

ONTARIO ENERGY BOARD

IN THE MATTER of the *Ontario Energy Board Act*, 1998, S.O. 198, c.15, Schedule B, as amended;

AND IN THE MATTER OF a Notice of Proposal by the Board to issue a new Conservation and Demand Management Code for Electricity Distributors

**SUBMISSIONS
OF THE SCHOOL ENERGY COALITION**

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1 GENERAL COMMENTS

1.1 Introduction

- 1.1.1** On June 22, 2010 the Board issued a Notice of Proposal to Issue a New Code, which is the Conservation and Demand Management Code for Electricity Distributors (the “CDM Code”) and sought input from stakeholders on the CDM Code. The CDM Code is in response to a directive issued by the Minister of Energy and Infrastructure on March 31, 2010 (the “Minister’s Directive”). A companion proceeding, EB-2010-0216 (the “Targets Proceeding”), has been commenced to establish CDM targets for electricity distributors, also in response to the Minister’s Directive.
- 1.1.2** These are the submissions of the School Energy Coalition (SEC). We first review the Minister’s Directive, then look at the specific issues raised and how the proposed CDM Code deals with them. We have separately provided comments on July 6, 2010 in the Targets Proceeding, but the two proceedings are clearly related.
- 1.1.3** In preparing these submissions, SEC has been assisted by a review of draft submissions from LPMA, CME and CCC, as well as the submissions, already filed, from GEC. This has allowed us to reflect a broader understanding of certain of the issues than might otherwise have been the case.

1.2 Interest of Schools

- 1.2.1** School boards have long been early adopters of conservation initiatives, dating back to budget constraints in the nineties, and for many schools even before that. Schools are unique in that there are 5,000 similar buildings scattered throughout the province that are high and predictable users of energy, with 50-100 new ones being built each year. School boards, in response to that, have embraced conservation as both a cost-saving and a pedagogical measure, often with significant success. The natural advantages of replicability, predictability and long-term thinking, coupled with the high motivation to save, have driven schools to be leaders in conservation, and that is not likely to change in the foreseeable future. More recently, the government has recognized this situation by providing incremental funding for school boards who want to do even more.
- 1.2.2** Throughout these initiatives, school boards often partner with their local distribution companies, who have expertise and are natural allies in seeking to achieve conservation goals. In addition, LDCs and school boards are both regional entities with public interest mandates, sometimes having contiguous or similar geographic boundaries. The common interests, particularly in conservation, are substantial.
- 1.2.3** On the other side of the coin, schools spend a lot of money on electricity, and as rates go up, whether distribution rates or GAM, that additional money has to be found somewhere. Schools have generally seen that the bill-reduction benefits of conservation initiatives far outweigh the higher unit costs, but we are constantly aware that as

conservation becomes more difficult and more expensive to achieve at the margin, the pressure on unit costs will become more problematic.

- 1.2.4** For these reasons, the proposal for a new set of rules to govern how LDCs carry out their conservation activities is of considerable importance to SEC and its members. It is in our interest to ensure that the CDM Code optimizes the ability of LDCs to deliver as much CDM as possible to all sectors, while at the same time promoting efficient use of ratepayer dollars to achieve those conservation goals.

1.3 Summary of Submissions

- 1.3.1 *The Minister's Directive.*** The Minister's Directive delivers a broad mandate and responsibility to the Board to achieve, through the regulated electricity distributors, specific and important energy savings and peak demand reductions over the next four years.
- 1.3.2** While the Minister's Directive does set parameters around how the Board meets its mandate, and it does assign responsibility for certain aspects of the process to OPA, it is clear to us that the foundation of the document is setting an objective and relying on the Board's specialized knowledge and expertise to achieve that objective.
- 1.3.3** This interpretation of the Minister's Directive has important implications for the nature of the Board's approach to the process, and the scope of the CDM Code. In our view, the basic responsibility of the Board is to oversee and supervise their regulated entities, the LDCs, in all aspects of meeting the CDM Targets, including things like the appropriateness of their strategies, their budgets and priorities, etc.
- 1.3.4** Of importance is the fact that the Minister stresses the existing statutory objectives of the Board, and in particular its objective to protect consumers with respect to prices. In our view, the Minister is asking the Board to do what it does in most of its regulatory functions – balance the interests of utilities and ratepayers to maximize the public interest.
- 1.3.5** On a specific point, we comment on the meaning of “persistence” in para. 2(a) of the Minister's Directive, and contrast the short term nature of the 6000 Gwh of energy savings (which must be realized within in the four year period) with the long term nature of the 1330 MW of peak demand reductions (which start in the four year period but should continue for a long period of time). Clarity in the difference between these two goals is critical in many aspects of this process, including setting budgets and the design of the incentive mechanism.
- 1.3.6 *CDM Strategies and Planning.*** We support the “strategy” document approach being proposed by the Board, while cognizant that a process to turn the strategy into an action plan is still required within each LDC. We have proposed some small changes to the contents of the strategy document, to reflect local conditions more clearly, for example,

and to specifically identify lost opportunity situations.

- 1.3.7** The most important issue related to the strategy, though, is the review and approval process. At present, the CDM Code does not appear to contemplate a process, yet with the amount of ratepayer funds that will be expended in this area, SEC believes that an efficient but complete review process is essential. We have proposed such a process to take place in 2011.
- 1.3.8 *Board-Approved Programs.*** We have a number of concerns about the wording and completeness of the sections of the proposed CDM Code dealing with Board-Approved CDM Programs.
- 1.3.9** Sections 2.3.3, 4.1.4, and 4.3.1 each appear to us to be unduly restrictive, and we propose changes that would retain the current intent, but with more flexibility. We are also concerned that the requirement that all programs end on December 31, 2014 is unnecessary and potentially harmful. The same result can be achieved by ending funding on that date, much as many utility programs are funded for a period of time, and then a further funding application is required to continue.
- 1.3.10** We also find that the treatment of the approval process for these programs is limited and sometimes confusing. We propose some clarifications, but also an expansion of the section on approvals generally.
- 1.3.11 *Budgets and Cost Control.*** This is the area of the proposed CDM Code which, to us, is the least thorough relative to its importance.
- 1.3.12** In our view, the Board should look at various sources of information to establish an overall amount that, in the Board's view, is a reasonable level of total spending by distributors to achieve the CDM Targets. We have suggested that the Board look at least at the following:
- (a) The inherent value of 6000 Gwh of energy at the margin, probably \$300-\$400 million;
 - (b) The inherent value of 1330 MW of peak capacity reductions, probably \$3 billion or more;
 - (c) The ratio of program and administrative spending to maximum incentives by the gas distributors, about 3:1, which implies a four year CDM budget of \$215 million;
 - (d) The actual third tranche spending over three years by LDCs of about \$150 million, which when increased for inflation and higher targets implies a four year CDM budget of \$240-\$320 million.
 - (e) The forecasts and projections of the OPA of the spending that may be required in

their programs to achieve the CDM Targets.

- 1.3.13** Once the Board establishes the overall level of reasonable spending, the Board should adopt a formula based on the CDM Targets to allocate it between distributors. This is not for the purpose of setting budgets, but rather to act as a benchmark or context when the Board is reviewing the bottom up CDM budgets of individual distributors.
- 1.3.14** As with other areas of the proposed CDM Code, we are concerned about the lack of specificity in review and approval processes, and we make some suggestions about approval of budgets.
- 1.3.15 *Incentive Mechanism.*** The incentive mechanism has some clear parameters established by the Minister, but most of the key aspects of the mechanism are left up to the expertise of the Board. We support the basic structure and approach the Board has proposed, but we have comments on six main areas.
- 1.3.16** First, we do not agree with the requirement that both energy and demand thresholds should be met to get to the next incentive level. We believe this will ultimately be unfair to some distributors, and may have the perverse effect of reducing the overall achieved levels of savings.
- 1.3.17** Second, we propose a specific approach to the measurement of peak demand reductions to reflect the level of persistence of any given measure into the future.
- 1.3.18** Third, we do not believe that the incentive should be allocated and available equally between energy savings and peak demand reductions. Because the latter are a lot more valuable, that should be reflected in incentives that are much higher for peak demand success than for energy savings success.
- 1.3.19** Fourth, we oppose the Board's proposal to use the centrality principle for attribution.
- 1.3.20** Fifth, we believe that a strong efficiency incentive should be introduced by way of an uplift of the peak demand unit incentives for MW saved at a cost in the top and second quartile of the costs per MW for all peak demand savings. We have included a comprehensive proposal for an incentive that is based on the Board's proposal, but reduces the energy savings incentive pool by \$15 million and instead makes that available to increase the unit incentives for peak demand reductions that are achieved at low cost. Attached to these submissions is an Excel spreadsheet illustrating that proposal, in comparison to the Board's proposal, and showing how it would play out with four sample utilities.
- 1.3.21** Sixth, we propose that the Board should anticipate a mid-term review of the incentive mechanism in the fall of 2012.
- 1.3.22 *Accounting and Fully-Allocated Costing.*** We strongly support the introduction of a

clear set of rules for fully-allocated costing. We have included some small comments on specific aspects of accounting and cost allocation.

1.3.23 Other Issues. We propose changing the due date for the annual report to June 30th, and the addition of a “material change” report for any utility that is finding their implementation and results significantly different from their Board- approved strategy.

1.3.24 As with the strategy and the budget, we propose that more meat be added relating to review and approval, in this case with respect to annual reports.

1.3.25 Finally, we comment on the sparse handling of the Board’s audit responsibility, and suggest expansion of those provisions, including a suggestion for the addition of a stakeholder advisory panel of some sort to capture some of the benefits that the gas distributors get from their stakeholder processes.

2 THE MINISTER'S DIRECTIVE

2.1 General Characterization

- 2.1.1** The Minister's Directive has two main components.
- 2.1.2** First, the Minister requires the Board to set CDM targets for each LDC over the period to December 31, 2014, and make achievement of those targets a licence condition for each LDC. We have commented separately on this component of the Minister's Directive.
- 2.1.3** Second, the Minister directs the Board to establish a set of rules for both OPA-Contracted Province-Wide Programs and Board-Approved CDM Programs. In doing so, the Minister sets out the goals the government wants to achieve, and establishes parameters within which the Board should make its rule-making decisions. As part of the latter, the Minister seeks to clarify those areas in which the Minister is looking to the OPA to take responsibility, and those in which the responsibility is to rest with the Board.
- 2.1.4** In our view, the essence of the Minister's Directive is a mandate for the Board to establish a policy and operational framework for the achievement of government conservation goals. The government has exercised its own authority to make some of the basic decisions about that framework themselves – the conceptual approach to the incentive mechanism, for example – and has also delegated some of the tasks to the OPA. With those exceptions, the Minister is relying on the Board to establish a CDM “system” for LDCs that will produce a significant public interest benefit. So for example, the Minister requires the Board to consider the Minister's “objectives”, but also “such other factors as the Board considers appropriate”.
- 2.1.5** We note – it is perhaps obvious - that this is a substantial responsibility. The achievement of 1330 MW of sustainable, persistent conservation over the next four years translates into a reduction of \$3-8 billion in capital costs for that much new generation. While the role of the OPA in designing and delivering programs for LDCs to implement will undoubtedly be critical, the Board is being asked to play the primary role in this, both by setting the rules at the outset, and then supervising the process of achieving those goals between now and 2014, or beyond.
- 2.1.6** It is against this backdrop of the overall breadth of the mandate that we have reviewed the proposed CDM Code, and in some cases have proposed substantial expansions to that Code.

2.2 Goals

- 2.2.1** The establishment of the CDM Code arises under the power granted to the Minister in section 27.1 of the Ontario Energy Board Act, 1998, which allows the Minister to “direct

the Board to take steps to promote energy conservation, energy efficiency, load management, or the use of cleaner energy sources”. Thus, the overriding goal in the Minister’s Directive is to promote CDM.

- 2.2.2** At a more specific level, it is important to note that the preamble to the Minister’s Directive starts with the targets. That is, all of the components of the Minister’s Directive have a single purpose: “to establish electricity conservation and demand management targets to be met by licensed electricity distributors within the timeframe specified”.
- 2.2.3** This is an important distinction, because the CDM Code is therefore not about CDM generally, but rather about the best set of rules to achieve 1330 MW and 6000 Gwh. by December 31, 2014. The Minister is saying to the Board: “Tell each utility how much CDM they are obligated to achieve, put in place a set of rules to allow them to do so, and supervise, monitor and encourage them along the way.”
- 2.2.4** Because it is the overall targets that are the goals to be achieved here, it is important to be very clear on what those targets are. In our submission, the targets are:
- (a) An amount of reduced energy usage in the four year period 2011 to 2014 inclusive, 6000 Gwh; and
 - (b) An endpoint on December 31, 2014 at which time provincial peak demand is lower through CDM programs by 1330 MW.
- 2.2.5** The first of these points is relatively easy to measure, particularly with the detailed technical information emanating out of the OPA, to which the Board is directed.
- 2.2.6** However, the second and more important of these goals is not as simple. The Minister wants a reduction of “1330 MW of provincial peak demand **persisting** at the end of the four-year period” [emphasis added]. This is a key phrase, because “persisting” can be interpreted two ways. On the one hand, it could mean that a demand reduction achieved in 2011 must still be in place on December 31, 2014 for it to count toward the target. On the other hand, it could mean that demand reductions must be of a “persistent” type, i.e. essentially permanent or at least long term reductions in the need for electricity, thus reducing or deferring the need for new generating capacity.
- 2.2.7** In our view the latter interpretation is the only reasonable approach. It appears to us that the Minister is seeking short-term energy savings (point (a) above) and also a long-term, continuing benefit from permanent changes in our required peak capacity (point (b) above). If this were not the case, then the 1330 MW component of the targets would be essentially superfluous, and if it is included at all, it should be cumulative peak demand savings over the four years, as with the energy savings. It is not, in our view, because it is supposed to be permanent, not temporary.

- 2.2.8** We note that, if the less ambitious interpretation is accepted by the Board, as some will certainly propose, the result is likely to be short-term demand reductions that create no long term benefit for the province. It is much cheaper and easier, for example, to incent an industrial customer to reduce daily summer peak this year through rescheduling of production times (on a one-time basis), than it is to motivate that same customer to replace inefficient old equipment with more costly but more efficient new equipment. On the other hand, the latter is truly persistent, and creates long-term benefits for the province.
- 2.2.9** In this regard, we are agreeing with the premise (although not necessarily the conclusion) in the second and third paragraphs of the GEC submissions. We believe that the Minister's stated goal is long-term benefits, consistent with the common sense view expressed by GEC that those long-term benefits are a more appropriate goal and one that should be appropriately incented. We would go beyond that, and say that those long-term benefits should be the focus of the incentives, which we will deal with in more detail in the section on the incentive mechanism later in these submissions.

