



By EMAIL and RESS

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Our File: 20240092

Ontario Energy Board
2300 Yonge Street
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Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2024-0092 – System Expansion for Housing Development – SEC Submissions

We are counsel for the School Energy Coalition ("SEC"). Pursuant to the OEB's letter and Notice of Proposal of April 17, 2025, this letter constitutes SEC's submissions on the proposed amendments to the Distribution System Code ("DSC") to implement the Capacity Allocation Model ("CAM").

Ontario schools recognize the importance and value of new housing development, and strongly support measures to facilitate new housing and bring the cost of that housing down. New communities throughout the province represent many of our students of the future, as well as the locations of most of the new schools in Ontario. Infrastructure for those communities is critical for growth in Ontario.

That having been said, in the context of this consultation our focus is also on identifying the responsibility of existing ratepayers for the costs of new communities. That is a key theme of these submissions, as we believe **the proposed amendments to the DSC will result in shifting hundreds of millions of dollars of cost responsibility from developers and homebuyers to existing ratepayers, jettisoning the concept of "beneficiary pays", contrary to the Ontario Energy Board Act (the "Act").**

SEC Recommendations

In summary, and based on the analysis below, SEC recommends as follows:

1. ***Ratepayer Protection.*** The OEB should not implement the proposed CAM, or any variation on it, without at the same time implementing a mechanism to ensure that

the re-allocated CAM costs are not borne by existing customers. The obvious solution to this is a DVA, but other solutions can be equally effective. No CAM should be considered that, as in the Notice of Proposal, re-allocates costs by default to existing customers who obtain no benefit from bearing those costs.

2. ***Unit Cost Implementation.*** In the final amendments to the DSC, and assuming existing customers have been protected, the OEB should make clear that distributors who want to implement the CAM using a development/connection charge approach, whether for a specific area or across their service territory, are free to do so, and the OEB will consider those proposals on their merits.
3. ***Connection Charge Proceeding.*** The OEB should initiate a consultation or generic hearing to consider whether a new rate – a connection charge – should be available for distributors that develop a comprehensive growth plan that will be updated annually and will be recovered through consistent application of the connection charge.
4. ***Capacity Market/Open Season Proceeding.*** The OEB should initiate a consultation or generic hearing to consider whether the use of a capacity market or open season to fund all or some categories of growth spending should be pursued.
5. ***Adjustments to Proposed CAM.*** If the proposed CAM is implemented, and again assuming that existing customers have been protected, changes should be made as outlined in our detailed comments on the Proposal, set out later in these Submissions.

Background

The existing DSC provisions for system expansions start from the premise that existing ratepayers bear only their fair share of the cost of an expansion, based on the “beneficiary pays” principle.

The DSC does that using economic evaluations, which essentially provide a net present value of the incremental revenues from new customers (net of ongoing operating costs to serve them). To the extent that the NPV of those revenues covers part of capital cost to connect those new customers, that part goes into rate base. Over time, the annual revenue requirement for the rate-based capital cost and the annual incremental revenues balance out, adjusting for the time value of money, and the existing ratepayers are kept whole.

Put another way, the existing customers and the new customers both contribute to the cost of the whole distribution system in proportion to the benefit they get from it, and the economic evaluation ensures that the growth capital does not result in a rate increase for anyone. New revenues match new costs, and balance is maintained.

If the capital cost to connect those new customers is greater than the amount that keeps this balance, that incremental capital cost is paid up front through capital contributions from those who seek the new connections, typically developers in the case of new

residential communities. The existing ratepayers are responsible for none of these incremental costs, because they get no benefit from incurring those costs¹.

Those additional capital costs are therefore the responsibility of those seeking the new connections, since they are the ones who benefit from incurring those costs².

One problem that arises is that, in major new developments, such as new communities, not all of the developers who will be needing connections in the buildout of the development are ready to go ahead at the time that infrastructure needs to be built. Major developments are built over 15-20 years, reflecting the ability of the builders and developers to supply new housing, and the ability of the market to digest new offerings in a single location. A new community of 15,000 homes could unfold at, for example, 1,000 homes per year for fifteen years.

Further, while the local infrastructure for individual subdivisions is often easily staged to match the buildout timing, the larger infrastructure needed to bring capacity to that new community usually cannot be added at 5-10% per year. Even if it could, it is often true that building it in stages would be needlessly expensive, when proper planning would show that 15,000 homes – and related non-residential uses, like schools and retail, etc. - will need capacity in a fairly predictable timeframe. Even if staged, the front end costs will still be disproportionate in most cases.

This creates a “first movers” problem. The developers who are ready to go ahead over the first few years will need the new capacity, but as the only ones at the table the costs they would have to bear would be prohibitive. If you are only building 3,000 homes, but you have to pay the cost to bring in capacity for 15,000 homes, that presents a significant financial challenge. It either prevents your buildout, or pushes up the cost of your homes unreasonably.

The existing DSC does not have a mechanism to shift the cost unfairly placed on the first movers to the developers who will build those additional homes over the community building period. The purpose of the CAM is to allocate some of the cost currently borne by first movers to those later movers, resulting in a more equitable sharing of the incremental capital costs of the system expansion.

SEC unequivocally supports the goal of allocating the incremental costs of new connections between all of those for whom the new capacity is being built. All those who share the benefits should share the costs.

¹ To the extent that there are enhancements to system reliability, operability, etc., there is a benefit, but those are a separate category of costs defined as “system enhancements”, and are borne by the existing ratepayers through additions to rate base in any case.

² There was an anomaly in the existing DSC because only the first five years of customer connections (the “connection horizon”) were included in the economic evaluation, and only twenty-five years of revenue from those new customers (the “revenue horizon”) was included in the economic evaluation, even though the assets whose cost is relevant are typically longer-lived than that. These anomalies have been corrected in December, with the result that the connection horizon, now 15 years, and the revenue horizon, now 40 years, more closely reflect the contributions by new customers through their rates to the costs to connect them. These submissions ignore that particular inequity, because for the most part it has been fixed.

SEC does not, however, support shifting those incremental costs to existing ratepayers, who will not share any of the benefits generated by incurring those costs. Existing ratepayers should have no responsibility for the incremental costs of new connections (over and above the shares already allocated to existing ratepayers by the economic evaluations and for system enhancements).

Unfortunately, the proposed amendments to the DSC to implement the CAM shift all of the cost risk, and, temporarily or permanently, all of the actual cost of that spending to the existing ratepayers instead of to the later movers. Instead of solving the initial problem, these proposed amendments create a new and bigger problem - allocation of costs in violation of the “just and reasonable” principle -, and in the process remove the “beneficiary pays” principle as the fundamental paradigm for allocating responsibility for growth capital.

Structure of the New Model

Scope of LDC Planning. The proposed CAM starts with the unstated major premise that proper planning requires looking at the total needs of an area, not just the immediate needs of identified customers.

While SEC believes that this enhanced planning paradigm is not sufficiently clearly laid out in the proposed amendments, it also believes that some, if not all, LDCs will understand that this model frees them to plan with a broader scope. If a new community is ultimately going to have 15,000 homes, it is not good planning to build for the 3,000 homes currently approved. Good planning thinks about what the system will have to look like in the future, 10-15 years out, and makes sure that the eventual build of that system is as efficient, cost-effective, and timely as possible.

We also note that LDCs are, for very good reasons, mostly risk-averse. Their planning paradigm is not increasing profitability (as with many old economy companies), or growth (as with many technology companies), but prudence. LDCs (with some unhappy exceptions, of course) understand that they are investing money on behalf of the public they serve, so they have as a primary goal the desire never to make any bad investments. In short, they don't put their existing ratepayers at risk if they can avoid it. They have a low risk tolerance, because in the end it is not their money they are investing, but that of their customers³.

The existing DSC fully protected the existing customers (at least in theory), but at the expense of setting up barriers for longer term, growth related planning.

The revised DSC would effectively expect LDCs to plan for growth, and spend to deliver capacity even if there were insufficient customers ready and willing to pay for it at the outset. This is sensible, of course, but it is not the end of the analysis.

