

July 21, 2010

BY COURIER (3 COPIES) AND EMAIL

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Ontario Energy Board
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Dear Ms. Walli:

**Re: Pollution Probe – Written Submissions on Proposed Code
EB-2010-0215 – Creation of CDM Code**

Pursuant to the Board's *Notice of Proposal to Issue a New Code* dated June 22, 2010, we write to provide the Board with Pollution Probe's written submissions regarding the proposed Conservation and Demand Management Code for Electricity Distributors (the "proposed CDM Code").

Pollution Probe's submissions are limited to supporting the proposed shareholder incentive rates while noting issues that need to be considered in developing any cost-reduction/efficiency incentive mechanism; the proposed overly broad definition of "duplicative" for OPA CDM programs; the need for the Annual Reports to include estimated future savings (including post 2014); and that more explicit guidance should be provided regarding which OPA Cost-Effectiveness Tests are to be used.

Each of these issues is discussed in turn below.

A. The Shareholder Incentive

Pollution Probe has two main submissions regarding the shareholder incentive parts of the proposed CDM Code.

1. Support to Increase Incentive Rates as Level of Energy Savings Increase

First, Pollution Probe supports the Board's proposal to increase incentive rates as the level of savings actually achieved increases, as detailed in Appendix D to the proposed

CDM Code. In particular, the Board's proposed shareholder incentives (per kWh and per kW) for achieving CDM savings appropriately increase as the level of savings increase. Assuming that the Board's proposed incentive rates are shown on an after-tax basis, Pollution Probe supports this proposal.

Pollution Probe also submits that these CDM shareholder incentives should not be subject to any claw backs that may be imposed to limit an electric utility's return on equity from its supply-side distribution assets. Pollution Probe also submits that Board should not reduce the proposed financial values of its kWh and kW reduction incentives if the Board ultimately decides to create an incentive that rewards cost-reduction/efficiencies.

2. Support in Principle for Cost-Reduction/Efficiency Incentive But Mechanism Needs To Be Properly Designed

Second, Pollution Probe supports a cost-reduction/efficiency incentive in principle, but Pollution Probe submits that steps need to be taken to ensure that such a incentive is not implemented in a way that negatively affects a utility's current incentive to maximize all cost-effective energy savings over the long-term.

According to page 5 of the Board's *Notice of Proposal to Issue a New Code* dated June 22, 2010:

The Board's current performance incentive proposal does not include a cost efficiency incentive. However, the Board sees merit in providing an incentive to those distributors that achieve their CDM Target in the most cost-efficient manner.

Pollution Probe supports the Board's proposal in principle. Furthermore, as the Board is aware, this principle is successfully embedded in the demand side management ("DSM") shareholder incentive for Ontario's gas utilities. Specifically, their shareholder incentive is a function of the Total Resource Cost Test (the "TRC Test") savings that their DSM programs create, which is broader than just gas saved. As a consequence, gas utilities have proper incentives to achieve the maximum possible net financial savings for their customers for every dollar spent by the utility on such programs.

However, a key difference between the electricity and gas sectors is that the proposed CDM Code is proposing to link the electric utilities' shareholder incentive to just kWh and kW savings instead of the net financial savings resulting from the TRC Test. Pollution Probe thus submits that a poorly designed ancillary cost reduction incentive mechanism could actually reduce a utility's incentive to maximize their kWh and kW savings (unlike now), and steps should be taken to avoid this outcome.

For example, if the cost reduction savings incentive were simply a function of a utility's average cost of saving a kWh, some utilities might only pursue their lowest cost energy efficiency options instead of all those options that still cost-effectively save energy. As a

result, in order to maximize a utility's "cost-reduction" shareholder incentive, the utility may not pursue higher-cost energy efficiency options that are still nevertheless cost-effective; reduce customers' net bills; and avoid the need for even higher cost new electricity supply.

Similarly, another concern is that a poorly designed cost reduction savings incentive which focuses only on the period that the proposed CDM Code would be applicable (i.e. 2011 to 2014) could motivate some utilities to minimize CDM costs by pursuing CDM options that create energy savings that will persist only during that limited period.

This is not merely a theoretical concern as the OPA's current CDM programs demonstrate this persistence concern. Specifically, according to the OPA, its 2006 CDM programs reduced demand by 18 MW in 2006;¹ its 2007 CDM programs reduced demand by 568 MW;² and its 2008 CDM programs reduced demand by 387 MW.³ If these programs actually had 100% persistence, these CDM programs should be reducing demand by a total of 973 MW.⁴ However, in fact, the OPA's programs are actually only reducing demand by approximately 430 MW in 2010,⁵ which means that more than 50% of the initial CDM savings seem to have now disappeared.

Pollution Probe thus submits that any cost-reduction shareholder incentive mechanism must be carefully designed to ensure that it does not reduce a distributor's incentive to pursue all cost-effective CDM saving opportunities. Any cost-reduction shareholder incentive mechanism must also not create an incentive for a distributor to increase its short-term profits by pursuing short-lived savings that will not persist over the long-term.

B. Definition of "Duplicative" CDM Programs With The OPA Too Broad

While Pollution Probe agrees that the Board should not approve CDM programs that are truly duplicative of OPA CDM programs, Pollution Probe respectfully submits that the definition of what would be considered "duplicative" pursuant to section 2.3.3 is too broad. The standard dictionary definition should be simply used instead.

According to section 2.3.2 of the proposed CDM Code, electric utilities may not apply to the Board for approval of CDM programs that "*duplicate* existing OPA-Contracted Province-Wide CDM Programs [emphasis added]".