2.3 OPA Responsibilities

- 2.3.1 *Program Design and Delivery.*** It is clear that the main responsibility for developing new CDM programs is being given to the OPA, as the specialized agency already holding this mandate.
- 2.3.2** The Board is being given no direct role in the development of new programs. Instead, the Board is asked to review and approve programs proposed by LDCs that are different from, and not duplicative of, the OPA's programs. The Board's role here is consistent with its regulatory mandate, in which the Board generally looks at what its regulated entities have done or propose to do, rather than taking an active role in developing programs itself.
- 2.3.3** It is as part of this review and approval mandate that the Board includes in the CDM Code guidelines for its regulated utilities who want to develop their own programs. Those guidelines must obviously reflect the parameters set out in the Minister's Directive, but beyond that should reflect the views of the Board as to how individual LDCs can most effectively develop and implement their own programs in a cost-effective manner.
- 2.3.4 *Technical Requirements and Specifications.*** In the area of technical expertise, it would appear to us that the Minister has simply assigned this area to the OPA outright. For example, the Board is directed to apply the OPA's Measures and Assumptions. Since the OPA is charged with the responsibility to create and update that information, it would be duplicative for the Board to seek to do something similar. Thus, the only area in which the Board is appropriately involved in the technical side is where the OPA has not occupied with the field, or there is otherwise a gap in the OPA's work in an area.

2.4 OEB Responsibilities

- 2.4.1 *Framework Development.*** Essentially everything else is assigned to the Board, starting with the development of the overall framework within which the LDCs carry out their CDM operations and seek to achieve their CDM targets. This is initially the CDM Code, but can also be expected to include the ongoing decisions and policy discussions by the Board as issues arise in the future.
- 2.4.2** In our view, the most important aspect of this part of the mandate is its general nature. The Minister did not give the Board a list of tasks to accomplish. The Minister said “Develop a comprehensive code”, and in our view that is the first and primary responsibility given to the Board. In practical terms, it means that the Board, in drafting the CDM Code, does not say “What does the Minister tell us to include?”, but rather “What guidelines and rules are needed in this Code for the LDCs to be both enabled and incented to achieve their targets?”. As we will note later in these submissions, this means expanding the Code in some areas to ensure that it is complete and fully canvasses all issues that the LDCs need to know about.
- 2.4.3 *Oversight and Supervision of LDCs.*** Once the framework is in place, the Board is then asked to be the agency that oversees and supervises the LDCs in the pursuit of their CDM targets. This includes review and approval processes, reporting and record-keeping oversight, and a specific direction to “take steps to encourage distributors to improve CDM Program performance”.
- 2.4.4** This flows logically from the current role of the Board as the economic regulator of the LDCs. The LDCs are used to seeking their approvals from the Board, and reporting to the Board, and respecting the Board’s views and decisions. The Board is developing a good knowledge of the individual LDCs, their strengths and weaknesses, and the range of discretions and restrictions that work best with this industry sector. The Minister has said, in essence “The LDCs are already your responsibility, and here is another area in which you should take on the same role”.
- 2.4.5** The practical implications of this are the application by the Board of all the existing principles for regulating the LDCs: fairness, both individually and within the sector; viability, reasonableness and achievability in establishing and enforcing rules; promoting collaboration both between LDCs and with others; control of imprudent actions and spending; guidance where LDCs are venturing in the wrong direction; and so on.
- 2.4.6** Of particular importance, in our view, is the “encouragement” responsibility in para. 10 of the Minister’s Directive. The Minister recognizes with that direction that not all LDCs will have the same ability to meet this new challenge, and expressly relies on the Board to keep a close watch, and to ensure that those whose performance is not as good as it should be are assisted in getting there.
- 2.4.7 *Money Issues.*** The Minister’s Directive does not talk about budgets or money, but in our

view that is not a signal that those aspects are excluded from this subject area. Rather, it would appear to us that in its silence on budgeting and spending, the Minister's Directive is in essence leaving it to the regulator to do what is necessary to ensure that the LDCs have the resources to achieve their targets (either from the OPA or from Board-approved budgets), and that they spend the money wisely. This is part of the Board's normal mandate, and unless it is assigned to someone else expressly, it remains a Board responsibility.

- 2.4.8** We are sensitive to the fact that the costs of meeting the CDM Targets are not expected to be included in regulated distribution rates, but rather in the Global Adjustment Mechanism. In our view, this is not the determinative factor. Hundreds of millions of ratepayer dollars will be spent. In our view, unless the Minister assigned oversight responsibility for those dollars to someone else, which he did not, by default budget oversight is the mandate of the economic regulator of the LDCs that are proposing the spend the money. The alternative would be that no-one has oversight control, which clearly cannot be what the government, through the Minister, intended.
- 2.4.9** In our submission, this area is a key deficiency in the proposed CDM Code. There are no rules or guidelines for budgeting, and no guidance on how much should be spent to achieve the CDM Targets.
- 2.4.10** We recognize that the Board has sought input from stakeholders on the best way to incent efficiency in achieving the CDM Targets, and we will have some proposals later in these submissions in response to that request. However, long before we get to incentives ratepayers will be bearing substantial costs as utilities spend to achieve their targets.
- 2.4.11** We note that most LDCs have really only had one experience with spending substantial amounts on CDM, and that is the third tranche funding. Results were sometimes uplifting, and sometimes disheartening, but at least in that case the LDCs knew what was expected of them, and could operate within those expectations. Without some guidance now from the Board, those same LDCs would be expected to figure out for themselves how much is appropriate to be spent, and how. The Board does not even ask this of the gas distributors, with 20+ years of experience in this field.
- 2.4.12** Therefore, we will suggest, later in these submissions, some additions to the CDM Code which, in our view, respond to that component of the implicit mandate given to the Board by the Minister to achieve the CDM Targets as efficiently as possible.
- 2.4.13** *Protection of Consumers and Public Interest.* Lastly, the Minister's Directive specifically charges the Board, in para. 8, to carry out the mandate within the context of the Board's existing statutory objectives, including protection of consumers with respect to prices. In our opinion, the point here is that there is a public interest to be achieved, and the Minister has determined that the agency with experience in achieving government goals in energy while at the same time protecting consumers should be given that same responsibility in this new context.

- 2.4.14** In raising this, we are not intending to invoke “motherhood and apple pie”. This is a much more practical point. The Minister is not saying “Find a way to achieve these targets, and don’t worry too much about how much it costs”. The Minister is specifically charging the Board with that difficult balance – maximizing the benefit while minimizing the cost. In a number of places in these submissions, we will comment on areas in which additions would be useful to strengthen how the CDM Code handles this part of the mandate.
- 2.4.15** In this regard, a key question is that of “cost-effectiveness” tests. The Minister’s Directive requires the Board to look to the OPA Measures and Assumptions for cost-effectiveness testing, but in fact the term has two meanings. As used by the Minister in the Directive, it means cost-effectiveness of acquiring conservation as opposed to generation. “Are we better with a negawatt or a megawatt?”, as the old phrase proposed. The measurement of this type of cost-effectiveness is dealt with using the OPA’s assumptions.
- 2.4.16** But from a prudence point of view, the cost-effectiveness of a program must also be measured by whether the same result could have been achieved with expenditures of less funds. The Board has referred to that as “cost efficiency”, and in our view it is very important that this concept, and the TRC-type approach used in the resource acquisition analysis, be defined carefully and the distinction made clear. In the Minister’s Directive, only the former is considered, but the Board quite rightly raises the latter in the proposed CDM Code, in order to fulfill its consumer protection mandate.

3 CDM STRATEGIES AND PLANNING

3.1 General

3.1.1 The Board has proposed a planning approach involving, as a first step, the filing by November 1, 2010 of a “strategy” to achieve an LDC’s targets. The intention appears to be to get the LDC engaged early, but limit the requirements for the initial document to something at a very high level. With the pressure off, utilities have the green light to think creatively, and start to engage their public interest motivations without at the same time engaging their risk-aversion tendencies. If we want LDCs to drive conservation, this kind of low-stress first step is an excellent approach, and we strongly support the Board’s view on this.

3.1.2 Of course, a very high level strategy at some point has to be converted to an action plan, and things have to actually get done. The trick in this process is to ensure that the strategy is not the whole process, and that honing that into something actionable is also part of the process.

3.1.3 We note that this is not just about process. It is also about the message that the Board sends to LDCs. If the message is sent that serious planning is not required for conservation, and that a loosey-goosey ad hoc approach to programs is OK in this area, then that’s what some LDCs will implement. In our view, it is very important for the Board to send the message that LDCs will be every bit as responsible for their CDM spending as anything else in their operations, and that the Board’s “gentle” approach at the front end of this ambitious set of targets does not mean that prudence and the discipline of a well-run utility are jettisoned.

3.1.4 Therefore, we believe that the Board should include, in the CDM Code, not just the initial steps in proper CDM program planning, but also enough of the subsequent steps that each LDC gets the message that the filing of the strategy must be followed by normal planning and implementation, just as with all of their other activities.

3.2 Contents of the Strategy Document

3.2.1 We have reviewed section 2.1 of the proposed CDM Code, as well as the template at Appendix B, and they appear to include the main information that would be useful for a strategy document. We do have four comments.

3.2.2 First, we believe it would be useful if the strategy contains an analysis of the unique aspects of the distributor’s service area that present either barriers to or opportunities for success in achieving their targets. This is a normal part of strategic planning, and by requiring a section in the strategy document dealing with this, the Board not only obtains information that is useful in evaluating the strategy, but also encourages a disciplined approach to selection and/or creation of programs suitable to the service territory.

- 3.2.3** Second, we are concerned that some of the details set out in sections 5 and 6 of the template may be beyond what can reasonably be achieved by November 1st. As long as this is kept to a relatively high level, we think it is probably doable, but if distributors start to get bogged down in too many details at the front end, this process will quickly become a chore and the distributors may lose their enthusiasm for the pursuit of the mandated goals.
- 3.2.4** Third, we agree with LPMA that section 2.1.1 (d) of the proposed CDM Code and section 8 of the template should both include the possibility of partnerships with trade and other non-governmental organizations, as well as for-profit and non-profit companies. We know that organizations like BOMA, CME, HRAI, and ECAO have all had an active role in the delivery of conservation programs, and distributors should be encouraged to seek such organizations out, for both their market reach and their expertise.
- 3.2.5** Fourth, we note the comments of GEC with respect to lost opportunities. This is an important issue, but we do not agree with GEC that it should be part of the incentive structure. We have proposed a revised incentive structure that will probably move somewhat in this direction naturally, but we believe that the best way at this early stage to ensure lost opportunities are a focus is to have this subject included in the strategy document. Each distributor should be seeking to identify their top lost opportunities and programs to address them. When the Board reviews the strategy, this should be one thing the Board is looking for. We anticipate that the OPA's programs will include a number that are specific to lost opportunities, so distributors will have some to choose from if they are not in a position to develop their own.

3.3 Review and Approval Process

- 3.3.1** The proposed CDM Code does not contain a review and/or approval process for a distributor's CDM strategy. We believe this is a significant shortcoming in the Code, and should be addressed fully at the outset.
- 3.3.2** The government has given the Board a substantial and wide-ranging mandate to cause the LDCs to achieve important energy and demand reductions. Getting the distributors to think through their strategy, then file it publicly, is an important first step, but without more it is an empty one. The necessary next step is for the regulator to review that strategy, and provide feedback and/or approval. It is only by being interactive in this way that the Board can help the distributors reach the targets set out in the Minister's Directive.
- 3.3.3** In addition, from the point of view of the LDCs the filing of a strategy without any feedback on it puts them at risk. It is in their interest to hear from the Board as early as possible whether they are pointed in the right direction, and whether their targets are achievable given the approach they propose. The worst thing for a distributor is to hear from the Board in 2013 or 2014 that they were just doing it all wrong from the beginning, and it is too late to comply with their licence condition. For the same reason that most

distributors prefer forward test year cost of service proceedings, the review and approval of their CDM strategy will reduce their risk in implementation. The fact that they will also have input to improve that strategy, whether from stakeholders intervening, or from the Board, will also be of value to them.

- 3.3.4** In our submission, the simplest approach is to require those who are filing for cost of service in 2011 to include their CDM Strategy in their filing, either at the outset or, more likely, as an update in the fall. This is the optimum situation, because the strategy is then being reviewed in the context of all of the utility's operations, making it much easier to see how it will fit in and be implemented effectively. As well, since there are spending implications (even though included in GAM, not Dx rates), and related allocation issues, the cost of service context makes that analysis simpler and more thorough.
- 3.3.5** What to do with the other 50-60 utilities is more problematic. It is not realistic to wait until they come up for cost of service to look at their strategy, since for some of them the review process would be too late to be useful. It appears to us that the only way to deal with this is to require those who do not have a cost of service proceeding this year to file an application for approval of their CDM strategy on or before May 31, 2011.
- 3.3.6** We recognize that this is not the best result, but it appears to be the least bad choice given the need to look at the strategies as early as possible, and the other pressures in the Board's heavy regulatory schedule. Filings in the spring, when most of the cost of service proceedings are complete, may allow for review and approval by the fall, so that all LDCs have Board feedback within the first of the four year target period.
- 3.3.7** With very few exceptions, we think these applications can be carried out with a fairly simple process, including interrogatories, technical conference, and written submissions, with an ADR only when the parties jointly ask for one. We also think that a standardized set of basic Staff interrogatories may simplify that process as well.
- 3.3.8** Some smaller utilities may band together to have a common plan, or very similar separate plans, and we believe that the Board should encourage those applications to be filed together for regulatory efficiency.
- 3.3.9** With these efficiencies, we believe that the strategy review and approval process need not be onerous, but the Board can still add significant value and improve the chances of distributors meeting their targets.

3.4 Renewal and Updating

- 3.4.1** The proposed CDM Code requires each distributor, in their annual report, to include any changes to their strategy that they are proposing. We believe that this is an important part of the ongoing process, as it is essential that the distributors maintain flexibility. We have seen with the gas distributors that, even within a year, their program mix and overall approach can change, in response to the market, to program delivery issues, and

otherwise.

3.5 Public Dissemination

- 3.5.1** The proposed CDM Code requires the distributor to post their CDM strategy on their website. We agree with LPMA that the Board should establish a section of the OEB website for posting of the CDM strategies, annual reports, and related documents for all LDCs. Not only does this make the process more transparent and accessible, but we would expect that utilities will be the biggest user of this aggregation of plans, looking for ideas from their peers and seeking opportunities for collaboration.

