

02 March 2011

Ontario Energy Board  
Attn: Ms Kirsten Walli  
Board Secretary

By e-mail

Dear Ms Walli:

**Re: EB-2010-0332/0331 – HONI and HOBNI CDM –  
GEC Response to Submission of CCC dated March 1, 2011**

I write on behalf of the GEC in response to Mr. Warren's letter seeking an opportunity to clarify the Board's jurisdiction and scope of hearing in this matter. To expedite any discussion of these matters that the Board may entertain, GEC offers the following written submission:

In this instance, the Board's jurisdiction does not flow from its rate setting mandate under 78(2) or (3) as the Board is *not at this time* making an order setting rates. The Board will eventually exercise its authority in this and all other LDC rate cases to set rates that include OPA and IESO charges or variance accounts including payments to Distributors for CDM, but at this stage the Board is acting pursuant to its jurisdiction under sections 27.1 and 27.2 of the Act.

The jurisdiction of the Board in this case to require and approve CDM required by Directive flows from *both* sections 27.1 and 27.2 and that is clear from the O.I.C. which refers to both sections.

Section 27.1 is very broad – "to take steps specified in the Directive..." to promote energy conservation etc..

Section 27.2 (4) refers to the Board's ability to specify in licences that the LDC must seek approval of the Board for programs. The 27.2 directive "may" specify a hearing requirement – but in this instance it has not done so – thus the Board has discretion as to how it will consider and approve the proposals.

Eventually the Board will consider approval (under section 78(3)) of 'just and reasonable' charges such as those flowing from sections 25.33 of the Electricity Act empowering the IESO to charge or adjust for amounts determined *inter alia* under section 78.5 of the OEB Act. Section 78.5 of the OEB Act requires the IESO to make payments "with respect to amounts approved by the Board" for CDM pursuant to a section 27.2 directive.

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Accordingly, in our submission, at this time, the Board is exercising a jurisdiction under the OEB Act that is distinct from its distribution ratemaking authority and the criteria for decision making are not necessarily the same as would apply in rate setting. However, it is clear that the Board's objectives in section 1 apply to all its "responsibilities under this or any other Act in relation to electricity". Section 1.(1) 3 reads:

**Board objectives, electricity**

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:...

3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

The "policies of the Government" are embodied *inter alia* in the Directive and in the LTEP and should inform the Board's criteria for decision making in this instance.

With respect to scope, the notice of hearing limits this hearing to the Board approved programs and does not cover the province-wide programs. Accordingly, the OPA's province-wide programs are not being approved in this hearing but are, in effect, a necessary context to allow the Board to determine whether HONI has a plan to meet its licence obligation and is in compliance with the various constraints on duplication in the Directive and CDM Code.

However, apart from the concern to avoid duplication, and apart from the light that the OPA programs shed on the adequacy of the LDC programs to fulfill government policy, the OPA plans do not *limit* the Board's ability to approve the extent or budget for LDC programs (a proposal we suspect others might urge upon the Board). The Directive is explicit in para 6 (c):

"that the Board shall not preclude consideration of CDM Programs or funding for CDM Programs on the basis that a distributor's CDM Targets have been or are expected to be exceeded."

GEC may be arguing at the end of the day, that given our view of the inadequacies in the proposed programs and given the uncertainties about OPA's programs and the evolving context, a procedural condition should be imposed on any approval to allow the Board to revisit the adequacy of the LDC plan before four years' time. However, at this stage, certainty is not required about what the OPA programs will cost or accomplish to allow approval of the LDC programs because overshooting the directive target is explicitly allowed and indeed encouraged by the statute and Directive.

Sincerely,

A handwritten signature in black ink, appearing to read "David Poch", with a stylized flourish at the end.

David Poch  
Cc: all parties