

EB-2011-0011

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 Toronto
Hydro-Electric System Limited for an Order or Orders
granting approval of initiatives and amounts related to the
Conservation and Demand Management Code.

BEFORE:

Marika Hare
Presiding Member
Karen Taylor
Member
Paul Sommerville
Member

DECISION AND ORDER

The Application

Toronto Hydro-Electric System Limited ("Toronto Hydro") filed an application with the Ontario Energy Board (the "Board"), dated January 10, 2011 seeking an order granting approval of funding for nine individual conservation and demand management ("CDM") programs.

The application was 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 and Infrastructure dated March 31, 2010.

The programs for which Toronto Hydro sought approval from the Board in its original application included:

- Business Outreach and Education;
- Commercial Energy Management and Load Control;
- Commercial, Institutional and Small Industrial Monitoring and Targeting;
- Community Outreach and Education Initiative;
- Flat Rate Water Heater Conversion & Demand Response;
- Greening Greater Toronto Commercial Building Energy Initiative;
- Hydronic System Balancing Program;
- In Store Engagement and Education Initiative; and
- Multi-Unit Residential Demand Response.

In total, the cost for the nine proposed Board-Approved CDM Programs put forth by Toronto Hydro was \$56.3 million.

On February 25, 2011, Toronto Hydro filed an addendum to its application for Board-Approved CDM Programs. Within its addendum, Toronto Hydro requested the Board to approve the recovery of 2010 program development and planning costs, with an associated total budget of \$158,199, and 2011 forecast program development and application support and regulatory costs, with an associated total budget of \$185,250. Toronto Hydro noted that the 2010 planning and program development costs consisted of labour costs strictly related to planning, evaluating, and preparing for the implementation of Board-Approved CDM Programs as contained in this application. Toronto Hydro noted in regards to the 2011 forecast program development and application support and regulatory costs that these costs include incremental labour costs in providing technical support throughout the application process, as well as incremental regulatory costs expected to be incurred in filing and defending the application.

On April 1, 2011, Toronto Hydro notified the Board and all parties that it had withdrawn its In-Store Engagement and Education Initiative and associated budget as a stand-alone program from its application. Toronto Hydro noted that the program was in fact consolidated with the Community Outreach and Education Initiative prior to finalization of its program portfolio, but that it had inadvertently remained as a separate program in the application materials filed with the Board on January 10, 2011.

The updated suite of programs Toronto Hydro sought approval for included the following programs:

- Business Outreach and Education;
- Commercial Energy Management and Load Control;
- Commercial, Institutional and Small Industrial Monitoring and Targeting;
- Community Outreach and Education Initiative;
- Flat Rate Water Heater Conversion & Demand Response;
- Greening Greater Toronto Commercial Building Energy Initiative;
- Hydronic System Balancing Program; and
- Multi-Unit Residential Demand Response.

With the In-Store Engagement and Education Initiative subsumed within the Community Outreach and Education Initiative, the revised portfolio included eight Board-Approved CDM Programs with a revised total budget of \$52.1 million.

On April 21, 2011, in response to interrogatories from Board staff, Toronto Hydro filed complete Evaluation, Measurement and Verification (“EM&V”) Plans for each one of its proposed Board-Approved CDM Programs. Toronto Hydro also noted that it had identified some errors in some of its pre-filed evidence and interrogatory responses and filed updates to correct those errors. Included in the update was a revised budget table for all eight proposed Board-Approved CDM Programs. Toronto Hydro’s updated budget for its eight Board-Approved CDM Programs was now \$50.7 million due to reduced incentives and other minor adjustments.

Intervention Requests

On January 24, 2011, the Board issued a Notice of Application and Hearing. In response to this notice, the Board received intervention requests from Horizon Utilities Inc. (“Horizon”), Hydro One Networks Inc. (“Hydro One”), the Ontario Power Authority (“OPA”), PowerStream Inc. (“PowerStream”), and Veridian Connections Inc. (“Veridian”). The Board approved the intervention requests from Horizon, Hydro One, OPA, PowerStream and Veridian.

The Board also received requests for intervention and cost eligibility from the following parties:

- Association of Major Power Consumers in Ontario (“AMPCO”)
- Consumers Council of Canada (“CCC”)

- Canadian Energy Efficiency Alliance (“CEEA”)
- Energy Probe Research Foundation (“Energy Probe”)
- Green Energy Coalition (“GEC”)
- Low-Income Energy Network (“LIEN”)
- Pollution Probe
- School Energy Coalition (“SEC”)
- Vulnerable Energy Consumers Coalition (“VECC”)

The Board determined that the following parties were approved as intervenors and were eligible for an award of costs in this proceeding: AMPCO, CCC, Energy Probe, GEC, LIEN, Pollution Probe, SEC, and VECC.

On February 5, 2011 the Board received a letter from Mr. Parker Gallant, a member of the public, requesting that the Board reject CEEA’s request for cost eligibility. Mr. Gallant cited the Board’s decision on cost eligibility in respect to EB-2010-0377, the Board’s review of distribution network investment planning, wherein the Board rejected CEEA’s request for cost eligibility based on the fact that the CEEA’s membership consists mainly of investor owned companies, utilities owned by local or provincial governments, and associations focused on energy efficiency. The Board granted CEEA approval as an intervenor but determined to withhold its decision on allowing CEEA cost eligibility until it had reviewed CEEA’s response to Mr. Gallant’s objection.

On February 18, 2011 the Board issued Procedural Order No. 1, in which it set out the dates for CEEA to reply to Mr. Gallant’s letter, for parties to file comments on the draft Issues List, for parties to file interrogatories and for the oral hearing.

Included in the Board’s Decision on Issues and Cost Eligibility, which was issued on March 11, 2011, was the Board’s finding regarding CEEA’s request for cost eligibility. In its response to Mr. Gallant’s letter, the CEEA noted that it is an organization separate and distinct from its membership and that it, and not its members, is the “party” seeking costs; and second, as the “party” CEEA is eligible under section 3.03 of the Board’s *Practice Direction on Cost Awards* because the CEEA primarily represents a public interest (energy efficiency) relevant to the Board’s mandate in this proceeding. The Board did not agree that the CEEA’s eligibility for cost awards should be determined without regard to its membership. The Board noted that to the extent that an entity’s membership is comprised largely of organizations that would themselves be ineligible

for cost awards, so too should the entity be considered ineligible absent special circumstances. The request for cost award eligibility was therefore denied.

Issues List

As noted above on March 11, 2011, the Board issued its Decision on Issues and Cost Eligibility. The Board received comments from GEC, Pollution Probe, SEC and Toronto Hydro. In its Decision the Board accepted or modified several of the proposed issues submitted by parties. The Board found, however, that the two new issues proposed by Pollution Probe were out of the scope of the Board's review in the proceeding and were therefore rejected.

On March 22, 2011, Pollution Probe filed a Motion for Review of parts of the Board's Decision on Issues. Pollution Probe requested that the Board hold an oral hearing for this motion. The two issues that Pollution Probe sought to have included in the issues list were: Are the proposed participation rates for Toronto Hydro's OPA-Contracted Province-Wide CDM Programs appropriate; and, Should Toronto Hydro be encouraged to propose additional Board-Approved CDM Programs?

On April 5, 2011 the Board convened an oral hearing on the Motion for Review filed by Pollution Probe. Board staff, Toronto Hydro, Pollution Probe, SEC and LIEN attended the oral hearing.

The Board provided its decision orally. In its decision, the Board noted that with respect to Pollution Probe's request that the Board adopt issues which would open an inquiry as to whether Toronto Hydro should undertake more Board-Approved CDM Programs than it has applied for, the Board concluded that this would be inappropriate. The Board also considered the proposed issue relating to Toronto Hydro's budgets for OPA Province-Wide Programs to be out of scope.

The Board concluded by noting that it considered the motion to represent a substantial repetition of the argument made by Pollution Probe when the issues list was first being considered. The Board found that Pollution Probe failed to meet the threshold required for consideration of the merits of the motion and the motion was dismissed.

Subsequent to the Pollution Probe Motion decision, both GEC and Pollution Probe withdrew and advised the Board that they would no longer actively participate in the proceeding.

OPA Input

On April 25, 2011, Toronto Hydro filed a letter it received from the OPA on April 21, 2011. In the letter, the OPA provided its opinion on the nine proposed Board-Approved CDM Programs that Toronto Hydro had filed with the Board in its original application. The OPA noted that it was of the opinion that the educational programs Toronto Hydro proposed are payable through the existing Program Administration Budget ("PAB") provided under the Province-Wide Programs. The OPA also noted that it was of the opinion that the remaining five programs proposed by Toronto Hydro were not duplicative of the Province-Wide Programs, based on the reasons and "...the conditions which have been agreed to by Toronto Hydro."

On April 26, 2011, Toronto Hydro filed copies of the OPA's Program Schedules for the OPA-Contracted Province-Wide Residential, Commercial & Institutional, and Industrial Programs that comprise the attachments to the Master CDM Program Agreement entered into between the OPA and Toronto Hydro. The OPA Program Schedules contain specific information associated with the OPA's proposed Province-Wide CDM Programs.

On April 27, 2011, Toronto Hydro filed its response to the letter it received from the OPA on April 21, 2011. Toronto Hydro noted that while it agreed that some education-related program costs are payable through the existing PAB provided under the OPA's Province-Wide Programs, its proposed education programs are all "incremental" to the Province-Wide CDM Programs and therefore should be approved by the Board. Toronto Hydro also included two charts to help illustrate the differences between its proposed programs and the OPA's programs.

On April 28, 2011, the Board commenced the oral hearing. At the outset, Toronto Hydro discussed the various filings that it had made over the week and days leading up to the oral hearing. The Board asked for submissions on preliminary matters, in particular, for parties to comment on the April 21, 2011 letter from the OPA. All parties were in agreement that the Board would be aided by the presence of the OPA at the oral hearing to provide clarification for the content of its letter. The Board agreed with

parties and noted that it considered it advisable to ensure that the proceeding has an appropriate evidentiary basis, that a witness or witness panel from the OPA attend with the purpose of testifying in respect of its letter of April 21, 2011. The Board concluded by noting that a very substantial amount of information had been filed within days of the start of the oral hearing. The Board advised Toronto Hydro that parties, staff and the panel had not had sufficient time to review this material in the detail required for cross-examination. For these two reasons, the hearing was adjourned until Monday, May 2, 2011.

On April 28, 2011, Toronto Hydro confirmed that a witness or witness panel from the OPA would attend before the Board to speak to and answer questions on the OPA's letter to Toronto Hydro dated April 21, 2011.

On May 4, 2011, the OPA filed its undertaking responses, including the Master CDM Program Agreement between the OPA and a particular distributor for delivery of OPA-Contracted Province-Wide CDM Programs.

Remaining Procedural Steps and Submissions

On May 9, 2011, Toronto Hydro filed its argument-in-chief.

On May 19, 2011, Toronto Hydro filed the Low Income Program Schedule in response to Undertaking J2.3.

On or before May 24, 2011, intervenors and Board staff filed their submissions. Within the submissions, outside of minor conditions or requests for small program expansions, parties generally supported the approval of the proposed programs by Toronto Hydro. However, Board staff, AMPCO and SEC did not agree that it would be appropriate for the Board to approve the proposed education programs, with CCC also in agreement with these parties with respect to the Community Outreach and Education Initiative. These parties submitted that it was apparent that the activities Toronto Hydro would be engaging in could be paid for through the OPA's PAB. Board staff, CCC and SEC also opposed the approval of the Flat Rate Water Heater program noting that it seemed clear that Toronto Hydro was already moving away from providing this service to its customers and that a CDM program, including incentives, was neither appropriate nor necessary.

With respect to Toronto Hydro's 2010 program development costs and 2011 forecasted program development and application support and regulatory costs, Board staff submitted that the requested 2010 amount of \$158,199 should not be approved. Board staff's view was that although these functions were helpful to Toronto Hydro in preparing and defending its Board-Approved CDM Program application, these functions were completed by existing Toronto Hydro staff and the costs associated with these individuals should have been recovered through distribution rates, given no clear evidence that the costs were incremental.

On June 1, 2011, Toronto Hydro filed its reply submission. Within its reply submission Toronto Hydro submitted that the OPA's letter of April 21, 2011 does not directly address and is not determinative of the issue of duplication in respect of the outreach and education programs. Toronto Hydro further argued that the OPA did not expressly venture an opinion on whether the outreach and educational programs are duplicative, instead asking the Board for guidance on this issue. Toronto Hydro noted that the Board's CDM Code allows for Board-Approved educational CDM programs and then submitted that educational CDM programs play an important and essential role in promoting the understanding of energy issues and achieving the cultural and behavioural changes necessary to attain a culture of conservation.

Toronto Hydro submitted that the proposed Flat Rate Water Heater program is intended to transition 80% of the roughly 5,500 remaining flat rate water heater customers onto a metered service with the addition of installing a *peaksaver*® load-control device to achieve both peak demand and energy consumption savings. Toronto Hydro also submitted that the Board should reject the position of certain parties that suggested that Toronto Hydro has the ability to unilaterally discontinue its flat rate water heater service. Toronto Hydro argued that this position improperly presumes that Board approval for discontinuation is not necessary, which Toronto Hydro notes is not its position.

Toronto Hydro submitted that its 2010 program development and planning costs and 2011 forecasted program development and application support and regulatory costs should be approved by the Board as its 2010 distribution rates application (EB-2009-0139), of which many issues were settled, did not include any new CDM costs in its 2010 revenue requirement. Toronto Hydro also submitted that its 2010 and 2011 application, development and planning costs are not directly attributable to any particular proposed program. Instead, they were incurred in developing, planning and applying for the bundle of eight proposed programs, as a whole.

Board Findings

The Board's findings are organized in three major sections. In the first section, the Board provides its findings on what it determines to be OPA established programs. In the second section, the Board provides guidance and criteria on what it considers to be duplicative programs. Lastly, the Board provides findings on the specific programs for which THESL has applied to the Board for incremental funding.

Whether OPA Province-Wide Programs are "Established"

The Minister's Directive to the Board dated March 31, 2010, and included as Appendix A, makes it clear that the Board may not approve Board-Approved CDM programs prior to the establishment by the OPA of the Province-Wide CDM programs, nor may the Board approve programs that are duplicative of the OPA Province-Wide CDM programs. Whether a proposed Board-Approved CDM program is duplicative of an OPA Province-Wide CDM program can only be determined once the parameters of the OPA program have been established.

In an interim decision in the Hydro One Networks Inc. and Hydro One Brampton Networks Inc. applications (the "HONI application" EB-2010-0331/0332) the Board provided some guidance on what it considered the term "established" to entail. The Board has heard submissions in this proceeding to the effect that the OPA Province-Wide CDM programs were "established" in July, 2010, when the OPA Board of Directors approved the budgets relating to the programs. Given that the prohibition with respect to the filing of duplicative programs can only have meaning when the Province-Wide CDM programs are available on the public record in sufficient detail and with sufficient finality so as to create a binding contractual obligation between the parties, the Board found in that case that this date cannot be the standard for the establishment of the OPA Province-Wide CDM programs.

An OPA Province-Wide CDM program will be considered by the Board to be established if it is described in sufficient detail and with sufficient finality so as to be capable of being incorporated into the contractual setting by way of a binding Schedule to the Master Agreement, such that the Board can make a confident determination that the Board-Approved CDM programs are not duplicative, as per the Minister's Directive. It is clear

from the evidence in this case that the OPA programs were not established to this standard until well after the application was filed.

Since the Schedules were not filed until April 26, 2011 and the Master Agreement itself was not filed until May 4, 2011, the Board finds that the OPA Province-Wide CDM programs were not established for the Board's purposes in respect of this application prior to May 4, 2011.

The CDM Code states in Section 3.1.1 that a distributor shall not apply for Board-Approved CDM programs until the OPA has established its first set of OPA-Contracted Province-Wide CDM programs. It is clear that given the Board's view as to what constitutes an established program, Toronto Hydro's application was premature. In the circumstances this failing is not material. The Board will consider the application as if the OPA programs had in fact been established prior to its filing.

The Board also notes that the OPA Province-Wide CDM programs are expected to evolve and change over time. It is therefore reasonable to expect that the Master Agreement may be amended in the future and that the program Schedules in existence at the time of this Decision may be amended, new program Schedules may be added, or existing program Schedules withdrawn. The Board therefore finds that it will be a question of fact whether specific OPA-Contracted Province-Wide CDM programs are established at each point in time the Board is asked to consider an application for Board-Approved CDM programs. The question of duplication cannot be addressed without specific reference to existing OPA programs, as they may evolve over time.

Prohibition Against Duplication

Duplication of OPA Province-Wide CDM programs by Board-Approved CDM programs is strictly prohibited by the Directive, and this prohibition has been reflected in the CDM Code. Applicants are precluded from applying (emphasis added) for Board-Approved CDM programs which are duplicative. While there was some speculation with respect to the rationale for the prohibition, the Board has little hesitation in concluding that the Minister's rule against duplication is rooted in a concern that CDM activities, as important as they are to the overall policy direction of the Province, need to be implemented and administered efficiently, with due regard to the interests of consumers in maintaining affordable rates. Indeed, section 8 of the Minister's Directive reminds the

Board very pointedly to ensure that this effort is accomplished with due regard for the interests of consumers.

