elevate CDM to a core function of the LDCs. As a part of the reporting process, LDCs will be required to report on their annual milestones, whether the milestones have been reached or not and an explanation of why they have not been reached. The proposed Code does not make it clear what will happen if distributors are unable to meet their CDM targets. Nor is there clarity as whether the annual milestones or the aggregate target in the conditions of license will represent the LDCs performance benchmark. To this end, *ENWIN* requests the OEB to clarify its compliance criteria.

Revenue Decoupling/Lost Revenue:

ENWIN is pleased that revenue decoupling has been identified as key to removing lost revenue disincentives. *ENWIN* suggests that the decoupling policy proceeding come closer to finalization before the proposed Code is finalized in order to improve the congruity of the two policies.