Pollution Probe submits that a dictionary definition is sufficient to determine what "duplicate" means. According to the Oxford Dictionary of English, the relevant definitions of "duplicate" and "duplicative" are "exactly like something else, especially through having been copied: *a duplicate set of keys*"; "a copy of an original"; and "make

¹ OPA, *2007 Final Conservation Results*, (February 2009), p. 3.

² OPA, *2007 Final Conservation Results*, p. 4, Table 3.

³ OPA, *2008 Final Conservation Results*, (January 2010), p. 4.

⁴ i.e. 18 + 568 + 387 MW.

⁵ Email from Ben Chin, Vice President, OPA to Jack Gibbons, June 23, 2010.

or be an exact copy of”.⁶ Pollution Probe submits that such a definition is sufficient to determine where a CDM program is truly duplicative, and Pollution Probe agrees that the Board should not approve such “duplicative” CDM programs.

However, the Board’s definition of “duplicative” in section 2.3.3 of the draft Code is instead much broader and inconsistent with a plain English meaning of “duplicative”. Pollution Probe submits that, if adopted, the proposed definition will inappropriately stifle competition, entrepreneurship, and innovation. The section should thus be struck or narrowed to be in accordance with the standard English definition of “duplicative”.

Specifically, according to the proposed section 2.3.3., a utility’s CDM program will be deemed to be duplicative of an OPA CDM program even if the utility program has:

- (a) *different* customer incentive levels on products or services already offered through the OPA;
- (b) *different* qualification requirements to receive customer incentives or services already offered through the OPA;
- (c) *different* technology specifications for technologies already incentivized or utilized through the OPA;
- (d) *different* marketing approaches for promoting customer incentives or services already offered through the OPA; and
- (e) *different* budgets for delivering customer incentives or services already offered through the OPA. [emphasis added]

Accordingly, even if a utility’s programs are *different* in key important ways, they are still considered “duplicative” for the purposes of the proposed CDM Code, and they cannot be approved. Pollution Probe submits that such a requirement unduly restricts creativity and innovation by penalizing utilities for taking the initiative to potentially improve existing programs, regardless of the level of benefits or improvements over the OPA program.

The adverse consequences of adopting the definition proposed above for “duplicative” can be illustrated by reference to the *peaksaver* air-conditioner load control program. This innovative and very effective load control program was initially developed and implemented by Toronto Hydro in 2005. Subsequently, the OPA began to fund the *peaksaver* program for electric utilities across southern Ontario. As a result, in August 2009, at the time of Ontario’s system peak demand, the province’s approximately 132,500 *peaksaver* participants provided 116 MW of important demand reductions for Ontario’s electricity grid.⁷

However, as of December 31, 2009, only about 7% of the province’s approximately 2 million potential participants were enrolled in the *peaksaver* program. Furthermore, the OPA does not appear to have plans to rapidly or dramatically increase this number of

⁶ *Oxford Dictionary of English*, 2nd ed., s.v. “duplicate”.

⁷ Email from Sasha Sud, Segment Manager, Residential Demand Response, OPA to Jack Gibbons, September 16, 2009.

peaksaver participants. This is despite the fact that demand response programs are a much lower cost and more politically acceptable means to address spikes in electricity demand than new gas-fired power plants.

If the Board's definition of "duplicative" is adopted, the result would be that the OPA would have a practical monopoly on residential demand response programs because even if a utility successfully experiments, they would not be rewarded for it. So, electric utilities like Toronto Hydro, would not be financially able or have the incentive to experiment with innovative marketing approaches to increase participation rates as appropriate. For example, they would not be allowed to hire students to go door to door to market *peaksaver*; and they would not be allowed to offer more generous financial incentives to encourage higher participation rates. In short, the Board's proposed definition of "duplicative" will give the OPA an unnatural practical monopoly on residential load control programs. As a result, CDM competition, innovation and entrepreneurship would be artificially restricted, and Pollution Probe submits that this would not be in the best interests of Ontario's consumers.

Pollution Probe notes that the Government of Ontario decided to eliminate Ontario Hydro's monopoly with respect to electricity generation for various reasons in 1999, including the benefits of open competition. Pollution Probe submits that it would be surprising (and not appropriate) for the Board to now, eleven years later, practically shield the OPA's electricity conservation activities from the discipline and benefits of competition and the corresponding rewards for Ontario.

C. Annual Reporting Should Include Future Saving Estimates That Extend Beyond 2014

Section 2.2.5(e) of the proposed CDM Code requires that electric utilities must describe the kW and kWh savings of their CDM programs on an annual basis. However, Pollution Probe submits that is equally important to know likely future savings as well (both during the 2011 to 2014 time period as well as after).

Pollution Probe thus submits that this section should be amended to clarify that reporting is not limited to just the previous year's actual saving, and electric utilities must provide their best estimates of their future CDM programs' kW and kWh savings over time, including post-2014. Pollution Probe submits that such a requirement would also help ensure that the benefits of a utility's CDM programs continue to persist over time instead of just the proposed CDM Code's timeframe.

D. More Explicit Guidance Should Be Provided re: OPA Cost- Effectiveness Tests

Section 3.1.4(b) of the proposed CDM Code requires an electric utility's application for a proposed Board-approved CDM program to include a benefit-cost analysis "using the OPA's Cost Effectiveness Tests". This term is in turn defined as "the cost-effectiveness

tests that the OPA has adopted for OPA-Contracted Province-Wide CDM Programs, including all related assumptions and cost assessments”.

Pollution Probe submits the Board should provide more explicit guidance regarding which specific tests it is referring to. For example, the Board should state explicitly if it referring to the Total Resource Cost Test, the Participant Test, the Utility Test, or some other test as appropriate.

Conclusion

We trust that these submissions are of assistance. Please do not hesitate to contact the undersigned if you wish to discuss this matter further.

Yours truly,



Basil Alexander

BA/ba