4 BOARD-APPROVED PROGRAMS

4.1 General Comments

- 4.1.1** We have limited comments on the sections of the proposed CDM Code dealing with Board-Approved CDM Programs. While we think this will become important in the future, it is likely that most utilities will rely largely on OPA programs in the first year. As a few start to propose their own programs, the Board will gain experience with filing requirements for those applications, and we would expect that this section of the Code will be expanded.
- 4.1.2** At a general level, we do note that section 3.1.3 does appear to be more onerous than necessary given the Minister's Directive. Depending on the program, requiring it to end as of December 31, 2014 may not be the best program design approach, so may undermine its effectiveness.
- 4.1.3** The Minister's Directive requires, in section 6(e), that the Board not approve funding for a Board-Approved CDM Program beyond December 31, 2014. This is not the same as requiring the program to end. In our view, the better approach is to provide that funding for all Board-Approved CDM Programs ends on the earlier of the date stipulated in a Board order, or December 31, 2014, but that programs contemplating continuation beyond that date are still acceptable. In order to continue, a further funding approval will be required in the future, but that is no different from many other activities of utilities that, while ongoing, are only funded for a given period (e.g. a COS test period or an IRM period). It is reasonable to expect that, if the work of the distributors in this first four year period is successful, the government will want to make the process more permanent, and programs started in this period will be continued into the future. The last thing we want to face at that point is starting afresh on January 1, 2015.

4.2 Types of Resource Acquisition Programs

- 4.2.1** We have two specific comments on resource acquisition program types.
- 4.2.2** First, we note that section 2.3.3 appears to be very wide-ranging and strict, and we wonder whether it should not be loosened a bit. As currently drafted, the following examples of legitimate local programs would appear to be disqualified:
- (a) A low-income version of a program offered generally by OPA, but with an income qualification added and a higher incentive or different method of delivery.
 - (b) A program to test market acceptance of an ultra high efficiency version of a product, when the OPA already has a program for a high efficiency version of that product.

(c) A specialized program for a targeted customer group, such as schools, where the OPA already has a general program for the same technology for a broader market such as all general service customers.

(d) A local modification of an OPA program to overcome a local barrier to the technology through a different delivery approach or increased resources targeted to the market.

4.2.3 These and other similar examples are not, in our view, duplicative of the OPA's work, but are instead creative, goal-oriented responses by local distributors to their own marketplace. This should be encouraged, not prohibited.

4.2.4 We therefore propose that the list of items in section 2.3.3. be designated as factors for the Board to consider in determining whether a program is duplicative, but that the overall test is whether the OPA has already established a program that has the same goal or substantially the same attributes as the distributor's proposed program.

4.2.5 Second, we again note the importance of lost opportunities, a subject on which we agree with GEC. We believe it would be useful if section 3.1.4 included an express requirement that the application for a Board-Approved CDM Program must consider whether there are lost opportunity aspects of the program, or there should be. For example, if a program is to replace inefficient industrial air conditioners, the distributor should consider how it can most effectively identify end of life air conditioners, and promote the program to those customers. Requiring the distributor to focus on this issue is the best way, in our view, to ensure that these opportunities are not lost.

4.3 Approval Process

4.3.1 We find that sections 2.3 and 3.1 - 3.3 of the proposed CDM Code are not clear on the process to obtain approval of a Board-Approved CDM Program. We believe it would be useful to have some guidance. For example, should these be in a separate application, or included in a rate application, or is it in the utility's discretion? Are these to be done with or without a hearing, or as the Board determines at the time? Are normal notice periods to be enforced? What is the nature of the budget approval being given? Etc. In short, we believe that more details are required to ensure that distributors know what to do, and what to expect, when they develop their own programs.

4.3.2 We have a specific comment with respect to section 3.2. In our view, the 30% test may be ambiguous, and should be clarified. What we believe the section says is that, if a distributor wants to spend 30% less on any individual program, and instead spend that money on another approved program, it must get Board approval. However, the section also refers to "cumulative fund transfers", which does not obviously relate to a reduction in a single program and re-allocation to another single program.

4.3.3 The appropriate rule, we think, should be that if a series of fund transfers, in a year or over a series of years, result in any program having less than 70% of its original budget available to it, the entire set of transfers has to be justified in the manner described in section 3.2.1. As currently worded, we do not believe it is clear this is what is intended.

4.4 Pilot and Educational Programs

4.4.1 We have two specific comments on section 4 of the proposed CDM Code.

4.4.2 With respect to both pilot programs and educational programs, section 4.1.4 requires the utility to demonstrate that savings of KW or kwh are “likely” as a result of the program. In our view, this is too restrictive. While the Board should, of course, monitor these types of programs to make sure they are not “pie-in-the-sky” activities, it is also important to allow distributors to be creative and take some risks. The point of pilot programs, for example, is innovation, and that means accepting risk in order to achieve possible benefits.

4.4.3 Therefore, we believe that the requirement to show “likely” results should be removed. There are already sufficient requirements in sections 4.2 and 4.3 to ensure that only serious programs will be accepted, and the Board will in any case exercise its judgment when it sees the actual programs being proposed.

4.4.4 With respect to educational programs, we believe that section 4.3.1 is too tough a restriction at this time. It is appropriate to ask the distributor to justify an educational program by way of the benefits they hope to achieve, but proof of behavioural changes is much stricter than that. If a distributor wishes to sponsor a science competition at local schools with a conservation technologies theme, there is little doubt that is a worthwhile activity, and will produce long-term benefits through education. It is not practical, however, nor necessary to require that distributor to prove that those 10 year olds will one day reduce their consumption because of their Grade 5 science fair. If a distributor wants to have a speaker sent out to local service clubs like Kiwanis and Lions to talk about commercial conservation opportunities sponsored by governments or manufacturers, it is not necessary to require additional resources be employed to track the resulting conservation behaviour of the participants.

4.4.5 Therefore, we believe that the requirements in section 4.3.2 (c) already cover this goal, and are more reasonable given the current state of knowledge of the distributors.

5 BUDGETS AND COST CONTROL

5.1 What Is the Board's Responsibility?

- 5.1.1** The proposed CDM Code does not contain information on overall CDM budgets, whether appropriate levels, approaches to developing those budgets, approval processes, etc. We believe that the responsibility of the Board in this area includes overall control of the spending levels of the distributors on CDM, whether that spending is through OPA or Board programs.
- 5.1.2** Our conclusion is reached first by a review of the Minister's Directive. As we have indicated in a previous section, the Minister has charged the Board with the overall mandate to cause the distributors to deliver these results, and at the same time to do so within its statutory objectives, including "protecting the interests of consumers with respect to prices". The only way the Board can do that is if the Board puts its mind to the overall cost/benefit analysis, i.e. how much is going to be spent to achieve these goals, and how can that spending be minimized so that prices are controlled.
- 5.1.3** Our conclusion is also reached from a more pragmatic basis, asking what makes sense for the sector. The answer, it appears to us, is that the Board should be giving the distributors guidance as to appropriate spending levels, and how to achieve their CDM Targets while keeping the cost to do so as reasonable as possible. This guidance will assist the distributors by providing them with parameters, and by lowering their risk.
- 5.1.4** With that conclusion, we propose that the Board engage in a two-stage process. First, assess what a reasonable overall level of spending is for the four-year period in question, in light of the OPA's resources and plans, the CDM Targets that need to be achieved, the amounts spent by other utilities on conservation activities, and the capacity of the distributors to add resources in a given period. Second, develop a process for reviewing the individual budgets of distributors to ensure that they are reasonable in light of the particular circumstances and CDM Targets of those individual distributors.

5.2 Budget Levels

- 5.2.1** There appear to be five ways that the Board can use existing information to assess reasonable spending levels on CDM in the upcoming four years.
- 5.2.2** First, the CDM Target of 6,000 Gwh. over that period translates, assuming a mix of peak and off-peak savings, etc., into \$300-\$400 million of reduced generation costs at the margin. If this short-term goal is achieved, then as long as the total of program costs, administrative costs, incentives, and regulatory costs associated with achieving the CDM Targets is less than that, there is no net cost to ratepayers for any of this. The programs pay for themselves over the same period in which they are carried out.

- 5.2.3** Second, the CDM Target of 1330 MW of persistent peak demand reduction translates into reduced capital costs for generation of at least \$3 billion, and probably significantly more. Assuming a twenty year average annual life of each peak reduction measure, this can at worst be seen as a deferral of generation for that period, the net present value of which is easily in the billions of dollars. The size of the potential benefit thus justifies a substantial budget to achieve it.
- 5.2.4** Third, the gas distributors have been doing this a long time, and currently their budgets are about three times their maximum available incentive. This may be a reasonable level for LDCs as well, which would imply a four year budget of about \$215 million.
- 5.2.5** Fourth, we know that over the three years of the third tranche spending, the total approved CDM spending was about \$163 million, and a net of about \$150 million was actually spent. It is reasonable to assume that distributors are able to handle a somewhat higher level of spending on CDM today, so that \$50+ million per year may be appropriately increased to \$60 to \$80 million. That would imply a four year budget of \$240 - \$320 million.
- 5.2.6** Fifth, it is possible to obtain from the OPA their plans for CDM spending over the four years, and their expectations of the ratios of dollars spent by distributors to achieved Kwh and KW. This would inform the Board as to what may be required, and would allow the Board to test the price impacts if those levels of spending ultimately are reached.
- 5.2.7** We believe that a target cost to achieve the CDM Targets of \$200 - \$300 million, plus incentives, is likely the appropriate range, but our point is to urge the Board to do a more thorough review of these sources of information, and come up with overall guidance for the distributors on the global number that looks reasonable right now.
- 5.2.8** In the course of doing so, we also believe that the Board should look at the implications of that budget level for individual utilities. For example, suppose the reasonable number is \$300 million. Oakville, to take one example, has proposed targets of 1.25% of the Gwh and 1.56% of the MW. If we assume that 20% of the spending will be to pursue the Gwh targets (see our comments under the Incentives section of these submissions), and 80% will be to pursue the more valuable MW targets, this implies an overall budget of \$60 million for energy savings and \$240 million for peak demand savings. For Oakville, that translates to \$4.494 million over four years, or \$1.124 million per year in CDM program and administration spending. This would represent 5.16% of their 2010 Board-approved OM&A budget, and 3.39% of their 2010 Board-approved revenue requirement. (The Board can compare these to information gathered in other recent consultations that show average levels of DSM and CDM spending in other jurisdictions.)
- 5.2.9** We are not for a minute suggesting that this is how the CDM budget for an individual utility should be set. Rather, we are saying two things. First, by working back to what an overall budget would mean for each LDC, the Board can assess the reasonableness of the overall number. Second, the allocation of the overall budget such as we have done above

acts as a type of informal benchmark or rule of thumb when reviewing the bottom-up budget that a utility is proposing. In this example, if Oakville comes in with a \$1 million per year CDM strategy, the Board starts out knowing that it is in the right range. This does not mean it is OK, but it does mean that more time can be spent on the components of the plan, rather than on its overall prudence. Conversely, if Oakville says that they need to spend \$2 million per year to achieve their targets, the Board will rightly want them to justify such a high level of spending.

5.2.10 We therefore urge the Board to establish an overall expected cost to achieve the CDM Targets, and a reasonable breakdown between utilities in the manner we have proposed. This will provide guidance and a starting point when distributors are preparing their strategies and resulting budgets.

5.3 Approval Process

5.3.1 We have commented earlier that it is not clear to us what review and approval process is contemplated for the CDM strategy of each distributor, and the same applies, with perhaps more force, to the review and approval of the budget.

5.3.2 There are really two issues here. At one level, the Board's direct responsibility is to approve the budgets for Board-Approved CDM Programs. The budgets for OPA programs are established and administered by OPA, and so prima facie are not the Board's responsibility. On the other hand, the Board has the higher level mandate of oversight and consumer protection in the context of the entire process of achieving the CDM Targets. Therefore, the Board must be concerned not just with what is being spent on Board-Approved CDM Programs, but also on the overall CDM budgets for individual LDCs.

5.3.3 In our submission, the Board should require each distributor to file their budgets for all programs – OPA and Board – that they plan to implement to achieve their CDM Targets. The Board should then review those budgets, and either approve their level, or caution the utility that recovery of all amounts in the budget may be at risk if costs are too high. If a budget is made up entirely of OPA programs, the Board does not have any lever to disallow costs, but we think that over the four years most budgets will include both Board and OPA programs. In all of those cases, the Board will have the responsibility and the ability to enforce reasonableness in the levels of spending of the distributor to achieve their targets.

5.3.4 As we have noted earlier, this is primarily in the interests of the utilities. Their risk is reduced if they are given an opportunity to show the Board what they plan to do and how much they plan to spend, so that the Board can assess reasonableness. Without this opportunity, distributors will be flying blind, hoping that the Board does not challenge their spending levels after the fact.

5.3.5 As to process, we suggest that incorporating the budget approval into the initial strategy

review, either in COS or a separate application, is the most efficient approach. Similarly, where changes take place in the strategy, approval of budget changes can also be part of that review and approval process.

5.4 Affiliates

- 5.4.1** LPMA has raised the interesting if collateral issue of the many distributors whose CDM activities are carried out through affiliates. Although this issue is in large part ARC-related, we share LPMA's concerns, and believe that the primary tool the Board should use to ameliorate this concern is transparency in reporting and review processes.

6 INCENTIVE MECHANISM

6.1 The Minister's Directive

- 6.1.1** This is one area in which the Minister's Directive is particularly prescriptive. The incentive must be tiered and performance-based, and it cannot incent performance below 80% of target, nor performance above 150% of target.
- 6.1.2** We note that the Minister has not prescribed certain key components of the incentive mechanism, including:
- (a) the overall amount,
 - (b) the split of incentives between energy and peak demand target achievements, and
 - (c) the formula for incentives within each tier.

These are the primary areas in which we have comments.

6.2 Structure of Incentive

- 6.2.1** As noted above, the basic structure of the incentive is prescribed. The proposed CDM Code, in section 7 and Appendix D, are consistent with the prescribed structure, and subject to our comments below the proposed incentive mechanism appears sound.
- 6.2.2** *Tax and ROE Implications.* GEC has raised the question of whether the incentive is before or after tax, and whether it impacts ROE. GEC seeks clarification, and we agree that would be useful.
- 6.2.3** In our view, whether incentives are taxable is a matter for the tax authorities to determine. The only action the Board could take would be to gross up the incentives, so that the net after tax is equal to the planned amount. This is not what is done in gas, nor is it consistent with how the previous electricity SSM was treated. Therefore, unless there is some particular reason to review those standards, they should be continued. That is, any incentive is revenue to the distributor, and if it is taxable, the recipient of that income, the shareholder, pays the tax on it.
- 6.2.4** With respect to ROE, it has generally been accepted that CDM incentive payments do not affect a distributor's allowed ROE from their distribution business. This may already be implied in section 5.4 of the proposed CDM Code, but if it is not perhaps it can be clarified. Similarly, in circumstances in which a distributor has some form of earnings sharing, for example during IRM, typically CDM incentives should not be part of that calculation. Otherwise, the effect would be to share the incentive with the ratepayers,

which is contrary to its purpose, to incent the utility's owner.

- 6.2.5 *Measurement of Energy Savings.*** The Gwh target is expressly stated to be within the four year period 2011 – 2014. We believe that any energy savings outside of that four year period cannot be considered in measuring achievement of the energy savings target, and any attempt to look at savings after 2014 is not allowed under the Minister's Directive. The mandated target is clear.
- 6.2.6 *Measurement of Peak Demand Reductions.*** The same is not true of peak demand reductions, which must be "persistent" in order to count at all. As we have noted earlier in these submissions, we believe that the Minister intends those reductions to be long-term benefits, and persistence to mean well into the future beyond 2014.
- 6.2.7** This creates a measurement issue, since clearly a peak demand reduction that will persist for the period 2014 to 2018 is of much less value than one from 2012 to 2040. To take a snapshot at December 31, 2014 and treat those two results as being equal cannot, in our view, be what the Minister intended, and it would not be good policy.
- 6.2.8** Our proposal is that the Board establish a median persistence level of 20 years for peak demand reductions. We have selected that as being in the mid range of the service lives of generation assets. Once that level is established, a peak MW that will persist for 20 years counts as 1 MW. If the expected persistence of the measure is greater or less than the 20 years, the peak MW for target purposes would be adjusted accordingly. For example, a 10 year persistent 1 MW measure would count as 0.5 MW, while a 30 year persistent 1 MW measure would count as 1.5 MW. The result is that, when 20 years times 1330 MW is achieved (i.e. 26,600 MW-years), the Minister's mandated target is achieved.
- 6.2.9** The effect of this should be that distributors focus, not just on short-term demand reductions, but on reductions that will persist for as long as possible. This is consistent with the government's aims and good conservation planning, and we believe that measuring utility success in this way will motivate distributors to achieve results that maximize the public benefit.
- 6.2.10 *Lost Opportunities.*** GEC has raised a concern about lost opportunities, and the potential for cream-skimming by utilities if short-term benefits are rewarded. We agree, but rather than try to carve out a special lost opportunities rule, the approach to persistence we have suggested should naturally motivate utilities to seek out those opportunities.
- 6.2.11 *Attribution.*** The Board, in section 7.1.2, appears to be reasserting the "centrality" principle for attribution. We have expressed our concerns about this concept, most recently in our submissions on causation in EB-2008-0346 (Gas DSM Framework Consultation), but also many other times in the past. As the field for the provision of conservation services becomes increasingly crowded, this centrality principle becomes increasingly anachronistic, and we strongly urge the Board to reject it in this CDM Code.

6.3 Design of Thresholds

- 6.3.1 *Joint vs. Several Meeting of Thresholds.*** The proposed CDM Code starts with the premise that a utility must meet both the energy threshold and the peak demand threshold before qualifying for the incentive at that level. In our view, this is ineffective, and unfair to some utilities for whom one or the other target will be a significantly greater challenge.
- 6.3.2** There are two reasons why we believe that the thresholds should be several rather than joint.
- 6.3.3** First, as we have noted in our comments on the CDM Targets in EB-2010-0216, for some utilities, and in particular winter peaking utilities, achieving reductions in provincial (i.e. summer) peak demand will be harder than achieving energy savings. While we understand that peak demand savings are far more valuable than short term energy savings, in our view it is not fair to those utilities to deny them incentives for their successes because they could not also succeed as much on the task that, for them, is more difficult.
- 6.3.4** What the current proposed incentive says is that a North Bay, for example, may get 140% of their energy savings target, but struggle to achieve 100% of their peak demand target, and be penalized on the energy savings incentive because of that peak demand struggle. If the CDM Targets were being set based on local conditions rather than on a formula, it might be possible to do this in a fair way. As it is, this is not fair. The same result is true, for example, in a high growth utility, where it is much easier to get peak demand savings (more new electrical equipment being installed annually), but energy savings may be more of a challenge.
- 6.3.5** Second, having joint thresholds sends the wrong message and will likely result in lower overall success. Consider the North Bay example above. If they know that getting to 100% of their peak demand target is the best they can hope for, why would they spend incremental ratepayer dollars to chase energy savings above 100% of their target?
- 6.3.6** In fact, it appears to us that the Board should want utilities to do as well as possible on each of their targets, rather than trying to keep them in lock step. By incenting utilities to do what they can the best they can, the Board will maximize the overall energy and peak demand savings in pursuit of the province-wide objectives established by the Minister.
- 6.3.7 *Allocation of Incentive Pool.*** The Board's proposed incentive assumes that equal amounts of incentive funds should be allocated to energy savings and peak demand savings. We do not agree. Part of looking at meeting the thresholds separately is determining how much of the pool should be used to incent each type of savings.
- 6.3.8** We conclude that a larger percentage should be used to incent peak demand savings rather than energy savings.

6.3.9 The reason for this is that peak demand reductions have a significantly higher long term value than the energy savings, which are confined to the four year period. While immediate savings are good, no doubt, in simple dollar terms the multi-billion dollar benefit in reduced generation capital costs from achieving the peak demand target far outweighs the \$300 to \$400 million savings in marginal generation costs over the next four years by meeting the energy target.

6.3.10 In the section “SEC’s Alternative Proposal” below, we seek to achieve this result by allocating more of the pool to MW vs. GWh at the outset, but also having the efficiency incentive component of the mechanism apply only to increase the MW incentive.

6.4 Amount of Basic Incentive

6.4.1 The amount of \$72 million as the overall incentive if 150% of targets are achieved appears reasonable to us, as does the logic behind the number (the gas distributors analogy).

6.4.2 We also note that we have run the Board’s formula for individual utilities based on the targets proposed in EB-2010-0216, and the maximum potential incentive for each utility appears to be sufficient to get their attention (given the size of the utility), and modest enough to minimize ratepayer impacts. We believe that, once the Board’s CDM Targets are finalized, and the incentive mechanism is finalized, it would be informative to all for the Board to publish a table of maximum potential incentives, by distributor. A formula is one thing. Seeing the actual dollars available is another.

6.5 Efficiency Incentive

6.5.1 We agree with the Board that it would be valuable to provide an extra reward to those who achieve their targets at lower cost than their peers. In our alternative proposal, below, we seek to do that.

6.5.2 We believe that two principles should be employed in the efficiency incentive. First, the Board should keep it simple by providing the additional incentive to the more valuable of the two targets, the peak demand target. While we modeled a mechanism that would provide efficiency incentives for both efficient energy savings and efficient peak demand reductions, it quickly became complicated to understand and administer.

6.5.3 Second, we propose that the measurement be cost per persistent KW saved, and that the pool available for the efficiency incentive be allocated 2/3 to those in the first quartile of costs per persistent KW saved, and 1/3 to those in the second quartile. The result is that the per KW incentive for a KW saved at a first quartile cost level would be significantly higher than the standard incentive, and the per KW incentive for a KW saved at a second quartile cost level would be modestly higher than the standard incentive.

6.5.4 The details of our proposed efficiency incentive are set out in the next section.

6.6 SEC's Alternative Proposal

- 6.6.1** Attached is a live Excel model setting out, on the first page, the Board's proposed incentive structure, and the dollar implications at each threshold level. The second page then sets out an alternative approach proposed by SEC. The third through sixth pages apply the SEC proposal to four sample utilities, to test whether the incentive levels and structure make sense.
- 6.6.2** In preparing our alternative proposal, we have followed the thresholds and unit incentive approach that the Board has proposed. We see those as being simple, easy to understand, and easy to administer.
- 6.6.3** We have maintained the same level of base incentives for KW of peak demand as those proposed by the Board, with the same total of \$35.9 million available if 150% of the Board's targets are reached. However, for the kwh of energy saved, we have reduced the unit values of incentives such that the total incentive for this component is reduced from \$36 million, as proposed by the Board, to \$21 million.
- 6.6.4** This leaves a total of \$15.1 million remaining in the overall \$72 million pot, and we have proposed that this be used as an efficiency incentive, applied only to the peak demand savings, as outlined above. Two-thirds of that amount is available for those MW saved at first quartile cost levels, and one-third of that amount is available for those MW saved at second quartile cost levels. The math as it works out is that the per KW incentives are increased by just under 120% for 1st quartile cost performance, and just under 60% for 2nd quartile cost performance. This is a substantial reward for those LDCs that can achieve peak demand reductions at lower cost than their peers. As we show in the examples, utilities whose KW savings are all in the top quartile of cost efficiency can almost double their available incentive.
- 6.6.5** In our submission, the SEC Alternative Proposal remains consistent with the Minister's Directive, has a strong progressive structure in keeping with the Board's approach, and provides substantial and appropriate incentives for efficiency, all while maintaining a simple structure.
- 6.6.6** We also note that when this model is applied to sample utilities, the results are reasonable given the size of the utilities. Toronto, for example, would under this scenario get about \$12 million of incremental income from achieving 150% of their targets, but would also have the opportunity for a further \$12 million if their KW are all in the top quartile of cost levels relative to their peers. Similar, Powerstream would have a \$4 million base incentive at the top achievement level, and another \$4 million if they lead their peers in cost efficiency.

6.7 Adjustments to the Incentive Mechanism

- 6.7.1** Whatever incentive mechanism the Board ultimately institutes, in our view it should not be static. At the very least, we believe that the Board should do a mid-term evaluation of the incentive mechanism in the fall of 2012, to get feedback on whether it is achieving its objectives, and whether it is incenting appropriate, inappropriate, or any behaviour.

7 ACCOUNTING AND FULLY-ALLOCATED COSTING

7.1 Accounting Approach

7.1.1 As we have indicated elsewhere in these submissions, we believe it is essential that the Board have before it full budgets and actuals for all of each distributor's CDM activities, whether OPA or Board. It is only by seeing the whole picture that the Board can provide the proper supervision of the utilities as they seek to achieve the Board's CDM Targets.

7.2 Fully-Allocated Costing Rules

7.2.1 We believe that the inclusion of Appendix A to the proposed CDM Code is an excellent step, which will assist utilities and the Board in maintaining a consistent and fair approach to cost allocation as between distribution, CDM and non-utility activities.

7.2.2 We have one small concern. Section 2.7 of the Appendix appears to prescribe particular cost drivers for call centre costs and accounts payable processing costs. While these are good starting points as guidelines, we believe that the parties to any proceeding should be able to demonstrate that an alternative allocation is better in the particular circumstances of that utility.

7.3 Emissions Credits

7.3.1 Section 5.6 of the proposed CDM Code stipulates that the distributor cannot acquire or benefit from things such as emissions credits that arise in the context of Board-Approved CDM Programs. While in general we agree with that result, we are concerned that the provision is ambiguous, and may be interpreted by some utilities as meaning that no-one can have the benefit of the Environmental Attributes. It would be better, we believe, if the provision stated that the application for a Board-Approved CDM Program shall include a proposal for legal and/or beneficial ownership and allocation of the Environmental Attributes, provided that the distributor shall not propose that they have that ownership or allocation.

7.3.2 We also note that the provision as currently drafted does not prohibit allocation of the Environmental Attributes to affiliates. We believe that prohibition should be added.

8 OTHER SPECIFIC COMMENTS

8.1 Timing

8.1.1 We are concerned that the first Annual Report is not due until September 30, 2012, almost half-way through the four year period. We propose two changes to deal with that concern.

8.1.2 First, we believe that Annual Reports should be filed by June 30th of the following year for all distributors. This is the target date for the gas distributors, who have an Evaluation and Audit Committee process to go through as well in this time frame. The electricity distributors do not have this additional time constraint, and so should not have difficulty meeting a six month target date.

8.1.3 Second, we suggest that the Board add to the CDM Code a “material change” report, requiring each distributor to report within 30 days of the end of any quarter if their results – energy or peak demand savings, spending, program launch dates, etc. - are materially different from their filed and approved strategy. This would give the Board early warning if any distributors are having difficulties with their pursuit of the CDM Targets. In addition, if any distributor is finding significantly more success than expected, the reasons for that success should be made public and thus shared with other utilities as soon as possible.

8.2 Review and Approval Processes

8.2.1 The proposed CDM Code does not have any review and approval process related to the Annual Reports. Given the importance of achieving these objectives, we believe that publication of the reports on the Board’s website, plus an appropriate review process, would be a valuable addition to the Code. Our comments in section 3.3 of these submissions are applicable here as well, with the appropriate contextual changes.

8.3 Board Audit Function

8.3.1 We are concerned that the proposed CDM Code does not deal in any detail with the requirement by the Minister in para. 9 of the Minister’s Directive that the Board carry out audits on the results of the distributors. We believe that, in addition to the general provision in section 6.1.3, the Board should establish rules surrounding audits, either directly in the Code or by reference to the Board’s other audit procedures.

8.3.2 We have also been concerned for some time that the electricity distributors do not benefit from stakeholder involvement on CDM in the same way as the gas distributors do with their DSM consultatives and EACs. The problem, of course, is that it is not practical to have EACs for each of eighty distributors, and it would be prohibitively expensive even if it were possible. The costs would outweigh the benefits.

8.3.3 In an effort to achieve some of the benefits of the EAC concept, we propose that the Board include in the CDM Code a stakeholder advisory committee, which would provide input to the Board in carrying out its audit functions. As is currently the case with the EACs of the two main gas distributors, the advisory committee could meet with Board Staff on a periodic basis to bring concerns about generic audit issues, or individual utility issues, which the audit staff could then consider in assessing their audit responsibilities. While this would not capture the “working together” aspect of an EAC when it is working most effectively, it would still allow Board Staff a more diverse set of inputs and provide early warning of emerging issues in CDM.

9 OTHER MATTERS

9.1 Process and Participation

9.1.1 We thank the Board for allowing us to participate in this process. We hope these submissions are useful, and we would appreciate the opportunity to continue to be actively involved in all future consideration by the Board of issues relating to conservation and demand management.

9.2 Costs

9.2.1 The School Energy Coalition hereby requests that the Board order payment of our reasonably incurred costs in connection with our participation in this process. It is submitted that the School Energy Coalition has participated responsibly in all aspects of the process, in a manner designed to assist the Board as efficiently as possible.

All of which is respectfully submitted.

Jay Shepherd
Counsel for the School Energy Coalition