Duplicative programs are inherently wasteful. Each program carries with it a variety of administrative costs and overhead burdens, and consumers in Ontario have a right to expect that those engaged in this process are not duplicating costs. There is no virtue in having different organizations, such as the OPA and an individual distributor developing program delivery for programs that are substantively duplicative of each other. In the Board's view, this is the rationale for the Minister's Directive against duplication.

In its testimony in this case, the OPA described the process of program development for its Province-Wide CDM programs. Over the course of approximately a year, the OPA and the LDCs worked together to design and develop the suite of Province-Wide CDM programs that are now considered by the Board to be established, for the purposes of this application. This process included the development of the Master Agreement and the related program Schedules.

The OPA witness confirmed that the OPA-Contracted Province-Wide CDM programs were developed to enable the LDCs to meet the CDM targets that were imposed as a license condition in September, 2010.

While it is the Board's responsibility to make a definitive determination as to what constitutes duplication in any given case, it is the Board's view that it would be assisted if the OPA, in its interaction with distributors planning to file an application for Board-Approved CDM programs, could develop an approach which would screen programs for duplication. Indeed, the OPA has indicated through this proceeding that it is willing to do so. Moreover, the OPA has specifically stated that it looks to the Board for some guidance with respect to what constitutes duplication, and that this will assist the OPA in its future role on what it will consider duplicative in its consideration of Board-Approved programs.

It is the Board's intention to provide some guidance on this point in this decision. Parties should note that it is likely that the determination of duplication will have to be made on case specific facts in future cases. The Board's intention is to provide general assistance to the OPA and distributors who plan to seek approval for Board-Approved

CDM programs. This guidance is in addition to the guidance provided in Section 2.3.3 of the Board's CDM Code.

In providing this guidance the Board is taking a purposive approach. Given that the rule against duplication is rooted in avoiding unnecessary expenditure, the Board's approach is based on the same consideration.

This discussion occurs with the backdrop of the architecture of the OPA-Contracted Province-Wide CDM programs.

The OPA has developed a very substantial budget of \$1.4 billion to cover the implementation of its Province-Wide programs. Any spending associated with Board-Approved programs, such as those applied for in this case, is in addition to that spending. Such additional spending arising from Board-Approved programs is not subject to any cap. The only restraint placed on this additional spending is the Minister's Directive to the Board to prohibit duplication, and to ensure that the Board approved programs are efficient. As noted elsewhere in this Decision, the Minister's Directive also directs the Board to protect the interests of consumers in our consideration of these applications.

In its evidence in this case, the OPA stated that it intended its programs to be "broad and flexible". This is important because it denotes the OPA's intention to develop Province-Wide CDM programs that are inclusive, rather than exclusionary. The OPA has expressly designed its established programs to meet the government's goals. Not only does this include the achievement of the distributor specific targets, but also the overall conservation targets to be achieved by 2014 year-end.

First, the Board considers proposed Board-Approved CDM programs that merely extend an OPA-Contracted Province-Wide CDM program to a different market segment to be duplicative, unless it can be shown that there is an element of the proposed Board-Approved CDM programs that cannot be accommodated within the OPA-Contracted Province-Wide CDM program. Such non-duplicative extensions may include such things as region-specific considerations, which would require novel approaches. This could arise where a specific industry concentrated in a particular service area requires unique approaches in order for the distributor to achieve its CDM Targets. This approach is consistent with the approach taken by the Board with respect to "custom projects" under the gas utility Demand Side Management ("DSM") rules.

Second, the Board is of the view that generally stand-alone distributor specific educational, outreach, capability building, or marketing efforts that could be or are payable through the OPA's existing Program Administration Budget (PAB) provided under the OPA-Contracted Province-wide CDM programs are duplicative. Such programs are duplicative with the OPA's direct province-wide educational, outreach, capability building, or marketing activities. Distributors ought not to be engaging in stand-alone educational or marketing programs that are only marginally different from those activities contemplated in the PAB or in the OPA's direct province-wide activities. There are many parties engaged in communicating conservation messages to the public. Where the distributor wishes to advance a stand-alone education, outreach, capability building or marketing program, it has the burden to demonstrate that the messaging involved is sufficiently unique to justify funding as a Board-Approved program.

Third, the Board considers that a distributor has a positive obligation to provide clear, cogent, and convincing evidence that demonstrates that its proposed Board-Approved CDM program is not duplicative of established OPA-Contracted Province-Wide CDM programs. This means that an applicant must clearly describe the OPA-Contracted Province-Wide CDM program or programs that most nearly provide similar activities. The Applicant must then provide a detailed, analytical comparison of its proposed program with the OPA-Contracted Province-Wide CDM program or programs so as to demonstrate the extent to which it is non-duplicative. It is not most effective to file hundreds of pages on the eve of the hearing, as was done in this case, in an effort to establish the non-duplicative nature of the proposed program. It would also be advantageous to an applicant's case if it were able to file an analytically based document evidencing the OPA's view that the proposed program is not duplicative. The letter filed by the OPA in this case was far from meeting that standard. The letter provided a conditioned opinion, but one which was not detailed or informative about why the proposed Board-Approved program should be seen as distinct from the OPA programs. In particular, the letter did not indicate on a program by program basis that the creation of distinct program delivery infrastructure and administration is necessary and cost effective.

Although the OPA's view on duplication will be considered by the Board, the burden lies with the applicant to convince the Board that its proposed Board-Approved program does not violate the rule against duplication contained in the Minister's Directive.

Fourth, the Board generally does not consider the patching together of conventional elements of existing OPA-Contracted Province-Wide CDM programs to be creating new non-duplicative programs. If such programs have been assembled in such a way as to transform the programs into something novel, the Board could consider them as non-duplicative. However, the utility seeking such approval would have to provide a clear demonstration that the resulting program is qualitatively novel, and that it is non-duplicative.

Board Findings on Specific Toronto Hydro Proposed Programs

In considering the individual programs proposed by Toronto Hydro as Board-Approved CDM Programs, the Board is guided by both the Minister's Directive to the Board dated March 31, 2010 and the Ministerial letter of direction issued to the OPA on April 23, 2010, attached as Appendix B to this Decision.

As noted above, the issue of duplication is a key component of the Board's approval process for distributor specific CDM programs. If proposed Board-Approved CDM programs are found to be duplicative of established OPA-Contracted Province-Wide programs they cannot be approved according to the terms of the Minister's Directive to the Board.

Throughout its assessment of this application the Board has used a purposive approach in its review of the proposed programs. The Board receives some guidance on this point from the Minister's letter of direction to the OPA. In that correspondence the Minister specifically directs the OPA to design province-wide programs for general residential; commercial and institutional (which includes agricultural and multi-family buildings); and industrial consumers. The OPA is further directed to "target end uses that are common within consumer groups across the province and that have potential for significant electricity energy savings and/or demand reduction within each consumer category." The OPA is further instructed by the Minister to "offer consistent conservation measures and incentives to consumers across all LDC service areas".

The Ministerial letter of direction goes on to require the OPA to consider enhanced coordination efforts where there are opportunities to "target consumers with multiple locations across several distributors' service areas (for example, commercial building owners and commercial chains) and conservation measures delivered or promoted

through provincial or national channels (for example, retailer in-store rebates or coupons)".

This guidance from the Minister is telling. It indicates the government's intention to ensure that the OPA Province-Wide programs are inclusive, broad and flexible in their effect. There is also a discernible interest in ensuring consistency of effect throughout the province. The government appears to be directing the OPA to establish a regime which will affect consumers in all regions in like ways.

These Ministerial directives have particular relevance in the Board's consideration of duplication as between the OPA-Contracted Province-Wide CDM programs and the proposed Board-Approved CDM programs. As noted above, each program, whether Province-Wide or Board-Approved, carries with it an infrastructure and administrative burden. At the core of the Board's concern is that duplication is an unnecessary cost to ratepayers. In its evidence, specifically Exhibit K2.1, the OPA outlines the four considerations it has developed with respect to duplication. As taken from Julia McNally's witness statement filed April 29th, the OPA refers to four purposes for avoiding duplication:

1. Ensure Incremental MW and GWh and do not undermine Province-Wide programs – e.g. for programs that offer reduced consumption, does the program have the potential to delivery incremental savings beyond those targeted by OPA-Contracted Province-Wide CDM Programs?
2. Avoid Market Place Confusion – e.g. is the program likely to create confusion in the market place?
3. Ensure Prudent Use of Rate Payer Funds by Avoiding Duplication of Resources – e.g. will this program result in the duplication of program administration efforts or costs?
4. Capture Regionally Specific Opportunities – e.g. does this program target end uses, behaviours, or customer groups that are specific to the LDC's region?

