

EB-2010-0279

BEFORE THE ONTARIO ENERGY BOARD**IN THE MATTER OF: ONTARIO POWER AUTHORITY
PROPOSED FISCAL 2011 EXPENDITURE AND REVENUE REQUIREMENT****GEC ARGUMENT****Contents**

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The Green Energy Coalition (GEC) represents over 125,000 Ontario residents who are members or supporters of its member organizations: the David Suzuki Foundation, Greenpeace Canada, Sierra Club of Canada and WWF-Canada.

1 Scope of this Proceeding and the Board's Powers

The scope of this hearing has been a recurring theme throughout the process. The Board has the difficult task of evaluating the efficiency, effectiveness and ensuring accountability for OPA's overheads but quite understandably does not wish to duplicate review of the substance of programs that will be assessed in the IPSP process. Layered on that practical consideration is the question of jurisdiction. GEC anticipates that both practical and jurisdictional considerations will be a major theme in OPA's reply argument as it has been in its argument in chief. Accordingly we offer submissions on five aspects of the matter.

1.1 Fees vs. Charges

Throughout this hearing counsel for OPA suggested that many of the concerns and suggestions raised by the parties were beyond the scope of the proceeding and beyond the Panel's authority to address. In its argument in chief OPA stresses the statutory distinction between charges and fees. GEC readily acknowledges that this process is a review of the administrative budget and not the procurement budget. That said, as the Board has already determined in its issues day decision, "an assessment of the OPA's administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities"¹.

¹ At Issues Decision p. 5: "The Board finds that its mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending. However, the Board is of the view that an assessment of the OPA's administrative fees must require an examination and evaluation of the

1.2 The OEB's Powers

In argument and in his cross-examination of Mr. Neme, Mr. Cass went so far as to suggest that the Board is powerless to do anything but accept or reject the proposed budget, implying that concerns about the adequacy or inadequacy of efforts and budgets intended to meet OPA's longer term obligations were therefore irrelevant. For example, despite Ms. McNally's acknowledgement that addressing the LTEP and the Supply Mix Directive call for CDM could not await the outcome of the IPSP², Mr. Cass in his cross-examination suggested that addressing a concern that OPA had simply failed to plan for such action was not simply impractical in this hearing but also that Mr. Neme's suggestions for the next annual revenue review were somehow inappropriate given the Board's limited authority. Given the Board's express statutory authority to reject an application and issue recommendations it would be truly bizarre if the Board could not offer forward looking comments to reduce the likelihood of a subsequent application failing. Indeed as reported at C-1-1 the Board in its EB-2009-0347 Decision *directed* OPA to provide better metrics in subsequent cases and OPA has at least attempted to heed that direction. Accordingly, the Board has previously found it has jurisdiction to offer such direction (whether legally binding or merely persuasive) and in the GEC's submission it is both appropriate and desirable for the Board to consider such forward looking suggestions in this proceeding.

That said we recognize that there is no bright line between ensuring that OPA is working to fulfill its various mandates in a timely, efficient and effective manner and a detailed consideration of the details of how it is fulfilling its mandates. We can all agree that testing OPA's IPSP plan for least cost performance is not for this hearing, but we might also agree that if OPA was failing to develop an IPSP plan in a timely fashion that would be of concern in considering the revenue requirement. GEC submits that the Board should review OPA's work plan at a high level to ensure that appropriate milestones and metrics are being utilized and that on its face it does not exhibit failings such as inappropriate timing, lack of adequate procedures to ensure cost optimization, or a failure to address mandatory directives.

management, implementation, and performance of the OPA's charge-funded activities. This is necessary because the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board approved fees that give the OPA the means to acquire and allocate the resources (e.g., staff) that are required to undertake its various responsibilities, resulting in charge funded activities. The Board finds that an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees."

² Vol. 2, p. 112

1.3 The LTEP, IPSP and Supply Mix Directive

In its argument in chief OPA suggests that the Board is precluded from commenting upon matters that are part of the IPSP Plan. Of course virtually everything that the OPA does is encompassed by the IPSP Plan and it would be absurd if the Board could not address the efficient and effective planning and administration of matters touched upon in the Plan. GEC in its evidence and this submission is not calling upon the Board to address the substance of the Plan (or its precursors, the LTEP and the Supply Mix Directive), we are suggesting that the Board needs to evaluate the administrative budget, management protocols, research sufficiency, accountability mechanisms and effectiveness of the OPA in the context of the tasks it is charged with accomplishing as set out in government policy, the Directives or the legislation (and in subsequent proceedings, flowing from any approved Plan). With respect to CDM, OPA's witness agreed that planning for and pursuit of conservation in excess of that included in the LDC CDM Directive could not await the IPSP. Planning work to accelerate conservation is also required by *O.Reg. 424/04* section 2.(1)2. So when Mr. Cass asked Mr. Neme if he thought OPA could act without specific directives, one must ask: was Mr. Cass suggesting that OPA must await an IPSP approval or specific Directive before it can plan such efforts? That OPA cannot conduct research and planning absent a specific directive? Clearly OPA is empowered by the regulation and Section 25.2 of the *Electricity Act* to do so and that is central to its mandate. Accordingly, it is absolutely clear that OPA will or should be pursuing that task in the 2011 and 2012 period.

Further, does the fact that the obligation to pursue, not just plan, added conservation arose in part in the Supply Mix Directive, after the filing of the Business Plan with the Minister, preclude review of this aspect of OPA's work and budget by the Board? Mr. Cass suggested in his cross of Mr. Neme that it does preclude such review. GEC submits that the Board and OPA cannot turn a blind eye to work that will be funded by the revenue requirement in the current period -- work that was foreseen in the Business Plan (see for eg. Ex. A-2-1, pp. 16, 18) -- simply because it is also related to Directives that issue after the filing of the business plan or because it involves goals that must be respected in the IPSP as well as pursued in the current period to respect government policy.

1.4 The 2008 Decision

OPA in its argument cites the Board's decision in the 2008 revenue case in which the Board declined to comment on matters GEC raised that pertained to the substance of the IPSP proceeding. At that time GEC had sought to encourage an increased emphasis on conservation. As a result, GEC did not intervene in the last two revenue review proceedings and only

intervened this year in response to the Board's proposed expanded issues list. GEC is cognizant of the earlier Decision and therefore interpreted the proposed expanded list as an indication that the Board feels its reviews to date may not have allowed sufficient consideration of the context to enable the Board to conduct an optimal review of the revenue requirement. GEC has not interpreted the expanded list to invite a review of the substance of the IPSP though the substance of the IPSP must be considered as part of the context. Accordingly, our recommendations are focussed on the adequacy of information in the EB-2010-0279 filing, the appropriateness of milestones and efficiency metrics (for the purposes of the Board's review as opposed to for the Minister's purposes – see below), the compliance (at a high level) by OPA with its statutory/directive and government policy mandates, the adequacy of OPA's management, research and work plan to efficiently and effectively fulfill its mandates, and the sufficiency of accountability mechanisms. GEC submits that these are all proper matters for consideration by this Panel and do not trench upon the correctness of the IPSP nor offend the 2008 Decision.

1.5 The Minister's Approval of the Business Plan

In argument and cross-examination OPA has cited the Minister's pre-approval of the business plan as somehow indicative of the limited scope herein. GEC respectfully suggests that the OPA position is both inconsistent with the legislative scheme and anathema to a meaningful process.

If the Minister's review of the business plan were determinative, then the Board's review would be irrelevant, a conclusion that could not have been intended by the legislature. If the OEB review is to be meaningful and not redundant, it must be at a differing level of granularity and/or scope than the Minister's and because it is a public review process the legislature must have intended it to be open to consideration of the differing viewpoints of the intervenors and function as a public accountability mechanism. Surely, at a minimum the Board must be able to express its view of what redirection, studies or reports it feels are appropriate to allow the Board to fulfil its review obligation now and in subsequent proceedings, and it must be able to give the OPA guidance on administrative expenditures and protocols to improve performance.

More specifically the 2011-2013 Business Plan is a general document which for the most part sets out activities, not outcomes – it is a forward looking business planning outline. We do not disagree with the OPA that the agency's tasks are those that it should undertake to properly fulfill its statutory, directive-mandated, and business plan identified roles. However, as we will discuss below, the Board, tasked with ensuring efficiency, effectiveness and accountability, should be looking for evidence that speaks to performance, to meaningful benchmarks, to more

detailed business management tools, to specific goals, to the adequacy of planning and to outcomes, not simply to proposed activities.

The Energy Futures Group report³ identified the paucity of information underlying OPA's request for a budget to plan and administer its CDM efforts and OPA's apparent failure thus far to conduct adequate planning to discharge its statutory and directive-mandated obligations. GEC acknowledges (as Mr. Neme did) that in the absence of an early settlement many of the identified shortcomings are difficult to address at this stage due to the timing of this hearing relative to the spending. How then, as a practical matter, should the Board address such gaps or failings? Mr. Neme noted that as a matter of principle he could not recommend that OPA 'get a free pass', but he acknowledged that his first suggestion of requiring a re-filing is difficult at this stage, half way through the year, and as a practical matter any improvement will likely need to come in the 2012 application and thereafter. Accordingly, much of our submission will focus on what direction the Board can give to the OPA as to what is expected in subsequent cases.

