



**EB-2010-0331**  
**EB-2010-0332**

**IN THE MATTER OF** the *Ontario Energy Board Act 1998*,  
S.O. 1998, c.15, (Schedule B);

**AND IN THE MATTER OF** an Application by Hydro One  
Brampton Networks Inc. for an Order or Orders granting  
approval of initiatives and amounts related to the  
Conservation and Demand Management Code;

**AND IN THE MATTER OF** an Application by Hydro One  
Networks Inc. for an Order or Orders granting approval of  
initiatives and amounts related to the Conservation and  
Demand Management Code.

#### **PROCEDURAL ORDER NO. 4**

Hydro One Brampton Networks Inc. ("Hydro One Brampton", collectively "the Applicant") and Hydro One Networks Inc. ("Hydro One", collectively "the Applicant") have each filed an application with the Ontario Energy Board (the "Board"), dated November 1, 2010 seeking an order granting approval of funding for six individual conservation and demand management ("CDM") programs. The Board assigned file number EB-2010-0331 to the Hydro One Brampton application and file number EB-2010-0332 to the Hydro One application.

The applications have been filed pursuant to the Board's CDM Code that was issued on September 16, 2010. The CDM Code was developed by the Board in response to a Directive from the Minister of Energy dated March 31, 2010.

In its application Hydro One is seeking recovery of approximately \$32 million in costs associated with its slate of programs. Hydro One Brampton is seeking approximately \$8 million.

In its Notice of Application and Hearing, issued November 19, 2010, the Board combined the hearings on these applications. By Procedural Order No. 1, the Board ordered that an oral hearing for the applications would commence on February 3, 2011.

On February 1, 2011, the Board issued Procedural Order No. 2 revising the schedule for the hearing. This was done in response to a letter received from the School Energy Coalition.

On March 2, 2011, the Board sent a letter to all parties in the proceeding informing them that at the outset of the oral hearing scheduled for March 4, 2011, the Board was interested in hearing submissions from parties regarding four preliminary matters. Two of these preliminary matters had been raised by the Consumers Council of Canada (“CCC”) in a letter dated March 1, 2011. The issues raised by CCC were: 1) the extent to which the applications are governed by the “just and reasonable” standard established in s. 78(2) of the Ontario Energy Board Act, 1998; and, 2) the extent to which the Board can consider in this application the costs of OPA-Contracted Province-Wide CDM Programs that are being acquired by Hydro One, and whether any “rates” resulting from these programs are just and reasonable. The Board also informed parties that in addition to the two issues raised by CCC, it wanted to hear submissions from parties on two other issues: 1) whether the OPA-Contracted Province-Wide CDM programs are “established” as contemplated in section 7 of the Minister’s Directive dated March 31, 2010; and, 2) what implications, if any, should the lack of a complete evaluation plan being filed by the applicants have on the hearing process and the Board’s consideration of the request for approval of the programs.

On March 4, 2011, the Board heard submissions from parties on the four issues noted above. On March 7, 2011, the Board reconvened and provided its Decision on the issues set out above orally. The oral decision of the Board is attached hereto as Appendix A.

With respect to the final question that was heard as part of the preliminary issues, the Board finds that it is useful to reiterate its determinations, as they relate directly to the matters set out in this Procedural Order.

In its findings, the Board noted that section 3.1.4(a) of the Board's CDM Code requires an applicant for Board-Approved CDM programs to file a program evaluation plan, based on the OPA's EM&V protocols. Although the Applicants have filed a draft evaluation plan template for each program, they have not filed a complete evaluation plan.

Hydro One indicated in its evidence and at the technical conference that it was its intention to prepare a complete plan with the assistance of a third-party expert, after Board approval of any programs.

The Applicant indicated to the Panel in its submission on the preliminary matters on Friday, March 4, that in the course of selecting a third-party expert, the Applicant expected to obtain a wide variety of submissions as to how to deploy these programs that would result in materially different methods and means of evaluating those programs.

The Applicant also stated that although it is only the method of deployment that may change, changes in deployment may affect some of the results in the uptake and success and speed with which some of the programs result in CDM effects.

Moreover, the Applicant revised its position with respect to the evaluation plans set out in its evidence and at the technical conference, arguing that it is no longer planning to complete its plans after Board approval; that its evaluation plans are in fact complete; and that the Board should hear evidence from the applicants' witnesses that the evaluation plans, as filed, satisfy the requirements of the Code.