Of the four outlined, the two that have the most direct bearing on the Board's consideration of duplication are those which ensure the prudent use of ratepayers'

funds by avoiding the duplication of resources, and the opportunity to capture regionally specific opportunities. With respect to this latter consideration, the OPA invokes the specific language of the Ministerial letter of direction of April 23, 2010 when it says, “does this program target end-uses, behaviours, or customer groups that are specific to the LDCs region?”

The OPA also indicated that its province-wide programs are “intentionally designed to be broad and flexible to address the various needs of LDC communities across the province.”

The other two considerations expressed by OPA - that is first a desire to avoid market confusion and second to not undermine Province-Wide program effects are also meaningful.

Board-Approved programs that are no more than offerings to a discreet sliver of the market, or which are re-bundled using the existing elements of the OPA Province Wide programs, could well violate each of these considerations.

Taken together, the OPA evidence and the Ministerial directives strongly suggest that the rule against duplication is rooted in the Minister’s determination to ensure that the ratepayer interest is well protected, and that the Board-Approved CDM programs ought generally to be focused primarily on regionally specific CDM opportunities which cannot be reasonably accommodated within the portfolio of OPA-Contracted Province-Wide programs, or substantively non-duplicative of them. A distributor seeking a Board-Approved program would have to demonstrate that the proposed Board-Approved program is cost-effective, non-duplicative and otherwise appropriate.

In the OPA fees case (EB-2010-0279), the Board heard evidence from the OPA respecting the negotiation of the Master Agreement as between itself and the distributor community. That testimony was unequivocal that the OPA programs are considered by the OPA to be fully capable of enabling distributors to meet their mandated CDM Targets without the addition of any further Board-Approved CDM programs. Ms. McNally stated in response to a question from Board Staff whether a distributor would have to come to the Board to hit its target, that:

“The LDCs have two choices. One is to do the province-wide programs and to exceed their targets. And these programs are fairly flexible. So it

is perfectly conceivable for an LDC to achieve their targets using only province-wide programs.”¹

It is important to observe that the Board's standard of review and the degree of scrutiny of the costs associated with this application is not lessened by the fact that the Board-Approved CDM program costs will be paid for by all of Ontario's electricity customers through the global adjustment mechanism, rather than solely by Toronto Hydro's customers. The Board considers the expenditures in their own right and with the same measure of diligence that it would apply to a distributor-specific rate impact. This application involves a very significant sum of money – in excess of \$50 million – over the four-year period. In order to approve such significant expenditures the Board must be satisfied that the ratepayer interest is being appropriately considered and that the proposals meet all of the relevant policy considerations emanating from the government. While it is the case that the government's policies are strongly supportive of CDM activities, it is equally true that the government, through the Minister's Directive and letter of direction, has consistently indicated that the protection of the ratepayer interest continues to be a crucial element in the Board's determinations.

It is also worth noting that the method of allocating Board-Approved CDM program costs, which is through the global adjustment mechanism, has the effect of burdening all of the communities in Ontario with costs that are being driven by a specific distributor. In the Board's view this cost allocation structure creates a requirement for the Board to exercise an appropriate level of diligence in its consideration of these Board-Approved CDM programs. The Board must ensure that this province-wide burden is perceived to be and is fair to all consumers within Ontario.

On October 22, 2010 Toronto Hydro filed its CDM Strategy for the period 2011-2014. This strategy document outlines Toronto Hydro's intentions with respect to the CDM Targets which form part of its license conditions.

That strategy document contains several pieces of information which are of interest with respect to the Board's determinations in this application. First, the strategy indicates that Toronto Hydro expects that approximately 76% of its peak demand (MW) target would be met using OPA-Contracted Province-Wide CDM programs. The strategy document also indicates Toronto Hydro's expectation that approximately 86% of its energy

¹ EB-2010-0279 Volume 4, Mary 13, 2011 page 78, Lines 4 – 8.

consumption (GWh) target would be met using OPA-Contracted Province-Wide CDM programs.

The strategy document also indicates that Toronto Hydro has identified several potential Board-Approved CDM programs that are expected to be deployed in concert with the Coalition of Large Distributors ("CLD") in order to achieve economies of scale and deliver efficiencies. Some potential Board-Approved CDM programs that are specific to the Toronto Hydro's service territory are also identified. The Commercial Monitoring and Targeting program and the Commercial Energy Management and Load Control program were identified as prospective programs in the former category. Toronto Hydro's service area specific programs are identified in the strategy document as the Commercial Balancing Program and the Flat Rate Water Heater Conversion Program. The Strategy does indicate that other programs are under development and consideration. The Strategy document also indicates that Toronto Hydro intends to submit applications for other pilot projects and education programs throughout the period 2011 – 2014.

The Board has also considered the OPA letter which was filed as evidence in this proceeding as Exhibit K1.1. This letter outlines the OPA's opinion respecting whether the applied-for Board-Approved CDM programs in this application are duplicative of the OPA-Contracted Province-Wide programs. The joint consideration of duplication by Toronto Hydro and the OPA began relatively late in the process established to consider this application. The witness statement filed as Exhibit K2.1 indicates that it was not until March 2011 that Toronto Hydro requested OPA's views on whether or not OPA considered Toronto Hydro's proposed Board-Approved CDM programs to be duplicative.

Following a series of discussions between the OPA and Toronto Hydro respecting duplication, the OPA issued a letter which became Exhibit K1.1.

While the Board has the exclusive mandate to determine whether a proposed Board-Approved CDM program violates the rule against duplication, the commentary provided by the OPA is helpful and instructive. The Board notes that the OPA has indicated that it is interested in, and is supportive of a process that would engage the OPA at an earlier stage to consider the extent to which proposed Board-Approved CDM programs are duplicative of the OPA-Contracted Province-Wide CDM programs. The Board notes that the CDM Code specifically provides that distributors shall not apply for Board approval of CDM programs that are duplicative. Early OPA involvement in reviewing a

distributor's proposed Board-Approved CDM programs for duplication should therefore assist the distributor in determining whether an application to the Board should be made at all.

Education and Outreach Programs

Exhibit K1.1 divides Toronto Hydro's proposed Board-Approved CDM Programs into two distinct groups. The first group represents educational, outreach, and marketing initiatives which Toronto Hydro has proposed for Board approval. More specifically these included Greening Greater Toronto Commercial Building Energy Initiative, the Business Outreach and Education Program, the In-store Engagement and Education Initiative, and Community Outreach and Education Initiative. The Board notes that these four programs became three with the incorporation of the In-store Engagement and Education Initiative into the Community Outreach and Education Initiative with respect to content and budget.

It was the OPA's view that these four programs were "payable through the existing program administration budget ("PAB") provided under the province-wide programs". While considerable effort was spent trying to provide interpretations of this language by Toronto Hydro, the OPA, and the intervenors, it is evident to the Board that, as at the time the letter was written, the OPA considered that these marketing, educational, and outreach activities ought to be paid for under the general budget for the province-wide programs.

The PAB is a component of the general funding for the OPA-Contracted Province-Wide CDM programs which is intended to fund a variety of activities associated with the implementation of the province-wide programs. Among those activities are promotion, education and outreach. To provide separate and additional funding for these programs would be inherently duplicative, not only of the PAB, but also of the broader OPA educational outreach and marketing activities. The OPA has a completely separate budget which is directed to making its programs known throughout the province, in an effort to create a general culture of conservation.

The broader OPA budget is intended to create this awareness, and the OPA's opinion, set out in Exhibit K1.1 that Toronto Hydro's proposed programs were payable pursuant to the PAB is a clear indication that such activities are to be paid for within the existing

budget for the OPA-Contracted Province-Wide CDM programs adopted by Toronto Hydro.

The Board will therefore not approve these educational, marketing and outreach programs as Board-Approved CDM programs.

Flat Rate Water Heater Conversion and Demand Response Program

This program involves the payment of incentives to Toronto Hydro customers who have water heaters that are subject to a flat rate fee for energy consumption. The Flat Rate Water Heater Program had up to 11,000 legacy customers, of which about 5,500 remain. This water heater load was installed on a separate unmetered circuit and was controlled by Toronto Hydro to manage peak demand. The load associated with these hot water heaters is not metered. The intent of the proposed program is to encourage the remaining customers to convert their hot water tanks to a metered service by offering an incentive to these customers to abandon the unmetered connection.