2 Strategic Objective 1 - Plan, Facilitate and Develop the System, and Strategic Objective 3 – Identify barriers, limitations, develop and/or define methods and solutions to deliver enhanced generation developments.

OPA is tasked by directive with the management and implementation of the FIT and Micro-FIT programs. The evidence indicates repeated delays in the application of the TAT, DAT and ECT tests associated with the FIT mechanism⁴. The ECT was supposed to occur every six months yet we still await the first ECT test. Similarly, problems have arisen in the Micro-FIT program due to a dispute over appropriate connection technical limits. Under cross-examination it became clear that OPA has taken a less than aggressive role in resolving these problems. OPA's witnesses acknowledged being well aware of the problem, but could not even say how widespread the problem is⁵. The only concrete step that OPA appears to have taken is to cut off applications where the LDCs haven't first approved connection – hardly a solution to the problem of blocked connections due to LDC recalcitrance. However, both Strategic Objectives 1 and 3 and the milestones thereunder speak to a roll for OPA in resolving problems and overcoming barriers. In GEC's submission the vague wording of the milestones has allowed OPA to take a back seat. GEC submits that in subsequent cases OPA should be required to

³ Ex. L-2-1

⁴ Vol.1 p. 132, see Board Staff argument for the history of delays

⁵ Vol. 1, p. 126 line 11 *et seq*

report on its success in resolving outstanding connection issues in the Micro-FIT context, should be required to report on the timeliness of its operation of the FIT tests, and should provide some quantified milestones for numbers of micro-FIT and FIT applicants and MWs connected.

3 Strategic Objective 2 – Plan, Procure and Support Development of Conservation

3.1 Activity-based versus Outcome-based Milestones

In GEC's submission a major failing in OPA's filing is its penchant for activity-based milestones rather than measureable outcome-based milestones. Vague milestones defeat accountability and do not encourage performance or organizational efficiency.

While some of the milestones, such as the release of an enhanced version of iCon, can be said to be measureable, in the sense that release or non-release can be determined, in the absence of any detail of what capabilities are to be incorporated in iCon it is unclear what needs to be accomplished for OPA to be judged successful on this task.

A more telling example is: "Provided effective support to facilitate LDCs delivering the OPA-Contracted Province-Wide CDM Programs and meeting peak demand reduction and energy savings targets." Given that the targets are four year targets, there is no adequate measure of success that the Board or OPA itself can look to a year from now.

The same is true of the milestone for transmission connected customers: "Deliver a suite of programs...".

In I-2-22 GEC asked for a listing of how each milestone will be definitively measured to allow a judgement to be made on the satisfaction of the milestone. In regard to the above example of the delivery of a suite of programs to transmission connected customers, OPA offered:

The third sub-component (lines 13-14) will be measured by whether transmission connected customers have the ability to participate in the Industrial Accelerator initiative and various demand response initiatives in 2011.

This benchmark is not atypical of the numerous milestones and sub-components listed where it is obvious that no quantification of outcomes or testing of adequacy is offered (eg. MWs, MWhs, participants, market penetration...). As a result it is simply not a meaningful measure of progress. The same failing occurs repeatedly throughout OPA's many milestones.

GEC submits that minimum achievement goals that reflect desired outcomes (i.e. MWs, MWHs, market penetration, participation...) should be explicit in the milestones and should be quantified where possible.

3.2 Efficiency Metrics

At Ex. C, Tab 1, Schedule 1 OPA notes that In the OPA's 2010 Revenue Requirement proceeding in EB-2009-0347, the OEB directed the OPA to "include more precise and informative documentation of its performance metrics for review through the fees case process. ...In future applications the Board directs the OPA to report on its achievement of its metrics, sorted by Strategic Objective."

Unfortunately, OPA's proposed metrics⁶ appear to be poorly crafted. For example, MW/FTE and GWh/FTE consider savings persisting from prior years against current staffing. The statistic as crafted obscures a view of the effectiveness of current efforts. Even with a complete failure to make headway in the current period OPA could report positive results.

Similarly, MW/\$ and GWh/\$ compare CDM savings including CDM savings persisting from *prior* years' efforts to spending in just the *current* year, precluding a clear understanding of the cost-efficiency of the *current* year's efforts.

Further, MW/\$ and GWh/\$ use total budget in the denominator, not CDM-specific budget which again obscures a view of cost-effectiveness in regard to these activities.

Similar failings are found in the generation statistics.

These failings are so pervasive it is difficult not to conclude that the metrics were engineered to avoid accountability. OPA should be directed to revise the metrics to include comparisons of current period achievements to the specific related current period budgets, in addition to metrics that report on cumulative, persisting achievements (relevant to the OPA's ultimate mandate).