The Board determined that it does not agree with this approach. The Board found that in the absence of a complete evaluation plan for each program, the application is incomplete and the proceedings should be adjourned until the evaluation plans are filed. The Board found that it has no latitude in this regard. The Code clearly states that an evaluation plan for each Board-Approved CDM Program must be filed with the application.

Upon delivering this determination, the Board sought to establish when a complete evaluation plan could be filed. The Applicant indicated that filing a complete evaluation plan is dependent on a competitive process to select an auditor or third-party EM&V

expert. This position is clearly inconsistent with the position stated by the Applicant on Friday, March 4. Moreover, the Applicant is now of the view, again in contrast to its stated position on Friday, March 4, that program participation and uptake is no longer dependent on the selection of a third party vendor. The Applicant now asserts that different third party vendors would provide different types of evaluation programs, depending on the different ways that they saw that the programs would be deployed.

The Applicant also now asserts that there are certain aspects of the deployment of the programs that cannot be determined until the vendor is chosen, and that it was not the Applicant's view that the vendors and the programs that they would come up with would determine how the programs would be implemented in the market. It was only certain of the aspects that would require determination after the vendor was chosen.

In view of the conflicting statements made by the Applicant, the Board believes that it is necessary to provide the following guidance with respect to the requirement to file a complete evaluation plan for each program.

The Board does not believe that it is necessary for the Applicant to engage in a competitive process and to contract with a third-party vendor prior to submitting its evaluation plans. The evaluation plan required by the Code is a straightforward document that provides guidance to a future auditor as to how the respective program should be assessed and evaluated. It should demonstrate, among other things, that the applicant has identified the potential risks of the program, and has identified the key data that needs to be collected in order to properly evaluate the program. It does not have to reflect a spectrum of possibilities respecting program deployment and implementation, or potential variations in program design.

To be sure, prior to the approval of any of the programs the Board will need to have a definitive idea as to specifically how the respective programs are to be implemented and deployed, their design, and their detailed characteristics and elements. This is part of the evidentiary burden facing the applicants in this process. No program could be approved by the Board which is not sufficiently well defined to allow the Board to make the determinations it must make pursuant to the Directive. Those determinations focus on the economic efficiency of the programs proposed, their cost effectiveness, and their unique or non-duplicative nature. This kind of evidence is not what the evaluation plan called for by the Code is designed to provide. It is the kind of evidence that the applicant must provide at the end of the day, if program approval is to be accomplished.

In its submissions respecting the four questions posed in the Board's letter of March 2, 2011, the applicant indicated that its witnesses had developed a good understanding of the changes being contemplated by the OPA in its revision of its EM&V protocols. While the Board is not requiring the applicant to adopt those revised standards now, it is the Board's view that the applicant should give careful consideration to doing so. It would be most appropriate to use the most current OPA EM&V Protocols when assessing the applied for programs, and indications are that the new protocols will be ready for dissemination in the near future.

The Board is of the view that it is necessary to provide the following guidance for the next steps of the proceeding.

**THE BOARD ORDERS THAT:**

1. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete TRC models of all cost effectiveness calculations, as requested by the School Energy Coalition, to all of the parties who have executed the Board's Declaration and Undertaking with respect to confidential filings on or before **Friday, March 18, 2011**. Parties who act as 3<sup>rd</sup> party CDM program delivery agents are not eligible to receive the TRC model under any circumstances.
2. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file a full concordance or mapping of all its proposed Board-Approved CDM Programs to the OPA-Contracted Province-Wide CDM Programs, discussing the similarities and differences of each program in an easy-to-read table, and deliver the same to all parties, on or before **Friday, March 18, 2011**.
3. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete evaluation plans for each program, based on the OPA's EM&V protocols and the information noted above, and deliver to all parties, on or before **Friday, March 18, 2011**.
4. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete budgetary and staffing level information for its CDM department, in accordance with the request made by the School Energy Coalition, and deliver to all parties, on or before **Friday, March 18, 2011**.

5. The Board wishes to advise parties that the **oral hearing could reconvene as soon as April 1st, 2011 and parties are advised to be prepared to proceed on this date.** The Board anticipates that up to four (4) hearing days are likely to be required to hear the applications in full. The Board will advise parties in due course as to the actual hearing dates and location in the Board's offices.

All filings to the Board must quote the file number, EB-2010-0331 / EB-2010-0332, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca), and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**DATED** at Toronto, March 8, 2011

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary