

January 26, 2012

**BY COURIER (2 COPIES) AND EMAIL**

**Ms. Kirsten Walli**

Board Secretary

Ontario Energy Board

P.O. Box 2319

2300 Yonge Street, Suite 2700

Toronto, Ontario M4P 1E4

Fax: (416) 440-7656

Email: boardsec@oeb.gov.on.ca

Dear Ms. Walli

**Re: Conservation and Demand Management (CDM) Guidelines for Electricity Distributors (EB-2012-0003)**

The following letter is in response to the Ontario Energy Board's request for Pollution Probe to provide comments on the *Conservation and Demand Management ("CDM") Guidelines for Electricity Distributors* released on January 5, 2012 (the "*Draft Guidelines*"). Pollution Probe is concerned that the additional restrictions and bureaucratic rules in the *Draft Guidelines* will limit the ability and motivation of our electric local distribution companies ("LDCs") to develop new, innovative, customer-focused energy conservation programs. More specifically, Pollution Probe submits that:

1. The definition of ineligible "duplicative" programs is overly broad, and should be narrowed;
2. Burdensome application requirements for LDCs should be reduced; and
3. Overall, the Board's approach to CDM, including the *Draft Guidelines*, should move towards a true performance/incentive-based regulatory framework.

***The Definition of "Duplicative" Programs is Overly Broad, and Should be Narrowed***

The Board will not approve an LDC's CDM program if it is duplicative of an Ontario Power Authority ("OPA") CDM program. The Board's *Conservation and Demand Management Code for Electricity Distributors* (the "*CDM Code*") provides a very expansive definition of "duplicative" programs. Unfortunately, the *Draft Guidelines* further broaden this already expansive definition. As a result, some potentially innovative and improved CDM programs will be deemed ineligible. Pollution Probe submits that the definition of "duplicative" programs should be narrowed, not further broadened, in the *Draft Guidelines*.

### Background Regarding “Duplicative” Programs

According to the Minister of Energy and Infrastructure’s March 31, 2010 Directive to the Ontario Energy Board, the electricity distributors’ CDM programs “shall not duplicate OPA-Contracted Province-Wide CDM Programs.”

Under section 2.3.3 of the Board’s *CDM Code*, 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-Contracted Province-Wide CDM Programs;
- (b) *different* qualification requirements to receive customer incentives or services already offered through the OPA-Contracted Province-Wide CDM Programs;
- (c) *different* technology specifications for technologies already incentivized or utilized through the OPA-Contracted Province-Wide CDM Programs;
- (d) *different* marketing approaches for promoting customer incentives or services already offered through the OPA-Contracted Province-Wide CDM Programs; and
- (e) *different* budgets for delivering customer incentives or services already offered through the OPA-Contracted Province-Wide CDM Programs.

The *Draft Guidelines* expand the Board’s definition of duplicative CDM programs to include:

- CDM programs that combine conventional elements of two or more existing OPA programs; and/or
- CDM programs that extend an OPA program to a different market segment or segments (e.g., extending a residential program to the commercial sector).

### The Overly Broad Definition is Inconsistent With the Plain Meaning of “Duplicative”

The definition of “duplicative” in the *CDM Code* and *Draft Guidelines* is inconsistent with the plain meaning of that word. 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 or be an exact copy of”.<sup>1</sup> However, under both the *CDM Code* and the *Draft Guidelines*, a program is considered to be duplicative even if it differs in very key ways from an OPA program. This is inconsistent with the plain meaning of that term.

---

<sup>1</sup> *Oxford Dictionary of English*, 2<sup>nd</sup> ed., s.v. “duplicate”.

### *The Overly Broad Definition Unduly Limits Creativity and Innovation*

The Board's definition of "duplication" in the *CDM Code* and *Draft Guidelines* limits creativity and innovation and is not conducive to a productive and mutually beneficial partnership of equals between the OPA and Ontario's LDCs. Once the OPA has created a CDM program, the LDCs are restricted to following the OPA's design. For example, LDCs cannot improve on an OPA program with enhanced marketing approaches or by extending a program to another market segment. This is not in the public interest since it restricts innovation and entrepreneurship by Ontario's LDCs; additional innovation on the part of LDCs would lead to better, more customer-focussed and lower cost CDM programs over time.

Our understanding of the rationale for defining "duplicative" so broadly is to avoid market-place confusion and ensure the prudent use of ratepayer funds by avoiding duplication of resources, namely those of the OPA. However, greater freedom and innovation in the design of CDM programs – rather than increased bureaucratic rules – will ultimately result in the best use of ratepayer funds.

Pollution Probe does not believe that allowing the LDCs to modify and enhance the OPA's CDM programs will lead to undue market-place confusion and higher costs. On the contrary, Pollution Probe believes that it will lead to more comprehensive and customer-focussed CDM programs which will lead to lower energy bills. As economist Joseph Schumpeter noted, the price of dramatic economic growth and product improvement over time is a certain degree of market confusion ("creative destruction") at any given point in time.

Of course, the exact replication of OPA programs is not beneficial; that true form of a "duplicative" program should not be eligible. However, the Board's definition goes too far in the other direction, disallowing programs that potentially improve on the OPA's offerings.

The avoidance of micro-management by the Board and the creation of an equal partnership between the OPA and the LDCs will lead to better energy services and lower bills for Ontario's consumers. This truth has been reconfirmed by the excellent performance of California's large electric and gas utilities (Pacific Gas & Electric, Southern California Edison, Southern California Gas, and San Diego Gas & Electric) and by Enbridge and Union Gas in Ontario.

As a first step towards greater freedom and innovation, the *Draft Guidelines* should narrow the definition of "duplicative" programs so that LDCs will be free to create innovative and improved CDM programs.

### ***Burdensome Application Requirements For LDCs Should be Reduced***

The *Draft Guidelines* create a number of application requirements that could add time and undue effort to the process. Pollution Probe submits that these requirements are unnecessary and should be reduced or eliminated.

In particular, under the *Draft Guidelines*, LDCs must "provide clear, cogent, and convincing evidence" that their CDM programs are not duplicative of OPA programs. Distributors must "engage in a detailed and thorough discussion with the OPA prior to filing a Board-approved

CDM program application” and are also expected to include an assessment from the OPA as to whether the proposed program is duplicative. Moreover, the application should include:

- A description of the OPA-Contracted Province-Wide CDM program or programs that most nearly provide similar activities; and
- A detailed, analytical comparison of the proposed program with the OPA-Contracted Province-Wide CDM program or programs so as to demonstrate the extent to which it is non-duplicative. The following should be used as a minimum in the comparison:
  - Program objective
  - Targeted customer segment (e.g., residential, commercial, industrial etc.)
  - Technology/measures used or implemented
  - Marketing strategy
  - Incentives provided

These requirements are overly burdensome. First, this level of detailed information will raise the distributors’ costs in designing CDM programs. Second, the requirement to conduct “thorough” discussions with the OPA, and to provide an OPA assessment of the proposed program, will cause significant delay.

These requirements do not benefit the ratepayer as they focus too heavily on whether a program is “duplicative,” rather than focusing on whether the program will be cost-effective or whether it is superior to other options. These application requirements should be reduced, and the focus more clearly placed on efficiency and the best interests of the ratepayer.

***Overall, The Guidelines Should Move Towards A Performance/Incentive-Based Regulatory Framework***

Overall, the *Draft Guidelines* reflect an approach to CDM programs that stifles innovation and relies too heavily on the OPA. If the OPA does not always produce the best, most ambitious, most efficient programs, the electricity ratepayers will suffer because LDCs are not permitted to improve on those programs. Generally speaking, the Board’s approach to CDM in the *Draft Guidelines* and elsewhere should be moving towards a true performance and incentive based regulatory framework.

***The Board’s Approach to CDM is Inconsistent With its Supply-Side Regulatory Policies***

The Board’s regulatory approach with respect to the gas and electric utilities’ energy efficiency programs is inconsistent with its regulatory policy for their supply-side activities.

With respect to the utilities’ transmission and distribution businesses, the Board has wisely adopted a performance-based incentive approach. That is, the Board establishes performance

targets for the utilities to achieve and provides them with financial incentives to meet and exceed their targets. The Board does not micro-manage the utilities' supply-side activities.

However, with respect to energy efficiency programs, the Board subjects LDCs to restrictive bureaucratic rules, which discourages innovation and entrepreneurship.

*The Board Should Follow California's Lead in CDM Regulation*

The Board should follow the lead of the California Public Utilities Commission ("CPUC") and implement a performance-based incentive regulatory framework for electric CDM programs. The benefits of such an approach are described by CPUC as follows:

"Over the years, successive CPUC decisions have created a policy framework to motivate investor-owned utilities to develop and continuously expand energy efficiency programs on behalf of their customers. This policy framework is composed of a number of elements including: the State's adopted *loading order* which establishes energy efficiency as the first-priority resource for utility procurement; *aggressive goals* set based upon up-to-date potential studies to ensure utilities are striving for the maximum achievable efficiency resource; *decoupling* of sales from revenues for electric and gas utilities, along-side *performance-based incentive mechanisms* to resolve a fundamental bias against efficiency investment by energy utilities; a robust funding stream for such invested comprised of a *public goods charge* and *procurement funding*; and CPUC-managed *evaluation, measurement and verification* work to ensure claimed savings are real and attributable to program effort. Due in a large part to this combination of policy elements, California leads the nation in energy efficiency."<sup>2</sup>

In short, Pollution Probe submits that the Board should rescind the bureaucratic rules that stifle innovation and entrepreneurship, and should instead move towards a performance-based, incentive regulatory framework for CDM which:

1. Requires Ontario's electric utilities to first meet their resource needs though all available energy efficiency and demand reduction resources that are cost-effective, reliable and feasible; and
2. Ensures that the cost-effective achievement of additional energy savings, on the customers' side of the meter, is always the most profitable course of action for our electric utilities.

It is time for the Board to repeal, not increase, the bureaucratic rules that are denying Ontario's energy consumers the cost savings that they deserve.

---

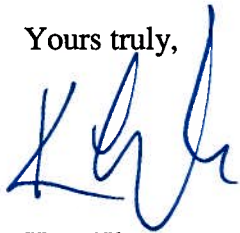
<sup>2</sup> California Public Utilities Commission, *California's Long-Term Energy Efficiency Strategic Plan: Executive Summary*, [http://www.cpuc.ca.gov/NR/rdonlyres/70EC7B35-48DD-4FA3-9DD6-BC231BD458E9/0/EESP\\_ExecutiveSummary.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/70EC7B35-48DD-4FA3-9DD6-BC231BD458E9/0/EESP_ExecutiveSummary.pdf).

***Conclusion***

In conclusion, Pollution Probe submits that the *Draft Guidelines* should be amended such that (1) the definition of “duplicative” programs is narrowed, not broadened, and (2) the burdensome application requirements for LDCs are reduced. These would be two small steps towards a performance/incentive based regulatory approach for CDM that minimizes restrictive bureaucratic rules and maximizes innovation.

We trust that Pollution Probe’s comments on the *Draft Guidelines* are of assistance to the Board. Please do not hesitate to contact me if you wish to discuss this matter further.

Yours truly,

A handwritten signature in blue ink, appearing to read 'K. Elson', written in a cursive style.

Kent Elson