Of particular concern is that the Conservation metrics for MW and GWh achieved are not clear as they do not account for persistence going forward. As Mr. Neme's report makes clear, of the 6000 GWh OPA claims it is achieving in the 2011-14 period through LDC delivery less than half (approximately 2600) will persist at the end of that timeframe⁷. Given the real world need to

⁶ Ex. C-1-1, p. 3

⁷ Ex. L-2-1, Confirmed by OPA at Vol. 12, p. 5

keep the lights on after the 2014 coal shut down and in the midst of major nuclear retirements or refurbishments, metrics that focuses on the efficient and timely delivery of *persisting* GWh are critical. In that regard the proposed metrics do not appear to account for the new persisting conservation LTEP targets. OPA should be directed to update these metrics to reflect the new mandate and to report on progress toward the updated metrics in the next revenue review.

3.3 Need for a CDM Plan that reflects the tasks at hand

3.3.1 OPA's Approach to its CDM Planning Mandate

As we will discuss below, OPA has been given a central role in the planning, coordination and procurement of conservation. Government policy and directives that OPA must address include:

- Making Ontario a North American leader in conservation
- Planning and coordinating or delivering CDM to meet the 2015 LTEP minimum CDM targets
- Planning and coordinating or delivering CDM to exceed the 2015 targets where cost-effective and feasible
- Coordinating the LDC 2011-14 CDM province-wide programs

In its argument in chief the OPA suggests that it is not this broader agenda that this hearing must consider. Rather, it argues that the Board must simply assess “whether the OPA’s proposed revenue and expenditure requirements and fees are appropriate for the fulfillment of the milestones —together with the other elements of the Business Plan — that have been approved by the Minister.”⁸ As discussed above, we differ in our view of the relationship between the business plan and the Board’s role. However, even if we were to accept OPA’s proposition that the business plan sets limits on this hearing process, those limits are not nearly as tight or narrow as the OPA appears to want them to be. For example, it is notable that the very wording of Strategic Objective 2 *in the Business Plan* references CDM resources identified in the IPSP integrated plan.⁹ Further, the Business Plan at page 16 refers to the government’s policy of positioning Ontario as a conservation leader in North America. In addition, the first milestone in the business plan is to “implement a portfolio... to make progress toward *long-term* peak-demand reduction and energy-savings conservation targets” (emphasis added).¹⁰ Thus, the very language of the Business Plan invites the Board to consider whether OPA has adequately planned – including budgeting, staffing organizational management structure and systems – to address several longer term objectives both efficiently and effectively.

⁸ OPA Argument in Chief, p. 5.

⁹ Ex. A-2-1, p. 15

¹⁰ Ex. A-2-1, p. 23

As the Energy Futures Group report and Mr. Neme's oral evidence elaborates, at present OPA has no plan to address the government policy of CDM leadership, an obviously sub-optimal plan to address the 2015 targets, and no plan for cost-effectively exceeding the minimum conservation goals in the LTEP including the 2015 targets. We might forgive these gaps at this stage if OPA had no prior knowledge of the requirements before the February 17th Directive but that is simply not the case. The Business Plan references the long-standing government policy of Ontario being a North American leader in conservation. In the first IPSP, OPA committed itself to pursue cost-effective and feasible CDM beyond the plan minimums. OPA has played an active role in advising the government on the development of the LTEP and the supply mix directive simply reflects that plan. Moreover, Ms. McNally acknowledged that the need to plan and deliver CDM to exceed the 2015 goals cannot await the IPSP results.

Similarly, as we discuss below, OPA has pursued its LDC coordination role with an apparent disregard for optimizing cost-effectiveness.

3.3.2 Failure to plan for CDM Leadership

Mr. Neme noted how OPA is targeting program-driven CDM at a rate of acquisition that is roughly half of what leading North American jurisdictions are proposing or accomplishing¹¹. Ms. McNally acknowledged that OPA's current plans disclose an approximate 0.7% per annum program driven conservation trajectory to 2015 versus the 2% or more seen elsewhere. She also acknowledged that being a North American leader in conservation is Ontario's policy¹².

GEC is concerned that OPA does not have a plan that addresses that goal at any level of detail, and that, in effect, OPA is flying blind. The Board should expect concrete management tools to be in place. At the very least, as Mr. Neme put it, the Board must be in a position to understand how high the mountain is that OPA must climb to understand if its administrative effort is appropriate for the task. Hence his recommendation that OPA demonstrate, *prima facie*, that it has a plan to address the government policy, LTEP and Supply Mix Directive mandate to pursue all cost effective and feasible CDM. As the Chair expressed it in allowing our request for information on the preliminary IPSP consultative documents, that information may be appropriate to allow consideration of "the extent or degree or acuity of the planning process"¹³. It would appear that the planning is inadequate in extent and, as we discuss below, in acuity.

3.3.3 Failure to plan to meet the minimum 2015 targets

OPA has referred the Board to its Planning and Consultation Overview Document which became public during the oral phase of these proceedings. That document provides little more than a

¹¹ Vol. 4, p. 116

¹² Vol. 3, p. 40

¹³ Vol. 3, p. 16, l. 11

histogram of the components of OPA's proposal to meet or exceed the 2015 targets. It is questionable to even describe it as a summary of a draft plan. Nevertheless, despite the slim information on offer, Mr. Neme, in his oral evidence in chief was able to identify that the proposal shows a distinct lack of meaningful planning for, and conformance with, the goals of complying with government policy and direction and the goal of administrative efficiency.

OPA's limited proposal for CDM acquisition ramps up sharply in 2015 proposing the same amount of program-driven energy conservation in that one year as is planned for LDC delivery throughout the entire 2011-14 period.¹⁴ Mr. Neme suggests that is likely disruptive, expensive and risky.¹⁵ It is apparent that OPA's near term CDM planning simply fails to conform to the 2015 target context. Given that much of the 2011-14 CDM effort is enshrined in the contractual arrangements with the LDCs, which arrangements are somewhat inflexible (see below), this inefficient plan is of significant concern.

3.3.4 Failure to plan to exceed the 2015 targets where cost-effective and feasible

OPA apparently has no definite intention to even produce a game plan to achieve the requirement to exceed minimum targets in time to inform the IPSP. Mr. Farmer stated:

"The IPSP will seek -- one of the issues will be: Will it seek to exceed or accelerate conservation?"¹⁶

In other words, in the IPSP process OPA will talk about *whether* it should press harder but it is not doing planning in time to inform the consultations which have now started, nor in time for the IPSP filing, and it is not beginning to implement such an accelerated CDM effort.

Ms. McNally confirmed that no study of potential is in the works that would allow a proper consideration of conservation in the IPSP beyond tweaking of work done 5 or 6 years ago, prior to the first IPSP:

MR. POCH: So do I take from that that there is no intention to produce a study about the cost-effective and feasible potential beyond what's in your programs now?

MS. McNALLY: So for this year, in this IPSP, in conservation, we've been focusing on program-level work, focusing on current data, market-based data. As Mr. Farmer mentioned in his evidence, in terms of just a higher-level picture, we've been relying on the existing achievable potential study, which has been modified, so I'll use the achievable potential, that higher-level study, which has been modified through program

¹⁴ Note that the disproportionate contribution of 2015 CDM to capacity (MW) is even larger than it is to energy (GWh), but this is largely due to the fact that DR programs are attributed to the last year due to short measure life.

¹⁵ Vol.13 p. 115, l. 7, & p. 116, l. 16

¹⁶ Vol. 1, p. 118, l. 23

experience. And I believe that Mr. Farmer noted that there's likely to be further work on this in 2012, on a higher-level achievable potential¹⁷.

Of course, work in 2012 will not inform the integrated plan that OPA hopes to file in August.

We repeatedly heard from Ms. McNally about a trilogy of initiatives which she suggested were intended to move OPA down the road to exceed minimum targets but those efforts may amount to little more than a reorganization of job titles. The reference in her trilogy to the OEB's incentive to LDCs to exceed assigned conservation targets (the only tangible effort in her trilogy to actually exceed targets) is particularly ironic given that it is the OEB's, not the OPA's, incentive and that OPA has put in place a cost reduction incentive that will more than reverse the Board's financial incentive to the LDCs (see below). Further, the LDC program administration budgets are fixed amounts with no mechanism to increase them should added marketing budget be needed to exceed targets (see below). If a mechanism for funding further marketing and administration is not offered soon, these fixed budgets, if not already a self-fulfilling prophesy, will become one. After a full year negotiating and designing programs and the master agreement we see that OPA has not yet adequately addressed mechanisms to encourage and manage to optimal levels of CDM.

OPA has acknowledged that conservation is the least expensive alternative. It is also clear that OPA's 2011 work plan, from what little we know of it, seems to place both the specific Directive to seek to *exceed* the CDM minimum goals and the acknowledged government policy to be a North American leader, on the back burner. GEC submits that this amounts to a fundamental failure to address the organization's mandate in a timely fashion. This lack of timely planning and implementation of management infrastructure risks disruption, administrative inefficiency and ultimately the cost-effectiveness of the plan. As Mr. Neme said of his son's homework – it's nice he finished in 15 minutes, but not particularly satisfactory if a major paper is due at week's end. OPA has such a paper due – it needs a study plan to get there.

The problem is not simply one of the timing for developing a rigorous plan to achieve all cost-effective and feasible conservation. There seems to be a more fundamental resistance within OPA to acknowledging the task they are charged with. For example, in response to Mr. Neme's observations about OPA's assumptions on codes and standards (which underlies OPA's assessment of what it must achieve by other means) Ms. McNally stated:

“Now, if the OPA were only to count incremental codes and standards or codes and standards passed only by Ontario, not by the federal government, it would require significant additional investment in conservation programs to make up the targets.”¹⁸

¹⁷ Vol. 3 p. 33

GEC cross-examined on this point and there was no disagreement that the implication was that OPA could pursue additional cost-effective CDM in that scenario¹⁹:

“If somehow those were taken away from us, we would still have targets directed at us. And it's my estimate, without doing detailed analysis here, that they would be more expensive.”

The fact that OPA's evidence was that discounting the credit OPA could take for codes and standards would lead them to pursue more expensive CDM is in effect an acknowledgement that OPA is not planning on pursuing that more expensive, but still cost-effective, conservation and thus that OPA has not internalized the implications of the mandatory directive to pursue cost-effective and feasible CDM beyond the minimum targets. In the exchange that followed Ms. McNally did ultimately agree that the mandate is to pursue all cost-effective and feasible conservation but it is apparent that they have neither planned to do so, nor, given Mr. Farmer's comments noted above, has OPA even concluded that it will plan to do so on a timely basis.

While we do not ask the Board to delve into program specific matters, the example of the peaksaver participation rates that arose in the hearing is illustrative of OPA's general approach. Mr. Neme pointed out that he was aware of jurisdictions achieving twice the participation rate that OPA has targeted.²⁰ Thus, in its agreement with the LDCs, OPA has in effect locked Ontario in for four years to a program goal that falls far short of what is required. Given Mr. Neme's more general evidence showing that other North American CDM leaders (that function in jurisdictions with aggressive codes and standards) are targeting program CDM at twice the rate that OPA is, correcting this and similar inadequate targets could have significant budgetary and organizational implications.

3.3.5 Failure to adequately coordinate 2011-14 LDC delivered province-wide CDM

The OPA is charged with designing and coordinating province-wide CDM programs that “target end-users that are common within consumer groups across the province”.²¹ During the hearing OPA witnesses indicated that in developing programs and negotiating arrangements with the LDCs they ‘left open opportunities’ for Board-Approved LDC programs.²² Since OPA is only concerned with programs that have the potential for province-wide delivery, we must assume that this means OPA left opportunities for programs that could be suitable for province-wide CDM delivery, on the table. Of course individual LDC efforts will not ensure that these

¹⁸ Vol. 2, p. 115

¹⁹ Vol. 12, p. 25. L. 25, & p. 26 l. 1

²⁰ Vol. 4, p. 129

²¹ Minister's Directive April 23, 2010, ex. A-5-2 page 3

²² Vol. 3, p. 139

opportunities will be addressed as evidenced by the fact that only 27 of 76 LDC CDM strategies include Board-Approved programs²³.

OPA could have limited the opportunity for LDC Tier 2 & 3 programs to situations where province-wide delivery is not necessary to capture all cost-effective opportunities and is not the most cost-effective method.

OPA's approach is problematic for two reasons. First, because OPA could not at that time have known the degree of cost-effectiveness of the Board-Approved programs it could not have ensured optimal cost-effectiveness of the portfolio or even of the delivery of any particular program capable of province-wide delivery. Second, given the economic benefits of achieving all cost-effective and feasible CDM, the government policy of CDM leadership, and given OPA's obligation in the supply mix directive to pursue all cost-effective and feasible CDM, OPA has compromised its ability to fulfill its mandate.

This example suggests that OPA has not internalized the need to optimize its CDM portfolio to both pursue all cost effective and feasible CDM and to do so in the most cost-effective manner.

Similarly, Mr. Neme's evidence of other jurisdictions achieving twice the CDM results and the particular example of peaksaver participation rates being half what others are achieving suggests that there is at least the possibility that much more could be accomplished per dollar of administrative expense. Of course, OPA does not appear to be able to tell the Board what could be accomplished at what societal and what administrative cost. In short OPA cannot demonstrate that it has plans and management procedures to both maximize cost-effective conservation and optimize its portfolio and delivery approach to achieve that result at least cost.

3.3.6 OPA must have a CDM plan and a work plan to achieve it

GEC submits that in its next application OPA should be required to demonstrate to the Board that it has appropriately researched the potential, and staffed and resourced itself to pursue the mandatory directive to exceed the targets where cost-effective and feasible and to honour the government policy of Ontario being a North American leader in conservation – in short, that OPA has internalized the value of *least cost planning*. It should also be required to demonstrate that its plan, on its face, offers a timely and efficient path to achieve these goals. To do so GEC submits that in subsequent reviews OPA should demonstrate that it has undertaken studies and implemented management procedures to both maximize cost-effective conservation and optimize its portfolio and delivery approach to achieve that result at least cost.

²³ Ex. J. 3.1

This hearing is not the place to evaluate the details of OPA's IPSP, or its particular CDM programs, but it is vital that the Board attain assurance that OPA:

- Is conducting research and planning in a timely fashion,
- is avoiding administrative inefficiency,
- is approaching the crafting of plans in a manner that will optimize cost-effectiveness, and,
- has a work plan that conforms to its mandate.

In regard to CDM attainment OPA has failed to offer assurance in regard to each one of these concerns.

3.4 Budget for Strategic Objective 2

As Mr. Neme noted in his oral evidence in chief, it was not possible for him to evaluate the appropriateness of the budget (and by implication the staffing level) for CDM in the absence of any information about the real task that OPA faces. OPA acknowledges that it must step up its effort to comply with the Supply Directive and Mr. Neme has demonstrated that OPA must enhance its efforts if it is to contribute toward making Ontario a North American CDM industry leader in accord with government policy. GEC submits that the implication of those observations is that if anything, OPA has likely under-budgeted for CDM planning and administration in the current period. It is not our suggestion that the Board force feed OPA budget to address this likely gap. It is our submission that OPA should be directed to evaluate the sufficiency of its plans and budgets for subsequent filings in light of these concerns.

There is one specific element of the budget that the Board may wish to seek clarification on for subsequent hearings. OPA's witnesses advised that the most senior staff have pay for performance compensation. Given our concerns about the inadequacy of the milestones and metrics, GEC is concerned that any such performance pay is likely to be a wasted incentive based on vague parameters that do not necessarily reflect real success. Going forward, the Board may wish to require disclosure of the particulars of the pay for performance regime and instruct OPA to ensure that such rewards are tied to measureable outcomes that reflect the core challenges that the agency faces and that such rewards are not tied to simple spending control absent any consideration of conservation and generation achievements (as is the case for the ill-designed LDC cost reduction incentive – see below).

3.5 OPA's Incentive for LDC Cost Reduction

A further example of OPA's disregard for meaningful cost-effectiveness is its cost reduction incentive to the LDCs (or 'cost-efficiency' incentive as OPA styles it). As evidenced by exhibit K 3.2 and confirmed by Mr. Neme who had been invited by Pollution Probe to check the calculation and assumptions, the cost reduction incentive more than offsets the OEB's CDM performance incentive in a range of situations. As discussed with OPA's witnesses, if an LDC finds itself at its CDM goal with only 80% of its PAB spent it would lose either \$5 million or \$7.5 million in incentives (depending on how the tier structure of the OPA incentive is interpreted²⁴) if it used that money to achieve 110% of its targets. Even where it had spent 95% of its PAB and could demonstrate exceedingly good delivery cost-effectiveness at the margin by achieving a further 10% CDM performance with the remaining 5% of its PAB budget, it would be *penalized* over a million dollars net.

OPA reports that the 2011-2014 LDC delivered CDM programs will produce \$1.4 billion in net economic benefits²⁵. The total PAB budget is \$269 million.²⁶ If 10% of the PAB can be saved at a cost of 10% more CDM, OPA will have roughly \$8 million of PAB returned (i.e. the remaining PAB less the 60 or 80% incentive) but Ontario will lose 140 million dollars in net CDM benefits due to OPA's poorly crafted 'efficiency' incentive.

OPA cites the clause requiring the LDC to use "Commercially Reasonable Efforts to achieve the Electricity Savings Target" as a safeguard against this effect. However, that clause ceases to operate once the target is achieved and would therefore have no effect in encouraging LDCs to exceed their targets.

Perhaps most disconcerting is the fact that OPA staff had not even done the math to ascertain the net effect of the competing incentives before finalizing the proposal²⁷. This demonstrates an utter disregard for the larger cost-effectiveness goal of optimal CDM. The result is a classic penny-wise and pound foolish mechanism.

The Board may wish to direct OPA to keep its eye on the big picture and not risk the sacrifice of hundreds of millions or billions of dollars in customer benefit to achieve minor reductions in delivery costs. In gas DSM regulation the utility incentives are based on TRC. This allows the utility to weigh how best to increase overall benefits by balancing delivery cost reductions with performance. Reliance on a PAC based incentive would have a similar effect. GEC submits that OPA should be instructed to redraft the incentive to base it on TRC or PAC. In any event the current incentive is extremely dangerous and should be eliminated immediately.

²⁴ OPA insists the tiers are not additive despite language in the schedule that speaks of "the sum of two tiers" and calculates the second tier by reference to the amount remaining between 80 and 95% of the PAB.

²⁵ Ex. A-2-1 p.17

²⁶ Ex. J 2.3

²⁷ Vol. 2, p 135, line 19

An interesting aside is OPA's interpretation of the tiered incentive as being non-additive despite contract language referring to the sum of two tiers²⁸. The difference in interpretation does not significantly impact our argument above. It does however indicate that there was some bad contract drafting leading to inconsistent language that will inevitably lead to disputes with the LDCs and further erode any possible efficiency incentive. This is a further reason to direct OPA to redesign the master agreement's 'efficiency' incentive.

Compounding the problem of the perverse incentive is the fact that the PAB budget is a fixed budget. If an LDC has an opportunity to exceed its target but would require added marketing or administration budget to do so, it will have to negotiate that with OPA in an as yet undefined change management or remediation process. Cross examination by VECC suggests that even that option is likely unavailable absent a new program.²⁹ This will discourage expanded LDC efforts. OPA should be encouraging CDM excellence, not erecting barriers to achievement. OPA should be encouraged to remedy this problem immediately so the signal to LDCs is clear that they should be pursuing all cost-effective and feasible conservation and that their efforts will not be arbitrarily capped.

3.6 CDM Accountability

In exhibit L-2-1 Mr. Neme has recommended that the Board require OPA to establish an Evaluation and Audit Committee similar to that found in gas DSM regulation and also that OPA be required to undergo an annual CDM audit. The Environmental Commissioner, in discussing OPA's CDM efforts, has similarly noted the value of the gas DSM EAC mechanism and confirmed that he sees no overlap or duplication between his role and the proposal contained in Mr. Neme's evidence³⁰.

As Mr. Neme has noted, OPA's unfettered and non-transparent control over the evaluation of its programs leaves much room for obscured accountability. As we have seen with OPA's proposed efficiency metrics, OPA seems to be less than excellent at ensuring transparency and accountability for itself. Even in the absence of such doubts, transparency and independent accountability are always healthy safeguards.

²⁸ Ex. K.1.2, p. 20

²⁹ Vol. 3, pp. 136-137

³⁰ K. 1.2 p. 25

No less important is the contribution to program effectiveness and cost-effectiveness that an EAC and audit process can provide. Mr. Neme gave evidence referencing the benefits he has witnessed first-hand from these mechanisms in the Ontario gas DSM context³¹.

OPA's response that it will have experts review its evaluation protocol is no answer. Evaluation protocols are general frameworks. Mr. Neme noted how it is the specifics of particular programs that make effective evaluation and program refinement a challenge and that in the gas DSM context stakeholders have often proposed refinements that the evaluators or auditor had missed.

GEC submits that the Board should direct OPA to convene an EAC with similar rules and responsibilities as have been developed for the gas distributors as a means to satisfy the Board that adequate accountability and verification has occurred. GEC also submits that OPA should be required to submit its CDM program to an annual audit in similar fashion.

4 Issue 7.2 – Export Fees

Exhibit I-8-5 recites the numerous benefits that exporters and export customers obtain from OPA's activities. In exhibit L1.1, at page 7 Elenchus states: "We agree that export customers also benefit from the planning, conservation and procurement activities undertaken by the OPA," but goes on to advocate a causation test. As is evident from the cross examination of the witnesses by OPA, such an allocation exercise would be complex, expensive and lead to numerous areas for dispute. The integrated nature of electricity system planning and operation makes any simple allocation inevitably arbitrary.

Given that there is no disagreement that OPA's planning and procurement activities benefit the export market, as a matter of fairness these entities should not be allowed to be free riders on those efforts. If the Board is persuaded that an allocation approach should be utilized, given that OPA's proposed fees represent a small portion of electricity costs for the export market, their implementation should not be delayed pending further study.

³¹ Vol. 4, pp. 122-123

5 Costs

GEC respectfully submits that it has intervened in a responsible manner in an effort to assist the Board. As the Chair has noted the balancing of the need to consider context with the narrow parameters of the Board's jurisdiction is a challenge. In that regard GEC has made best efforts to respect the Board's issues day Decision on scope and has offered extensive argument on the matter of scope which we hope will assist the Board in its balancing in this and future proceedings.

GEC respectfully requests that 100% of its reasonably incurred costs be awarded after assessment.

All of which is respectfully submitted this 27th day of May, 2011.

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

David Poch
Counsel to GEC