At the time of application, this program included *peaksaver*® control. As part of its discussions with Toronto Hydro respecting the duplication issue and as evidenced in exhibit K1.1, the OPA has insisted and Toronto Hydro has agreed to subtract the funding related to the *peaksaver*® component of the proposed program from this application. The *peaksaver*® element is unquestionably duplicative of the OPA-Contracted Province-Wide programs.

Toronto Hydro has been trying to terminate the Flat Rate Water Heater Program for some time. As evidenced by material respecting the flat rate water heater available on Toronto Hydro's website (Exhibit K3.1), Toronto Hydro has been insisting that customers rewire their water heater circuits so that the water heaters are connected to the main electrical panel and are thus metered like all other electrical load in the home. This connection program was mandatory and has been imposed on a significant number of customers. The specifics of Toronto Hydro's efforts in this regard were the subject of an undertaking (J3.1) to Board staff. The Board analysis of this issue was not assisted by Toronto Hydro's incomplete response to this undertaking, provided after the oral portion of the hearing was completed.

It appears to the Board that Toronto Hydro can, without applying to the Board to withdraw the flat rate water heater rate and without further funding from any source,

terminate the flat rate water heater service. In fact, Toronto Hydro has been doing so on an ongoing basis. Toronto Hydro has been requiring legacy customers to transition their water heater service to a metered service. Thousands of them have done so, without any incentive, offered or received. There is no reason why ratepayers in the rest of the province, or indeed why Toronto Hydro's own ratepayers, ought to pay any amount of money through the global adjustment to support incentive payments to customers who have already been or can be obliged to abandon this service.

Accordingly, the Board will not approve the Flat Rate Water Heater Program as a Board-Approved CDM program.

Hydronic System Balancing

This program is intended to assist office, institutional, multi-residential, and hospitality sectors within the City of Toronto in their management of hydronic systems. The program is predicated on the premise that hydronic system operators typically oversize hydronic systems and do not manage them in an optimal manner. The program is intended to pay incentives to such operators to assess and alter their practices, as appropriate.

One of the OPA's key Province-Wide programs is the Equipment Replacement Incentive Initiative ("ERII"). This program is intended to incent the replacement of sub-optimal equipment with equipment that is inherently more efficient from an energy usage point of view.

Toronto Hydro asserts that its program is unique and that it is non-duplicative of the OPA-Contracted Province-Wide CDM program because there is no worksheet associated with hydronic equipment in the OPA-Contracted Province-Wide CDM program, and because the OPA-Contracted Province-Wide CDM program does not incent the assessment component.

In its letter to Toronto Hydro dated April 21, 2011, which is Exhibit K1.1, the OPA provided its observations with respect to this program. Specifically, the OPA noted that "The work done by Toronto Hydro on this proposed program could allow the OPA to introduce a new engineering worksheet to the ERII at a future date, and Toronto Hydro has agreed to work closely with the OPA to develop such a worksheet. The development of this worksheet could facilitate increased participation of the MURB

sector in the province-wide program.” This endorsement by the OPA appears to be an endorsement for a pilot project, not a stand-alone, four-year Board-Approved CDM Program.

The Board notes however, that this program does not fit the definition of a “pilot program” as provided in the Code. The Code states that a pilot program is one that “involves the testing, or evaluation of methodologies and/or technologies that are not generally in use in Ontario and that may serve as a model for other distributors or the OPA to use in future CDM development.” As evidenced in Toronto Hydro’s application, hydronic systems are used in many buildings throughout its service territory, showing that this is not a new technology. Without the inclusion of a new technology the program does not adhere to the CDM Code’s pilot program definition. For this reason, the Board will refer to this as a “test program”.

The OPA has a roster of equipment that is subject to the Equipment Replacement Incentive Initiative, which is incorporated into the program by means of worksheets. The purpose of this program is to develop such a worksheet for hydronic equipment. While the program is expressed as targeting the Multi-Residential Unit Building (“MURB”) sector, it is an equipment and operations initiative.

Toronto Hydro asserts that the proposed Board-Approved CDM program provides an incentive for the assessment of a participant system and is therefore non-duplicative of the existing OPA initiative. The Board disagrees. An alteration of this nature does not transform a program that would otherwise be duplicative, to be non-duplicative. First, Section 2.3.3(b) of the Code is clear that simply altering incentive levels does not make a program non-duplicative. By reasonable implication, merely adding an incentive to encourage assessment does not represent such an innovation to the existing program to justify distinct program delivery and administration. Second, in assessing whether a program is duplicative or non-duplicative, the Board looks to find some fundamental differences between existing OPA-Contracted Province-Wide programs and the proposed Board-Approved programs. This proposed program does not pass that test. Programs that are marginally different from the OPA-Contracted Province-Wide CDM programs typically will be found to be duplicative.

Given the OPA’s interest in the worksheet, however, the Board does see merit in providing funding in the nature of a test program for a period of 18 months. The test program will be subject to the CDM Code provisions for reporting as if the test program

were a pilot. In other words, the test program reporting will be as per section 2.2.5(j) of the CDM Code. In addition, the Board directs Toronto Hydro to share all relevant information associated with this program with the OPA and other interested parties in a timely, co-operative and productive manner.

The amount of funding for the 18-month period will be set at \$1.5 million. This number is derived from Toronto Hydro's budget projections for this program for 2011 and 2012 (approximately \$2 million) and proportionally adjusted to reflect the 18-month period.

The Multi-Unit Residential Demand Response Program ("MURB DR")

This program first appeared in Toronto Hydro's CDM Strategy document, filed on October 22, 2010 as a proposed pilot project. The proposed pilot was intended to run from March 2011 until September 2011. Between October, 2010 and the time this application was filed on January 10, 2011, the proposed pilot program has been re-cast as a four-year stand-alone CDM project with a budget of almost \$20 million.

At a total cost of \$235,000 the pilot was intended to test customer acceptance of the technology; measure the impact on suite temperature control on peak demand; test customer acceptance of common area load control; determine the capability of technology to affect dispatching, two-way communication, and internal building infrastructure requirements; and establish demand and savings potential and the program level cost-effectiveness. The strategy document indicates that the results of the pilot would be used to apply for a potential Board-Approved CDM program at some later date. There is no explanation in the evidence respecting the rationale for abandoning this program as a pilot project and applying instead for a stand-alone CDM project with a budget of \$20 million over the four-year period.

The proposed Board-Approved CDM program applies the *peaksaver*© program to the multi-unit residential sector. It is designed to allow cooling units in the common areas and owner/tenant suites to have their temperature set-points increased to reduce the total centralized cooling load in the facility at times of high peak system usage.

During the course of the hearing, Toronto Hydro acknowledged that the program was subject to certain user adoption thresholds, if it was to be cost effective in any given setting. Toronto Hydro indicated that at least 40% of the suites in any given building and

at least 30 kW of common area load was necessary in order to make the program viable in any given setting.

The Board has two concerns with respect to this program. First, no evidence has been filed that demonstrates how and why the unresolved issues which caused this program to first be a pilot, as identified in the CDM Strategy document, have now been resolved, such that this program should now be funded as a full-scale four-year program.

Without a greater understanding about the resolution of these issues, there are few if any grounds upon which the approval of a \$20 million budget can be justified. It is to be noted that two of the items the pilot was intended to address were to establish demand and savings potential and program level cost effectiveness. From the Board's point of view these are fundamental considerations that should be understood prior to the implementation of a fully funded four year stand-alone Board-Approved program.

The Board's second concern relates to the nonspecific nature of the program to Toronto Hydro's service area. There is nothing unique about apartment buildings, or condominiums in Toronto. Such buildings occur throughout the province. It would have been helpful to the Board had Toronto Hydro provided more information about the specific characteristics of this sector in its service area and the particular challenges that it faces. Without such information, the program appears to consist of an extension of the *peaksaver*® to a very common type of consumer. There does not appear to be anything in this proposed program that is sufficiently novel to justify a distinct infrastructure and administrative framework. The Board therefore denies this program.

The Board notes that this program, like a number of other OPA-Contracted Province-Wide CDM programs and proposed Board-Approved CDM programs, is intended to encourage and effect load reductions at times of peak system load. This is the objective of the overall time-of-use/smart meter rate regime which has been put in place across the province. In another proceeding (EB-2010-0279), the Board heard testimony from the OPA to the effect that the total resource cost (TRC) assessment for such projects does not take into account the costs associated with the establishment of the time-of-use rates regime or the infrastructure necessary to implement it. This means that the TRC calculations respecting such programs may be predicated on costs that have been understated. While this evidence has played no role in the Board's decision here, it is nevertheless an important input into future consideration of TRC assessments.

Commercial Energy Management and Load Control Program

This proposed program is intended to enable small and medium-size commercial customers (average monthly demand > 200 kW) to reduce summer peak demand through an application similar to the *peaksaver*® load control program. The program also involves providing program participants an energy management system. Through the use of the energy management system, Toronto Hydro will be able to control electricity loads during times of high system demand arising from summer air-conditioning load.

Toronto Hydro's evidence with respect to this program indicates that the key component of this program is the selection of the energy management system that will be made available to program participants. Toronto Hydro proposes to enter into a RFP process on its own behalf and on the behalf of other utilities that may have an interest in implementing this program. It is important that the energy management system be capable of both demand response for the provincial electricity grid and energy management for the participants in terms of functionality, system reliability and robustness. System functional requirements and technical specifications will be prepared by Toronto Hydro and the RFP responses will be subject to an evaluation.

The proposed program would offer customers a financial incentive that is in addition to the receipt of the energy management system free of charge. Customers who participate would be paid a load control incentive for each activation event based on the number of air-conditioner units connected to the *peaksaver*® control. The program has a budget of \$11.5 million over the four-year period.

In its review of the Board-Approved CDM programs put forth by Toronto Hydro, contained in Exhibit K1.1, the OPA indicated that it planned to provide such a program as an OPA-Contracted Province-Wide CDM program. The OPA considered it to be "...beneficial to the development of the new initiative to have Toronto Hydro proceed with [this program] to test program design concepts."

In the Board's view this is an indication that the OPA regards this program to be a useful project, one that would inform the development and refinement of an already planned OPA-Contracted Province-Wide CDM program.

In its evidence respecting this proposed program, Toronto Hydro acknowledges that this program would have general application, if successful. Accordingly, the Board will approve this program as a test program for an 18-month period with a budget of \$3.82 million. This amount takes the applied for budget for 2011 and 2012 and adjusts for the 18-month period. The test program will be subject to the CDM Code provisions for reporting as if the program were a pilot. In other words, the test program reporting will be as per section 2.2.5(j) of the CDM Code. In addition, the Board directs Toronto Hydro to share all relevant information associated with this program with the OPA and other interested parties in a timely, co-operative and productive manner.

Commercial, Institutional and Small Industrial Monitoring and Targeting

This proposed program is intended to imitate the OPA-Contracted Province-Wide Industrial Accelerator Program, but to a category of customers not currently eligible for enrollment in the OPA program. Specifically, to qualify for enrollment in the program, commercial, institutional and industrial participants must have an average monthly peak demand exceeding 200 kW, verified by the most recent 12-months billing history. It is proposed that program participants would receive incentive payments related to the procurement of equipment, software, project management and labor costs associated with the investigation, design/consultation, acquisition, installation, and configuration and setup/commissioning of the monitoring and targeting system. There is a ceiling of \$75,000 for this part of the incentive.

In addition, program participants will be eligible for an energy savings incentive. This performance incentive would be paid at the end of each year for savings achieved during the four-year program. To be eligible for this incentive, the annual kilowatt per hour savings must be equal to or greater than 8% of the normalized baseline year kilowatt hour consumption.

Toronto Hydro anticipates that participation in this program would be no more than 5% of the commercial/institutional sector and 2% of the qualifying industrial sector. It expects the number of participants in the program to be just over 100 participants during the four-year term of the project.

The Board notes that the purpose of this program is to encourage building operators to take advantage of the time-of-use rates architecture and avoid electricity usage during on-peak periods. This behavioural change is what the time-of-use rates architecture is

intended to accomplish, using the incentive of relatively low-cost electricity during off-peak times, and the disincentive of high cost electricity during peak periods. As noted earlier in this Decision, the Board has some concern that the TRC assessment for projects of this nature do not appear to take into account the costs associated with the time-of-use rates architecture or related time-of-use infrastructure.

It is clear to the Board that the target sectors for this program are not unique to Toronto Hydro, and that the program appears to be highly relatable to existing OPA-Contracted Province-Wide CDM programs, most notably and obviously the Industrial Accelerator program. In the Board's view, there is no aspect of this program which is qualitatively novel. The program is largely instructional, intended to encourage building operators to take full advantage of the time-of-use rates environment. At best, this program is an incremental change to the existing OPA-Contracted Province-Wide CDM program by making a current program available to a slightly different group of customers.

The customer groups targeted by this proposed initiative appear throughout the province, and the program content appears to be fully consistent with existing OPA-Contracted Province-Wide CDM programs. While the OPA in its evidence in Exhibit K1.1 suggested that the program was not duplicative, it also stated that the program was not currently (emphasis added) offered to the commercial, institutional and small industrial markets.

The extension of an existing OPA program to marginally different customer segments is not a sufficient difference to justify the approval of a stand-alone, four-year Board-Approved CDM program, and the delivery infrastructure that goes with it. In its witness statement, which was Exhibit K2.1, the OPA described its intention to provide province-wide CDM programs that are broad and flexible to address a variety of circumstances across the province. The methodology to be used is consistent with that appearing in OPA-Contracted Province-Wide CDM programs.

The Board considers this proposed program to be duplicative of the existing OPA-Contracted Province-Wide CDM program, and given the amount of otherwise available educational information with respect to time-of-use pricing, unwarranted as a stand-alone program.

In addition, such distinctions in programs do not appear to be consistent with the Minister's letter of direction to the OPA dated April 23, 2010. In that letter of direction

the Minister obliged the OPA to develop province wide programs that "...will target end-uses that are common within consumer groups across the province ..." In addition the Minister required the OPA to "...offer consistent conservation measures and incentives to consumers across all LDC service areas." In the Board's view where a common approach to all customer classes can be readily accomplished, it should be accomplished in an OPA-Contracted Province-Wide CDM program. The segregation of one customer segment simply to accommodate a Board-Approved CDM program is not a significant difference to make the proposed Board-Approved CDM program non-duplicative.

For these reasons, the Board denies the approval of this program.

Program Development and Planning Costs

Toronto Hydro has applied for a total of \$343,499 in program development, planning costs, application support and regulatory costs for the period 2010 to 2011. Included in this total are the legal, Board and intervenor costs associated with this application.

Toronto Hydro disagrees with Board staff that the 2010 program development and planning costs were undertaken by CDM staff included in the 2010 distribution revenue requirement. The Board finds this disagreement to be irrelevant. The 2010 program and development costs are out-of-period costs for which no deferral account had been established, and are thus not recoverable.

Following issuance of the CDM Code, costs associated with program development and the application must, as defined by the Code, be separated from distribution costs and are recoverable through the global adjustment mechanism. The Board has been informed by the use of materiality thresholds that have been incorporated into 3rd generation incentive ratemaking (IRM). The Board is of the view that a materiality threshold should apply with respect to the recovery of program development and planning costs and will adopt the utility-specific materiality threshold arising from the 3rd generation IRM framework. The Board therefore finds that the costs of this application (approximately \$185,000) are immaterial, given that Toronto Hydro's 3rd generation IRM materiality threshold is \$1 million.

Additionally, it is to be noted that accomplishment of as little as 80% of the CDM Targets, as set out in the licence, will result in a shareholder benefit, by way of an

incentive payment. The Board therefore finds that the costs of this application, below the materiality threshold, should be a shareholder cost. The applied-for program development and planning costs are therefore denied.

Payment Schedule

As a result of this Decision, the Board directs the Independent Electricity System Operator (“IESO”) to provide payments as outlined below, at monthly intervals, totaling \$5.32 million, from the first applicable payment date following the issuance of this decision and continuing for a period of 18 months.

As per the IESO’s submission dated May 25, 2011, which was accepted by Toronto Hydro, the IESO outlines a process for how it can administer payments for Board-Approved CDM programs.

Board-Approved Payments – Fixed Costs

For payments that are associated with or attributed to Toronto Hydro’s fixed CDM program costs, Toronto Hydro will provide a schedule to the IESO of the fixed costs payments approved by the Board as soon as possible, following issuance of the Board’s Decision and Order. The applicable payment(s) to Toronto Hydro will be processed for Toronto Hydro’s settlement statement for the last trading day of the month and included in its invoice, which is issued by the IESO ten (10) business days after the end of the applicable month.

Board-Approved Payments – Variable Costs

With respect to payments that are associated with or attributed to Toronto Hydro’s variable CDM program costs, Toronto Hydro shall provide to the IESO the monthly payment amount within four (4) business days following the end of each applicable month, in a manner to be determined by the IESO. The applicable payment(s) to Toronto Hydro will be processed for Toronto Hydro’s settlement statement for the last trading day of the month and included in its invoice, which is issued by the IESO ten (10) business days after the end of the applicable month.

The total amount, associated with Toronto Hydro's fixed and variable CDM program costs, to be recovered from applicable market participants will be included in the monthly global adjustment charge.

THE BOARD ORDERS THAT:

1. Toronto Hydro-Electric System Limited is approved, for a term of 18 months, for the following Board-Approved CDM programs:
 - Hydronic System Balancing test program: \$1,500,000;
 - Commercial Energy Management and Load Control: \$3,820,000.
2. Toronto Hydro-Electric System Limited must follow the process outlined in the Payment Schedules section of the Decision and Order to recover approved funds from the Independent Electricity System Operator.

DATED at Toronto July 12, 2011

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Appendix A

Toronto Hydro-Electric System Limited

EB-2011-0011

**Minister of Energy and Infrastructure
CDM Directive to the Ontario Energy Board, March 31, 2010**



Ontario
Executive Council
Conseil des ministres

Order in Council Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit:

WHEREAS it is desirable to achieve reductions in electricity consumption and reductions in peak provincial electricity demand.

AND WHEREAS the Minister may, with the approval of the Lieutenant Governor in Council, issue directives under section 27.1 of the *Ontario Energy Board Act, 1998* in order to direct the Board to take steps to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources.

AND WHEREAS the Minister may, with the approval of the Lieutenant Governor in Council, issue directives under section 27.2 of the *Ontario Energy Board Act, 1998* in order to direct the Board to establish conservation and demand management targets to be met by distributors and other licensees.

NOW THEREFORE the Directive attached hereto is approved and shall be and is effective as of the date hereof.

Recommended: _____

Minister of Energy
and Infrastructure

Concurred: _____

Chair of Cabinet

Approved and Ordered: _____

MAR 31 2010
Date

Lieutenant Governor

O.C./Décret

437/2010

MINISTER'S DIRECTIVE

TO: THE ONTARIO ENERGY BOARD

I, Brad Duguid, Minister of Energy and Infrastructure, hereby direct the Ontario Energy Board pursuant to sections 27.1 and 27.2 of the *Ontario Energy Board Act, 1998*, as described below.

The Board shall take the following steps in order to establish electricity conservation and demand management ("CDM") targets to be met by licensed electricity distributors ("distributors") within the timeframe specified herein:

1. Subject to paragraph 5, the Board shall, without a hearing and in accordance with the requirements of this Directive, which relate to the conservation and demand-management targets to be met by distributors and other licensees including the OPA, amend each distributor's licence to add a condition requiring the distributor to achieve reductions in electricity consumption and reductions in peak provincial electricity demand through the delivery of CDM programs ("CDM Programs") by the amounts specified by the Board (the "CDM Targets"), over a four-year period beginning January 1, 2011.
2. In establishing CDM Targets for each distributor, the Board shall:
 - (a) ensure that the total of the CDM Targets established for all distributors is equal to 1330 megawatts (MW) of provincial peak demand persisting at the end of the four-year period and 6000 gigawatt hours (GWh) of reduced electricity consumption accumulated over the four-year period;
 - (b) specify for each distributor, a CDM Target for the reduction of provincial peak electricity demand and a CDM Target for the reduction of electricity consumption, each of which must be greater than zero; and,
 - (c) have regard to information obtained from the Ontario Power Authority ("OPA"), developed in consultation with distributors, regarding the reductions in provincial peak electricity demand and electricity consumption that could be achieved by individual distributors through the delivery of CDM Programs.
3. The Board shall amend the licence of each distributor as follows:
 - (a) by adding a condition that specifies each distributor must meet its CDM Targets through:
 - (i) the delivery of Board approved CDM Programs delivered in the distributor's service area ("Board-Approved CDM Programs");

(ii) the delivery of CDM Programs that are made available by the OPA to distributors in the distributor's service area under contract with the OPA ("OPA-Contracted Province-Wide CDM Programs"); or,

(iii) a combination of (i) and (ii)

- (b) by adding a condition that specifies that the distributor must deliver a mix of CDM Programs to all consumer types in the distributor's service area, whether through Board-Approved CDM Programs, OPA-Contracted Province-Wide CDM Programs or a combination of the two, as far as is appropriate and reasonable having regard to the composition of the distributor's consumer base;
- (c) by adding a condition that requires the distributor to comply with rules mandated by a code issued by the Board.

4. The Board shall amend licenses of distributors to ensure that:

- (a) distributors utilize the same common Provincial brand (which includes any mark or logo that the Province has used or is using, created or to be created by or on behalf of the Province, and which will be identified to the Board by the Ministry as a provincial mark or logo for its conservation programs) with all Board-Approved CDM Programs;
- (b) that the brand identified in (a) shall be the same brand utilized by the OPA and distributors for OPA-Contracted Province-Wide CDM Programs, once those programs have been created; and,
- (c) that the brand shall be used by distributors in conjunction with or co-branded with distributor's own brand or marks.

and the Board shall, upon receipt of written direction from the Ministry, which may be issued from time to time, and as a condition of license, require any one or more distributors to cease using the Provincial brand described in this paragraph at such time or in such way as may be specified in such direction.

5. The Board shall not amend the licence of any distributor that meets the conditions set out below:

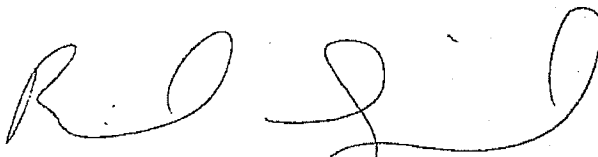
- (a) with the exception of embedded distributors the distributor is not connected to the Independent Electricity System Operator (IESO)-controlled grid; or,
- (b) the distributor's rates are not regulated by the Board.

6. The Board shall issue a code that includes rules relating to the reporting requirements and performance incentives associated with CDM Programs and to the planning, design, approval, implementation and the evaluation, measurement and verification ("EM&V") of Board-Approved CDM Programs and to such other matters as the Board considers appropriate.

In developing such rules, the Board shall have regard to the following objectives of the government in addition to such other factors as the Board considers appropriate:

- (a) that Board-Approved CDM Programs shall not duplicate OPA-Contracted Province-Wide CDM Programs that are available from the OPA at the time of Board approval;
- (b) that the Board shall encourage opportunities for coordinating CDM Programs between the distributor and other relevant entities such as other electricity distributors, natural gas distributors and the OPA;
- (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;
- (d) that a tiered performance incentive mechanism shall be available to distributors for verified electricity savings with incentives beginning to accrue once a distributor meets 80% of each CDM Target; performance incentives shall not be offered for electricity savings achieved beyond 150% of each CDM Target;
- (e) that Board approval for funding of any given Board-Approved CDM Program shall correspond to the period in which the Board-Approved CDM Program is offered, provided that the period is no longer than the period for which CDM Targets are established;
- (f) that the Board shall require distributors to use OPA cost-effectiveness tests, as modified by the OPA from time to time, for assessing the cost-effectiveness of Board-Approved CDM Programs;
- (g) that the Board shall require distributors to use the OPA protocol process and third-party vendor of record list, as modified by the OPA from time to time, when conducting EM&V of Board-Approved CDM Programs;
- (h) that the Board shall consider the definition of CDM to be inclusive of load reduction from initiatives, such as geothermal heating and cooling, solar heating and fuel switching, but exclusive of initiatives that are associated with the OPA Feed-in Tariff Program and the OPA Micro Feed-in Tariff Program; and,

- (i) that all Board-Approved CDM Programs shall utilize the same common provincial brand (which includes any mark or logo that the Province has used or is using, created or to be created by or on behalf of the Province, and which will be identified to the Board by the Ministry as a provincial mark or logo for conservation) used for OPA-Contracted Province-Wide CDM Programs, once such programs are created, and used in conjunction with or co-branded with any brand or mark used by the distributor.
7. The Board shall not approve CDM Programs until OPA-Contracted Province-Wide CDM Programs have been established.
8. The Board shall, in approving Board-Approved CDM Programs, continue to have regard to its statutory objectives, including protecting the interests of consumers with respect to prices.
9. The Board shall conduct, or cause to be conducted, targeted audits of EM&V carried out by the distributor or third-parties on behalf of the distributor, as necessary.
10. The Board shall annually review and publish the verified results of each individual distributor's CDM Programs and the consolidated results of all distributor CDM Programs, both Board-Approved CDM Programs and OPA-Contracted Province-Wide CDM Programs and take steps to encourage distributors to improve CDM Program performance.
11. The Board shall permit distributors to meet a portion of their CDM Targets through the delivery of CDM Programs targeted to low-income consumers.
12. The Board shall have regard to the objective that lost revenues that result from CDM Programs should not act as a disincentive to a distributor.



Minister of Energy and Infrastructure

Appendix B

Toronto Hydro-Electric System Limited

EB-2011-0011

**Minister of Energy and Infrastructure
Letter of Direction to the Ontario Power Authority, April 23, 2010**

Ministry of Energy
and Infrastructure

Office of the Minister

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APR 23 2010

CHAIR
ONTARIO ENERGY BOARD

COPY



APR 23 2010

MC-2010-892

Mr. Colin Andersen
Chief Executive Officer
Ontario Power Authority
1600-120 Adelaide Street West
Toronto ON M5H 1T1

Dear Mr. Andersen:

**Re: Conservation and Demand Management Initiatives Under the GEA
Conservation Framework**

I write pursuant to my authority as the Minister of Energy and Infrastructure in order to exercise the statutory power of ministerial direction I have in respect of the Ontario Power Authority ("OPA") under subsection 25.32(4.1) of the *Electricity Act, 1998*, as amended.

Conservation is one of the most cost-effective means of dealing with electricity supply issues. This direction focuses on three opportunities to advance conservation:

1. strategic co-ordination of conservation and demand management ("CDM") programs with distributors ("LDCs") and the Ontario Energy Board ("OEB");
2. energy efficiency and demand response programs involving First Nation and Métis communities;
3. support and funding of CDM research and innovation.

1. STRATEGIC CO-ORDINATION

The *Green Energy and Green Economy Act, 2009* received Royal Assent on May 14, 2009, and provides LDCs with new opportunities to participate in the design and delivery of CDM programs.

I have issued a directive to the OEB (the "**CDM Directive**"), instructing it to establish mandatory CDM targets for LDCs to achieve reductions in electricity consumption and reductions in peak provincial electricity demand by the end of 2014 (the "**CDM Targets**") in support of the government's commitment to eliminate coal-fired generation by the end of 2014; and to ensure the total of the CDM Targets established for all LDCs are equal to 1330 megawatts (MW) of provincial peak electricity demand and 6000 gigawatt hours (GWh) of electricity consumption over a four-year period beginning January 1, 2011.

.../cont'd

LDCs will be permitted to meet their CDM Targets by delivering three types of conservation programs to distribution-connected consumers: (1) province-wide CDM programs developed by the OPA, in consultation with distributors ("**OPA-Contracted Province-Wide CDM Programs**"); (2) collective LDC programs designed by groups of synergistic LDCs ("**Board-Approved CDM Programs**"); and (3) individual LDC programs ("**Board-Approved CDM Programs**").

The OPA will play a key role in coordinating and facilitating the successful implementation of the new CDM opportunities provided to LDCs through the *Green Energy and Green Economy Act, 2009*.

Therefore, I hereby direct the OPA to undertake, as of the date of this letter, the following initiative:

- Provide advice to the OEB, following consultation with LDCs, on the appropriate allocation of CDM Targets amongst LDCs;
- Provide advice to the OEB on the administration of LDC CDM activities, including but not limited to the use of OPA cost-effectiveness tests and the OPA protocol process and third-party vendor of record list in order to assess the cost-effectiveness of Board-Approved CDM Programs and to conduct Evaluation Measurement and Verification (EM&V) of Board-Approved CDM Programs, as requested by the OEB; and
- Design, deliver and fund OPA-Contracted Province-Wide CDM Programs according to the following criteria:

CRITERIA

Principles

1. The OPA will design OPA-Contracted Province-Wide CDM Programs, taking all reasonable steps to collaborate with LDCs.
2. LDCs will deliver OPA-Contracted Province-Wide CDM Programs to distribution system-connected consumers to achieve all or a portion of their CDM Targets.
3. The OPA will provide certainty of funding to LDCs for the four-year term of the OPA-Contracted Province-Wide CDM Programs.
4. The OPA will be responsible for the evaluation, measurement and verification of the OPA-Contracted Province-Wide CDM Program results.
5. The OPA will ensure OPA-Contracted Province-Wide CDM Programs are marketed with consistent messaging under a common Provincial brand, once created, and co-branded with LDC marks. It is expected that there will be a common Provincial brand which includes any mark or logo that the Province has used or is using, has created or will be created by or on behalf of the Province, and will also be made available to natural gas utilities for marketing of natural gas conservation programs.

.../cont'd

Design of OPA-Contracted Province-Wide CDM Programs

1. The OPA will design OPA-Contracted Province-Wide CDM Programs for the following categories of distribution system-connected consumers:
 - (a) general residential;
 - (b) commercial and institutional (including agricultural and multifamily buildings); and
 - (c) industrial.
2. OPA-Contracted Province-Wide CDM Programs will target end-uses that are common within consumer groups across the province and that have potential for significant electricity energy savings and/or demand reduction within each consumer category.
3. OPA-Contracted Province-Wide CDM Programs will offer consistent conservation measures and incentives to consumers across all LDC service areas.
4. The portfolio of OPA-Contracted Province-Wide CDM Programs will be cost-effective. Individual measures, groups of measures, or measures targeted at specific consumer groups need not be cost-effective on a stand-alone basis.

Oversight and Delivery of OPA-Contracted Province-Wide CDM Programs

1. The OPA will make OPA-Contracted Province-Wide CDM Programs available for delivery by each LDC with a CDM Target in its service area.
2. The OPA will, taking all reasonable steps to collaborate with LDCs, seek to maximize administrative and delivery efficiencies by utilizing appropriate program delivery models including where appropriate entering into contractual arrangements with LDCs and other delivery agents. Specifically, the OPA will consider enhanced co-ordination efforts with regard to:
 - (a) Opportunities to target consumers with multiple locations across several distributor service areas (for example, commercial building owners and commercial chains) and conservation measures delivered or promoted through provincial or national channels (for example, retailer in-store rebates or coupons); and
 - (b) CDM activities, including, but not limited to, the marketing, procurement and delivery of CDM measures and/or services offered through OPA-Contracted Province-Wide CDM Programs where these will afford significant administrative cost and/or delivery efficiencies (for example, call centre, rebate fulfilment, appliance de-commissioning, procurement of devices and mass media advertising).
3. It is expected that the OPA, where appropriate and having regard to its overall mandate and that of the electricity distributors, will seek opportunities to co-ordinate OPA-Contracted Province Wide CDM Programs between the electricity distributors and other entities such as natural gas distributors.

4. The OPA will continue to deliver the current suite of OPA CDM programs, through LDCs and other delivery agents, until OPA-Contracted Province-Wide CDM Programs, that would replace them, have commenced implementation.

2. FIRST NATION AND MÉTIS COMMUNITIES

In 2006, the OPA initiated a broad scale, multi-element pilot program to promote CDM among Aboriginal communities across Ontario. The successful pilot program was designed and developed using the wisdom and teachings of Aboriginal Elders, as well as the knowledge of Aboriginal and non-Aboriginal energy technical experts and managers.

I hereby further direct the OPA to undertake, as of the date of this letter, the following initiative:

The OPA will design and coordinate the delivery of energy efficiency and demand response program(s) for First Nation and Métis communities. In doing so, the OPA will request the advice, and consider the recommendations of, First Nation and the Metis communities including advice and recommendations relating to program delivery.

3. SUPPORT AND FUNDING OF CDM RESEARCH AND INNOVATION

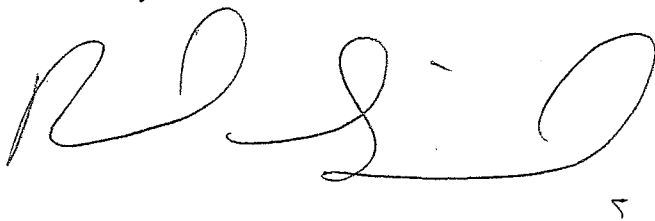
In 2005, the OPA established the Conservation Fund to provide funding for action-oriented, sector-specific CDM pilot projects, in order to build marketplace capability, test new or unique CDM program elements, and to help inform the development of future conservation programs.

I hereby further direct the OPA to undertake, as of the date of this letter, the following initiative:

The OPA will continue to provide, through its Conservation Fund, support and funding of CDM research and innovation as a means to assist LDCs and others in their conservation efforts.

This Direction shall be effective and binding as of the date hereof.

Sincerely,



Brad Duguid
Minister

c: ✓ Howard Wetston, Chair and Chief Executive Officer, OEB