³ Utilities benefit from what is often called the “regulatory compact”, a social/legislative deal in which they are entitled to recover in regulated rates in the future costs prudently incurred today. This is unlike unregulated companies, who may hope to recover today's investments in the future, but have no right to do so. When utilities invest today, they are committing their customers to pay for those investments in the future. It is in that sense that they are spending their customers' money when they are making investments.

Someone has to pay for that growth spending.

Allocation Paradigm. Once a plan is expected that takes into account everyone who will need new capacity, not just those at the door today, the cost of that plan has to be allocated between those who will need that new capacity. In simple terms, if you need to spend \$60 million to deliver capacity for 15,000 homes, the cost is \$4,000 per home (with variations for size of demand, time value of money, etc.).

At its root, this is not a complicated problem. It is arithmetic.

The devil is, as always, in the details.

Buildout over Time. First, you may not have to spend the whole \$60 million on day 1, but it will still have to be spent. This can be solved by building in the time value of money spent, a normal part of planning economics.

We believe the CAM model does this, but it is less clear than we would like.

True-ups of Costs and Forecasts. Second, the cost and connection numbers are forecasts, and so will not be 100% accurate. In the case of cost forecasts, that is about risk allocation. The cost per home can be subject to a true-up (allocating the risk to the connecting customer), or the cost per home can be fixed (allocating the risk to the LDC building out the capacity, which means either existing customers or the shareholders), although presumably in the latter case the upfront cost is higher to build in that risk and reflect a contingency.

The proposed amendments essentially leave this issue to the individual LDC. In our view, either now or at some future date OEB guidance on this issue would be helpful to many LDCs.

Different Levels of Developer Commitment. Third, not all new customers that will connect to the new capacity being built will be ready to write a cheque on day 1.

SEC believes there are more categories of new customers than the Notice of Proposal contemplates.

The easiest to identify are those who want a number now, and will write a cheque for their share right away. "Promise to deliver us capacity when we build our homes, and we'll give you \$X per home for that capacity today."

The second group are those that want an estimate now, which they will fund immediately, on the understanding that there will be a true-up later for the actual cost of the capacity built (not the # of connections).

The next two groups are those who want either a firm number or an estimate today, but don't want to pay until their homes are being built and connected. They will provide a financial commitment to secure their capacity, like a letter of credit or other surety, which the LDC can use to finance the capital spending.

There will also be developers that own land in the new community, and certainly plan to build new homes that will need the new capacity, but are not yet in a position (by circumstance or by choice) to pay or make a financial commitment for that new capacity.

Next there will land in the new community that is included in the Official Plan as residential new development (so they are likely part of the forecast capacity needed), but is in fact still owned, for example, by farmers, golf courses, and others who have no (near term) desire to build new homes.

Finally, there are new connections that are completely unexpected. Much is made of the data centre that “comes out of nowhere”, but in fact it is normal for small and large connections to emerge just because new capacity has become available. Whether it is a strip mall, or a high school, or a hospital, or a local arena, this too must be factored into the allocation of the cost of the new capacity. If you spend \$60 million to build new capacity, those who use it should be paying for it, even if they were unexpected users.

Beneficiary pays.

Rights to Capacity. Developers are not going to pay the cost to build new capacity (all or part of it), unless they are assured that the capacity will be available to them as they need it. The existing system implies a “right to capacity” for those who have paid to build it (whether on a fixed cost or estimated basis). Under the CAM model, there is an amount of capacity that has not been paid for as yet.

At the simplest level, if a developer provides a payment or binding financial commitment to pay for their capacity, that capacity should be reserved for them. This should not be controversial.

The proposed new CAM handles this by treating that capacity as committed, but allowing new connections to use it as long as they pay the incremental cost to build replacement capacity for those who originally provided the commitment. That is, they temporarily use capacity someone else has reserved, but put up money or financial commitments to replace it in time for the person who reserved it to have it when needed.

This all makes sense. How LDCs will manage this is another question, but SEC will wait to see what the LDCs say about the challenges of managing capacity commitments in this more complicated scenario.

The bigger problem comes with new connections that made no commitments, but for whom the capacity was built because they were part of the forecast. The proposed CAM handles this by requiring those new connections to pay a proportionate share of the cost, plus the time value of money, when they seek to be connected.

However, in the meantime those new connections with no commitments have no actual or potential rights to any of the capacity built. It is “first come, first served”.

Protection of Existing Customers

Assignment of Cost Responsibility to Existing Customers. Allocating the costs of these major projects has essentially three buckets.

First is those who have actually paid for new capacity, with or without a true-up condition. Those costs, when incurred by the LDC, never become a cost of existing customers, because they have already been paid by developers or others connecting to the system.

Second, and at the other end of the spectrum, there are the costs funded by incremental revenues (the CAM assumes this is zero), and the costs of enhancements. They are allocated at the outset to the existing customers, and added to rate base, because existing customers benefit from this expenditure.

Both of these buckets are reflected in the existing DSC, with no significant changes except in quantum.

Third, and the purpose of the proposed CAM, is the bucket of costs incurred to connect customers expected in the future, but who have not yet paid for their capacity. This includes those who have made financial commitments, those who have not committed but are expected as part of the plan, and those who actually end up wanting to connect during the planning period while the capacity is available, whether or not they were in the forecast.

The proposed CAM assigns the cost responsibility for all of that third bucket to the existing customers by adding that part of the costs to rate base.

SEC notes that none of this cost is currently the responsibility of existing customers, presumably because they get no benefit from these costs. This is a change in policy being proposed in the Notice of Proposal.

We also note that the Minister's Letter of Direction and other communications to the OEB did not propose that the OEB allocate additional costs to existing customers and thus increase their electricity bills. The OEB is proposing this on its own initiative.

It is further worth noting that the objectives of the OEB under the Act do not include promoting housing development at the expense of existing customers, which is presumably the reason why the Minister's Letter of Direction did not propose that.

If the OEB can achieve the promotion of housing development while remaining consistent with its statutory objectives, that is of course a good result. If a proposed policy or rule or code, such as this one, promotes housing development at the expense of, for example, protecting customers with respect to price, that is not an acceptable result.

The Problem Thus Presented to Distributors. This creates a problem for distributors.

On the one hand, driven by prudence and their responsibility to protect their existing customers, many distributors will try to keep the cost of the third bucket (and therefore the amount of capacity built) as low as possible. Some distributors in the advisory

group suggested that they would resist any spending in excess of that backed by financial commitments, for precisely this reason. It is how they plan – to protect their customers.

The effect of this is necessarily to reduce the amount of capacity infrastructure being built, thus undermining the efforts of the provincial government and municipalities to provide more new homes on an efficient, timely, and cost-effective basis.

On the other hand, the provincial government and the municipalities (often the utility shareholders) will seek to have LDCs increase the growth capacity they are building, and try to influence them to do so.

The effect of this pressure would be to increase the size of the third bucket, and therefore increase the costs that are allocated to existing customers, contrary to the beneficiary pays principle. Further, it increases the risk of overbuilding the system.

Effect on Existing Customers. The “third bucket” allocates costs to existing customers by adding some part of the capital for expansions to rate base. This increases rates.

While the modelling done by OEB staff and consultants for the advisory group suggested that the rate increases would be relatively small (1-3% for a large utility), that modelling did not tell the full story. SEC estimates that, in the areas in Ontario where there is significant residential growth pressure, distribution rates could increase by 15-30% through this allocation, because of the combination of utility size (smaller utilities spreading the cost over fewer existing customers) and multiple growth areas within a utility.

A single \$50 million expansion (adding \$4-5 million to annual revenue requirement) might add only 1-2% to distribution rates in a utility like Elexicon or Alectra. It could add many times that percentage in a utility like Orangeville or Newmarket.

Further, in the larger suburban or exurban utilities, it is often the case that there is more than one expansion going on at any given time. Those impacts on existing customers will be cumulative.

It is at least arguable that this allocation of the third bucket to existing customers is temporary, because the new capacity is being built based on a forecast of new customers, some of whom have even provided financial commitments for the cost. Over the course of the fifteen year planning period, it is expected that some or all of this cost, including the financing cost that the existing customers have borne, will be recovered as those forecast customers connect.

This still creates three issues.

First, there is no justification provided for increasing rates for existing customers for a decade or more for spending that does not benefit them. A 10-15 year rate increase is still a rate increase.

Related to this is the fact that growth-area utilities will not have just one expansion subject to the CAM. They will have growth year after year, and multiple CAMs at any given time. The bills of existing customers will go down as recoveries from early CAMs reduce rate base, but those reductions will be offset (or more) by increases from the next CAM, and the next.

From the customer's point of view, these increases are permanent.

Second, the risk of recovery of the capital cost from these additional customers is being laid upon the existing customers. If growth slows, the existing customers pay longer. If the growth occurs after 15 years, the proposal makes the allocation to existing customers permanent by requiring no contribution from those who connect later, even though they benefit from the investment in new capacity.

There is no reason why existing customers should bear the risk of overbuilding by the distributor. Right now the regulatory process controls for overbuilding through rate cases (and distribution system plans) and through the DSC. Under the Notice of Proposal, it is proposed to build in a new risk of overbuilding, and allocate all of that risk to existing customers.

Third, allocation of even a temporary increase in rate base to existing customers necessarily requires reconsideration of the current formulae for both IRM between rebasings and ICM for growth projects. Both formulae assume that rate base allocated to existing customers (and existing rates) is permanently allocated to them. It does not take into account that the rate base allocated to them will decline as expected contributions are received. Thus, this CAM will combine with the IRM and ICM formulae to build in all overpayments by the existing customers until the next rebasing, which in some cases can be as long as ten years.

The design of the IRM and ICM will therefore have to change if this CAM is implemented without existing customer protections.

The DVA Solution. The solution proposed in the CAMAG to prevent this inequity was to charge the cost of qualifying expansions (net of the capital cost already allocated to rate base for enhancements and through the economic evaluations) to a Deferral or Variance Account. No part of the cost that doesn't benefit existing customers would be added to rate base and made their responsibility.

The DVA solution would start by charging that net cost of the expansion to a newly created DVA. As capital contributions come in, those contributions would be credited to the DVA, thus reducing the balance over time. The "financing charge" already proposed to be included for those connecting later would cover the accruing costs to the LDC of financing the capital in the DVA until recovered.

In a perfect world, all of the capacity would be taken over the planning period, with appropriate contributions from those new connections, and the net balance in the DVA at the end would be zero. The existing customers would never see this cost.

In the real world, of course, there would likely be some balance at the end of the planning period. At that point, the utility would seek to have that balance cleared, and would have the responsibility to demonstrate that it was a prudently incurred cost that should be recovered in rates.

Note that the Commissioners then have multiple options.

It will often be true that the planning was good, and the only reason that there is a balance in the DVA is that hindsight is clearer than foresight. A prudent utility may have a balance in the account, and a legitimate claim to have it added to rate base. It then remains available for future connections.

Alternatively, it may be that the utility did not plan well, built more than was prudent based on what they knew or should have known at the time of the planning, and for that reason has excess capacity (and costs) left over. In such a case, the Commissioners can disallow all or part of the recovery. For example, they could disallow some of the return component, or change the recovery of financing costs to be the debt rate only, and so on.

We note that this should also assist the distributors. Faced with pressure from municipal shareholders and others to “build, build, build”, they can point out that, if they build too much, the DVA puts shareholder recovery of the cost in play. In effect, they are not solely risking the money of existing ratepayers; they are also risking the shareholders’ money.

Rejection of the DVA Solution. The DVA solution was presented at the CAMAG, and had some support from various parties. However, OEB staff determined it was not within the scope of the consultation, and so it was not pursued in detail.

SEC notes that jettisoning the “beneficiary pays” principle was also not in scope in the CAMAG process, and was certainly not discussed by the group, yet that is the solution that is included in the Notice of Proposal.

SEC submits that, whether it is the DVA solution, or some other method, a structure must be proposed that prevents the reallocation of costs from developers to existing customers, even if that reallocation is intended to be temporary. Using a DVA is one workable approach.

Alternative Solutions – Truncated Process

Limited Scope – No Fundamental Changes. Another problem with the CAMAG process was that it was being carried out on a very short time frame, so that there was insufficient time to consider both the nuances of the proposals being made by OEB staff, and other possibilities. Generally, all members of the CAMAG agreed that the time frame available was too short.

The truncated process meant that CAMAG was given a limited scope. Essentially, the message was that the OEB was not going to consider any fundamental changes to the

Distribution System Code, but was only willing to carve out a small add-on (an Appendix to the DSC, we were told) to deal with the first movers issue.

This was, in our submission, a mistake. The first movers problem is a problem in which hundreds of millions of dollars of capital costs either are not incurred by distributors in a timely manner, or are incurred but are not being borne by the appropriate parties. A decision to encourage the spending of that much more money, or to re-allocate that much in capital costs, is not in the end going to be a “small add-on”. Somebody who isn’t paying a lot of money for something (in this case, expansions) is going to start paying for it.

There was going to be a fundamental change in any case. It needed a more thorough and more broadly scoped consideration.

In addition to forcing the DVA approach out of scope, this limited scope also prevented consideration of at least two other paradigms that could be used to allocate costs of major expansions in a fairer manner.

Development Charges. Developers are familiar with the concept of development charges, since that is how they pay for municipal services for their developments. As a result, developers were interested in the possibility that a similar (although perhaps not identical) approach could be used for expansions of electricity distribution services.

In this regard, SEC notes that the government has recently introduced legislation that would enhance the development charge system in municipalities, and provide substantial funding to support those substantial capital investments.

In the context of electricity capacity, a development charge approach would have an LDC prepare a growth plan for a planning period (15 years, for example), and convert the cost of that plan into a per-kW or per-connection cost to deliver that growth plan. There would be a publicly disclosed cost (or a rate, perhaps) to connect, based on the capacity required and the timing of that capacity. Any developer could come forward to the distributor, seek offers to connect, and rely on the publicly disclosed unit cost as what they would have to pay.

The trick is that the connection charge would be recalculated every year based on what had been spent to date, including the built-in cost of capital for capital costs already incurred, and a new 15 year plan with an updated cost and connection forecast. Because it is recalculated with better information every year, the connection charge is trued-up on an ongoing basis. Each year’s calculation improves on the previous one by taking actual costs and actual connections into account.

In addition to providing developers and others with connection certainty, and in addition to being self-correcting, this methodology also allows distributors to plan their growth spending holistically. Existing ratepayers are never on the hook for any substantial amount of spending from which they receive no benefit, because the annual corrections keep the connection charge tied to reality. Further, every connection incurs a cost, and there is no longer a distinction between first movers and anyone else.

A proposal to consider this concept was discussed briefly by CAMAG, but was declared beyond the scope of the CAMAG consultation. This is despite the fact that many developers (and existing customers) would have preferred it. As a result, it was never discussed in detail, and issues such as how to value the tax shield, how to reflect cost of capital, and what to do with timing differences in spending vs. connections, were not discussed. All are tractable problems, but they remain unexplored.

To be fair, OEB staff did incorporate some of the development charge paradigm into the proposed new CAM model. As set out in the Notice of Proposal, the contributions required to connect to new capacity under the CAM could devolve into a kind of per-kW connection charge that is updated each year for the development area with actual costs of the expansion, and a financing charge to reflect the timing difference between capital spending and any individual connection.

It is likely that in practice some utilities will propose CAM details (since much is left to their discretion) that result effectively in a development charge kind of approach, but solely within the CAM development area. They might have to jam some of the calculations into the model proposed in the Notice of Proposal, because that model is not specifically connection charge oriented, but it is at least a possible approach.

SEC believes that, assuming the OEB implements a DVA to protect existing customers⁴, the OEB in the final CAM amendments should make clear that distributors who wish to propose a connection charge approach to expansions are free to do so in a rebasing or ICM application. The OEB panel of Commissioners considering their application can then determine on a case by case basis whether the allocation of costs in the proposal is fair and consistent with good regulatory policy.

SEC further submits that the OEB should immediately institute a proceeding – whether a consultation or generic hearing – to look at the possibility that distributors be able to propose regularly updated connection charges for growth spending across their entire service territory.

Open Season or Capacity Market. The possibility of a market for growth capacity was briefly discussed at the beginning of the CAMAG, before being cut off by mutual agreement of all participants as being both out of scope, and too complex to be considered at this time.

The concept of an open season, widely used in natural gas to assess need, and assign cost responsibility, for pipeline infrastructure, was not discussed at all.

It is clear that the issue being addressed with the CAM is getting the right people to pay for additional distribution infrastructure designed to facilitate growth. Offering it to potential bidders through a capacity market or an open season approach (or any of the many potential variations) is one standard way the marketplace ensures that the right

⁴ In our submission, neither the proposed CAM nor any other capacity reallocation should be implemented without a DVA or other comparable protection of existing customers.

people pay for things they value. Thus, it is at least something that needs to be considered.

Thus, even if the OEB implements changes to the DSC that help first movers while fully protecting existing customers, SEC believes that the OEB should initiate a consultation to determine whether new concepts of funding growth capital, including a capacity market or an open season, should be pursued. Such a consultation could start, for example, with a White Paper on the issues inherent in such an approach, to help focus the discussion. Because of its knowledge of the natural gas market, the OEB has strong resources available to look at this concept.

Detailed Components of the CAM Proposal

SEC has the following more detailed comments on the Notice and the proposed amendments, using the page numbering of the Notice and its appendices:

1. Page 2 and 11 and Appendix I, page 5. It is not clear to us why the subdivisions and the major expansions are made subject to different models. This, in our view, creates unnecessary integration and crossover issues (such as credit for revenues) that could be handled more easily by a comprehensive cost model. LDCs should at least have the option to approach costs in this way, and should not be restricted to situations in which developers request integration of the cost models.
2. Page 4(b). The Notice talks about the cost sharing, without mentioning that the existing ratepayers will have responsibility for the bulk of the costs. This is not appropriate.
3. Pages 5 and 8. While there are many aspects of this that are properly left to the discretion of LDCs, the fundamental cost allocation model is the result of a policy decision by the OEB. The OEB should be clear on what is required of distributors, and what is left to their discretion. The design of the model is not in the latter category.
4. Page 7. Similarly, if there are first movers and later movers expected to connect to an expansion, a CAM should not be optional.
5. Page 7. The use of the word “intentionally” does not properly distinguish between minimum capacity built to meet the needs of immediate connection requirements (developers need 16 MW, so 20 MW has to be built, for example), with the capacity being built to accommodate customers that are not represented by the first movers (i.e. the 15 year need is 50 MW, so that is our plan). This should be clarified.
6. Page 9 and Appendix I, page 2. The CAM term should commence when the expansion is energized. Otherwise, the basic principle of used and useful would be ignored. Expansions that are not energized are in CWIP, not in rate base.
7. Page 9 and 12. The definition of “uncommitted capacity” implies that, if a distributor builds 20 MW to serve 16 MW of developer requirements, the existing ratepayers pay the 4 MW that the developers didn’t require, even if 20 MW is the minimum build to serve the 16 MW. “Uncommitted capacity” should be defined as the

capacity available after deducting the minimum build for actual and forecast developer requirements.

8. Page 10. The Notice does not make clear the amount unforecasted upstream connections that reduce the ability of the expansion to provide capacity to the new community should pay to reflect that reduced downstream capacity. This is a major gap in the proposal.

9. Page 10. The suggestion that “the distributor will initially finance” anything is incorrect. It is proposed that those unpaid costs will be financed by existing ratepayers, who get no benefit from incurring that cost.

10. Page 11. In SEC’s view, line length is a red herring that provides an unnecessary complication to CAM calculations. If a distributor believes that line length is a material factor in cost, the solution is multiple CAMs, not an unnecessarily complicated single CAM.

11. Page 12. The Notice does not make clear how the alternative option would work in a CAM situation. Do the first movers have to pay for the full cost? If not, what involvement does the utility have in construction? Is the transfer price from the LDC the actual cost, or only part, representing the share of the first movers? Do the later movers reimburse the first movers, or the LDC? We could go on. There are many questions left unaddressed.

12. Page 12. SEC agrees that transparency in connection assumptions is an important improvement. We note that the requirement to do this is not apparent in the Code.

13. Page 13. The Notice does not consider that the flexibility in payment options changes the financial responsibility of existing ratepayers, and they have no say in this.

14. Page 14. Uncommitted customers should not simply be required to pay a deposit. The same requirements to pay for capacity (cash, letter of credit, etc.) should apply to those who seek to use capacity committed to others.

15. Page 15. Leaving the payments from uncommitted customers to existing practices is not appropriate policy if the existing practices are not known by the regulator. In SEC’s view, a de minimis rule is not appropriate in this case, and the OEB should not accept “existing practices” unless it knows what they are.

16. Page 15. SEC agrees that WACC plus tax is the appropriate financing charge, but believes that distributors should have the option to accept a lesser time value of money. As long as the existing ratepayers are not paying WACC plus tax in the meantime, local community aspirations should be given scope by reducing the financing charge to encourage new development. This would result in shareholder money being spent, rather than ratepayer money.

17. Page 16. The argument in the Notice rejecting the DVA option is unsupported by either fact or precedent. Used and useful does not require immediate addition to rate

base. Many capital costs are not added to rate base right away, for many reasons. Further, used and useful is a concept based on benefit to existing ratepayers. If there is no such benefit, the concept prohibits charging the carrying cost to existing ratepayers. That is, in fact, the point of the paradigm. The OEB regularly charges both opex and capex to DVAs where either the forecast cost is unpredictable, or the responsibility for those costs is to be determined at a later date.

18. Page 17. SEC agrees that a true-up on demand or connections is overly cumbersome, and should be avoided. However, the necessary implication of that is that a DVA or other ratepayer protection is essential. The forecast by the distributor must still be prudent, and the only way to make that determination is in a proceeding in which the OEB determines the final responsibility for costs driven by forecasting variances.

19. Page 18. The Section on Anticipated Cost and Benefits is fundamentally incorrect. Ratepayers are currently protected by the DSC. This proposal would remove that protection, contrary to the Act, to achieve an objective that is not authorized by the Act. The description of the new cost allocation framework as being fair and equitable is only correct if a ratepayer protection mechanism such as a DVA is added that reinstates the protection currently available to customers in the DSC, and required by Section 1(1)1 of the Act.

20. Appendix I, page 3. The phrase “the distributor will initially finance the unpaid costs of expansion” is misleading. The correct phrase should be “the distributor will add the unpaid costs of the expansion to rate base at their next rebasing”. In addition, stating that those costs will be recovered from future customers is incorrect. The correct statement would be “Some or all of these costs may be recovered through payments received from those future customers over time”.

SEC Recommendations

SEC therefore recommends as follows:

1. ***Ratepayer Protection.*** The OEB should not implement the CAM, or any variation on it, without at the same time implementing a mechanism to ensure that the re-allocated CAM costs are not borne by existing customers. The obvious solution to this is a DVA, but other solutions can be equally effective. No CAM should be considered that, as in the Notice of Proposal, re-allocates costs by default to existing customers who obtain no benefit from bearing those costs.
2. ***Unit Cost Implementation.*** In the final amendments to the DSC, and assuming existing customers have been protected, the OEB should make clear that distributors who want to implement the CAM using a development/connection charge approach, whether for a specific area or across their service territory, are free to do so, and the OEB will consider those proposals on their merits.
3. ***Connection Charge Proceeding.*** The OEB should initiate a consultation or generic hearing to consider whether a new rate – a connection charge – should be available for distributors that develop a comprehensive growth plan that will be updated annually and will be recovered through consistent application of the connection charge.

4. ***Capacity Market/Open Season Proceeding.*** The OEB should initiate a consultation or generic hearing to consider whether the use of a capacity market or open season to fund all or some categories of growth spending should be pursued.
5. ***Adjustments to Proposed CAM.*** If the proposed CAM is implemented, and again assuming that existing customers have been protected, changes should be made as outlined in our detailed comments on the Proposal set out earlier in these Submissions.

All of which is respectfully submitted.

Yours very truly,
Shepherd Rubenstein Professional Corporation



Jay Shepherd

cc: Brian McKay, SEC (by email)
Interested Parties (by email)