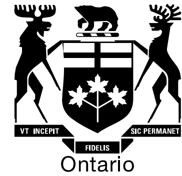
Ontario Energy Board

Commission de l'Énergie de l'Ontario



EB-2005-0001
EB-2005-0437

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 Enbridge Gas Distribution Inc. for an Order or Orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas commencing January 1, 2006.

BEFORE: Pamela Nowina
Presiding Member and Vice Chair

Paul Sommerville
Member

Cynthia Chaplin
Member

PARTIAL DECISION WITH REASONS

December 22, 2005

TABLE OF CONTENTS

1 INTRODUCTION 1

1.1 THE APPLICATION 1

1.2 PARTIAL DECISION 1

2 PROPOSAL FOR A THREE YEAR DSM PLAN (2006-2008), INCLUDING O&M BUDGETS AND VOLUME ESTIMATES 2

2.1 BACKGROUND 2

2.2 BOARD FINDINGS 3

3 ATTRIBUTION OF BENEFITS IN JOINTLY DELIVERED PROGRAMS 6

3.1 BACKGROUND 6

3.2 BOARD FINDINGS 7

4 SHARED SAVINGS MECHANISM (SSM) INCENTIVE 9

4.1 BACKGROUND 9

4.2 BOARD FINDINGS 10

5 MARKET TRANSFORMATION PROGRAMS AND INCENTIVES 12

5.1 BACKGROUND 12

5.2 BOARD FINDINGS 13

6 DEMAND SIDE MANAGEMENT VARIANCE ACCOUNT (DSMVA) MECHANISM 16

6.1 BACKGROUND 16

6.2 BOARD FINDINGS 17

7 RECOVERY OF DSMVA FOR 2002 AND 2003 18

7.1 BACKGROUND 18

7.2 BOARD FINDINGS 18

8 EARNINGS SHARING FOR THE DELIVERY OF ELECTRICTY PROGRAMS 19

8.1 BACKGROUND 19

8.2 BOARD FINDINGS 19

1 INTRODUCTION

1.1 THE APPLICATION

Enbridge Gas Distribution Inc. ("EGDI", Enbridge", the "Company" or the "Applicant") filed an application dated March 18, 2005 with the Ontario Energy Board under section 36 of the *Ontario Energy Board Act, 1998*, for an order or orders approving or fixing just and reasonable rates for the sale, distribution, transmission and storage of gas for EDGI's 2006 fiscal year commencing January 1, 2006. The Board assigned file number EB-2005-0001 / EB-2005-0437 to the application.

On August 10, 2005 a Settlement Proposal was filed with the Board. The Board heard submissions from the parties and accepted the Settlement Proposal on August 15, 2005. The Board held an oral hearing commencing August 16, 2005 on the unsettled issues. The oral phase of the hearing was completed on October 27, 2005. EGDI Argument-in-Chief, Intervenor Argument and EGDI Reply Argument were filed with the Board on November 4, 2005, November 21, 2005 and December 5, 2005 respectively.

1.2 PARTIAL DECISION

This Partial Decision with Reasons addresses the following issues:

- Proposal for a three year DSM plan (2006-2008), including O&M budgets and volume estimates
- Attribution of savings in jointly delivered programs
- Shared savings mechanism (SSM) incentive
- Market transformation programs and incentives
- Demand side management variance account (DSMVA) mechanism
- Disposition of the DSMVA for 2002 and 2003
- Revenue sharing for the Applicant's delivery of electricity programs

Copies of evidence, exhibits, arguments, and transcripts of the proceeding are available for review at the Board's offices.

The Board has considered all of the evidence, submissions and arguments in the proceeding and has summarized the evidence and the positions of the parties to the extent necessary to provide context for its findings.

2 PROPOSAL FOR A THREE YEAR DSM PLAN (2006-2008), INCLUDING O&M BUDGETS AND VOLUME ESTIMATES

2.1 BACKGROUND

In this case the Company is seeking approval for a three year DSM plan to cover 2006, 2007 and 2008. This multi-year aspect of the Company's DSM proposal finds its origin in the Settlement Agreement in last year's rate proceeding, RP-2003-0203. In that Agreement, which was approved by the Board, the parties accepted the Company's DSM plan for 2005, subject to its commitment to file a multi-year plan at its next rate proceeding. The Company has met that commitment.

The Company's proposal includes specific annual budget amounts and what it terms "estimated volumetric savings" for each year of the proposed three year term:

Year	Budget ($ millions)	Estimated Volume Savings (million m^3)
2006	$18.9	84.4
2007	$20.3	86.3
2008	$21.5	90.4

Originally, fuel switching was part of the DSM Plan. However, the Company agreed to move the funds for fuel switching from the DSM budget to the Opportunity Development O&M budget.

Associated with the Company's proposal for a three year term is its request for guidance from the Board with respect to gross spending levels. Some intervenors have urged the Company to increase its planned spending to a stipulated higher percentage of utility revenue. The Company stated that it has been attempting to address this issue for a

number of years, and that additional guidance from the Board would make the regulatory process more efficient. Specifically, the Company is seeking an endorsement from the Board that DSM spending in the range of 1 to 2 percent of utility revenue is appropriate. The Company proposes to increase DSM spending over 3 years up to a budget of approximately 1 percent of annual revenue. The Company also requested that the Board provide an opinion on simplifying the budget setting process by setting annual budgets as a percent of revenue.

The Company's proposed three year plan retains all of the elements of its existing program, but makes significant changes to the design and operation of these elements within the multi-year plan. These aspects of the Company's proposal will be considered elsewhere in this Partial Decision, but it is important to note that in addition to proposing a 3 year term for its plan, the Company seeks to make material changes in how the plan will operate and how it will account for and share plan outcomes with ratepayers.

The Company did not propose any change to the LRAM mechanism, which fixes all the assumptions for the calculations of lost revenues at the start of the year, with no change being made as a result of new information during the year.

2.2 BOARD FINDINGS

The concept of a multi-year plan has been generally well-received by all interested parties. The Settlement Agreement governing the 2005 DSM plan is evidence that there is at least a recognition that a multi-year format may lead to efficiencies and a better planning environment for DSM activities. Indeed the primary rationalization offered by the Company for its multi-year proposal is simply that an annual examination of the targets, budgets and programs is inefficient, and that engaging in the process less often, say every three years, is more efficient, and does not necessarily compromise ratepayer oversight or confidence in any aspect of the plan.

While there may be some agreement on the potential benefits of a change in the term of the plan, there is clearly no consensus on the Company's proposed changes to the specific elements of the plan.

In addition to their opposition to the changes to plan elements, a number of intervenors argued that the adoption of a new extended term for the Company's DSM plan should only occur after a review of the broader DSM environment. In their view, entrenchment of a three year plan at this time is inappropriate given material developments in the area. These developments include an enhanced engagement of electricity distributors in conservation and demand management (CDM) activities and a growing presence of the Federal government in pursuit of climate change initiatives.

Also important is the fact that the other major gas utility, Union Gas Limited ("Union"), has itself filed an application for a three year term for its DSM plan. Some intervenors, most notably the Consumers Council of Canada (the "Council") and the Industrial Gas Users Association ("IGUA") , argued that it would be more efficient to address and assess the differences between the DSM approaches of EGDI and Union prior to the adoption of a multi-year program for either. The elements of the respective programs have evolved separately for each utility. While the plans share a number of elements, important differences have developed in the respective plans over the years.

The Board finds that it is not appropriate to approve a three year term for the Company's DSM plan at this time. The Board considers that the sharply enhanced importance of conservation activities in the broad energy market today makes a review of the design of the DSM plans of both major gas utilities advisable. It is important to assess the extent to which the existing gas distribution DSM programs meet the needs of the distributors, the ratepayers and the broad public interest. The fact that the two utilities have developed markedly different approaches raises the possibility that efficiencies are being missed in the process, and that a convergence of the two plans may be appropriate. It is also important to consider and, where appropriate, accommodate the role of other energy

market participants and government in the delivery and encouragement of DSM activities.

The Board will approve a one year DSM plan for EGDI, and will convene a generic proceeding to deal with a series of questions related to the DSM activities of EDGI and Union. It is intended that this generic proceeding will occur in the first half of 2006. We expect the output of the generic proceeding to be clear, detailed, binding direction to the natural gas utilities.

Among the areas that will be investigated in the generic hearing are several which directly address issues of this case. These are:

- Timing of the schedule for submitting and reviewing DSM plans. This would include a consideration of amending the plans in mid-course to incorporate intervenor suggestions, new information, and budget changes, and the appropriateness of linking the plan to the schedule for establishing distribution rates;
- Determination and use of planning assumptions for generic energy efficiency measures and custom projects;
- Budget as a percentage of utility annual revenue
- Structure and screening of programs including differentiating between market transformation, lost opportunity and enabling activities;
- Structure and use of LRAM, SSM and DSMVA;
- Process and content of program evaluations including the requirement for a third party audit process;
- Length of plan, as well as updating the plan and reporting requirements;
- A consideration of rules respecting free riders and attribution of energy savings;
- and,
- The appropriateness of directing specific DSM measures to low-income consumers.

The Board approves the Company's proposed budget for 2006, which is $18.9 million. This figure represents an increase over the 2005 budget amount, but an increase which is consistent with the experience of recent years. The Company's testimony that the budget

was developed in the normal course using a "bottom-up" methodology was not seriously challenged by any intervenor. The Board will consider the other specific changes that the Company proposes to its plan elsewhere in this Partial Decision, but the findings will be limited to 2006. Where possible the Board will defer decisions on the issues listed above to the generic proceeding.

The Board will adopt the "volume savings estimate" for 2006 as the volumetric savings target for 2006, subject to adjustments consequential to other findings in this Partial Decision. The Board notes that the Company accepted a number of the Green Energy Coalition's ("GEC") assumption changes outlined in Undertaking J36.1. The Company will ensure that these adjustments are incorporated into the DSM plan for 2006 and will provide the results of all adjustments to the Board and all parties to the proceeding.

3. ATTRIBUTION OF SAVINGS IN JOINTLY DELIVERED PROGRAMS

3.1 BACKGROUND

This issue addresses the extent to which the Company is entitled to claim energy savings associated with jointly delivered DSM programs. The Company asserted that it is not proposing any change to the attribution rules it applies to such programs. It identified the following principles as governing the attribution of energy savings for DSM programs which are delivered under partnerships or other joint projects:

- The energy savings allocation is to be determined at the time the DSM plan is implemented, not later, such as during the audit.
- Savings allocation for any new programs introduced during the period of the plan will be dealt with in the same manner as other program assumptions.
- The Company may claim 100 percent of the DSM savings where the Company's role was central to the program.
- For each program that represents over 5 percent of the TRC benefits in the DSM plan, the Company will provide supporting information regarding its role in the program.

Of these principles, the one attracting most interest from intervenors is that which purports to authorize the Company to take full credit for the energy savings experienced

through a program in which the Company has played a “central role”. In the Company’s view it should be considered to have played a central role in a program if it initiated the partnership, initiated the program, funded the program, or implements the program.

One program put forward by the Company is the EnerGuide for Houses program. This is an NRCan program that the Company is supporting in its delivery area. The Company is claiming 100 percent of the attributable benefits for this program.

Some intervenors argued that the Company has not shown any significant impact on this program as a result of its participation. They suggested the attribution rate should be adjusted by increasing the presumed free rider rate from 8 percent to 90 percent. This would reduce the benefits for the Company from 92 percent of the total participation to 10 percent.

A number of intervenors submitted that for joint programs and programs funded by entities other than electric local distribution companies (“LDCs”), the utility should be able to claim the proportion of the benefits only where those benefits would not have occurred without the utility’s efforts.

Some intervenors stated that they support the concept of the Company working with partners because such joint efforts are likely to result in a more cost effective approach to the delivery of DSM programs. They proposed that each program be considered on a case by case basis, and that attribution of energy savings should depend on the actual level of participation by the Company, and the extent to which it has made a financial contribution to the program or program participants.

3.2 BOARD FINDINGS

As indicated above, the generic proceeding will address rules for attribution of energy savings. The Board must develop a balanced and efficient approach to the issue, which does not involve lengthy regulatory proceedings, and which is fair and easily implemented.

It is clear from a cursory review of the criteria the Company uses to support its current "central role" attribution that such a characterization is dependent on a number of assumptions that may be controversial in any given case. It is also clear that the criteria proposed by intervenors can be subject to the same uncertainties. The sharply enhanced interest in conservation of all forms of energy, and the apparent increasing role played by other market participants and government make it important to find a reasonable and fair attribution methodology, which has the confidence of all affected parties.

The Board is not in a position at this time to make any finding which would replace the Company's current practice. The Board finds that the Company may claim 100 percent of the benefits associated with DSM programs in which it plays a central role in the marketing and delivery of the program with a non-rate regulated third party.

However, the Board heard sufficient evidence in this case respecting the NRCan EnerGuide for Houses program to conclude that this program does not meet the Company's own criteria for establishing a central role. First, the Board notes that the financial contribution made by Enbridge to program participants is relatively modest compared to the total budget for the EnerGuide for Houses program. It is also apparent that this national program has not found extraordinary participation rates within the Company's franchise area, leading to the conclusion that its contribution is not exemplary, when compared to the program's general impact across the country. In these circumstances it is inappropriate for the Company to claim 100 percent of the energy savings associated with it. The Board is not convinced that the Company continues to play a central role in the EnerGuide for Houses program nor that it has provided a significant impact on increased market penetration. The Board appreciates that Enbridge provides non-direct financial roles that are important to the EnerGuide for Houses program. These roles include promotion and support for the program. The Company has played a historical role in developing the program. Accordingly, the Board finds that the Company can claim 50 percent of the net benefits. The volumetric savings target for this program only will be adjusted to reflect this finding.

GEC and the Company had differing views on the concept of free riders. The Board believes that clarity on the issue of free riders should be established in the generic proceeding. For 2006, the free rider percentage for the EnerGuide for Houses program will remain at 8 percent.

The Board expects that the electric and natural gas industries will co-operate and partner in the creation of TRC benefits and the reduction of program costs. If the Company is entering into a partnership with an electric LDC, the Board's current guidelines for the attribution of benefits will apply, pending the outcome of the generic proceeding. These guidelines were established in the Total Resource Cost Guide issued on September 8, 2005.

4. SHARED SAVINGS MECHANISM (SSM) INCENTIVE

4.1 BACKGROUND

The Shared Savings mechanism is designed to provide an incentive to the utility to aggressively pursue DSM savings. The existing SSM mechanism for the Company was initiated in 1999. The theory behind the incentive was to reward achievement of the TRC goal. Revenue flowed to the shareholder as results surpassed the forecast incentive threshold or pivot point. No payout to the shareholder was made when results fell short of the TRC target.

In this proceeding the Company proposed a fundamental change to the operation of the SSM. It proposed to derive revenue for the shareholder beginning with the first dollar of TRC savings at the rate of 5 percent of TRC achieved. This proposal effectively eliminates any performance threshold, and bases shareholder reward on all TRC results.

The Company's rationale for this change is based on three concepts. First, it suggested that it is fundamentally unfair to deny the shareholder participation in the program where it misses the target by a small amount and through no fault in its diligence or application to the DSM program. Second, in the Company's view, society begins to receive the benefit of the DSM activity as soon as the first unit of TRC is generated and denying the

Company a revenue reward until a target is achieved is unjust. Third, the Company's proposal adopts the mechanism put in place by the Board to encourage the electricity distributors in the province to embark on CDM activities.

The Company also stated that the present SSM is administratively problematic because of its reliance upon pivot point targets that are difficult to negotiate and settle. Intervenors have proposed various TRC determined SSM models ranging from 1 percent to 6 percent of net benefits with TRC pivot points ranging from 75 percent to 100 percent of the TRC target. As well, some intervenors submitted the current SSM should remain in place.

Some intervenors are concerned with the Company being rewarded for poor performance and that the Board should set a floor below which no rewards are paid out.

4.2 BOARD FINDINGS

The Board is satisfied that the SSM should be continued for 2006, with the following attributes:

- 100 percent of the target will be set at $158.1 million less the consequential adjustments of this Partial Decision.
- The SSM will be available for all TRC savings in excess of 75 percent of the established TRC target.
- For TRC savings between 75 percent and 99.9 percent of the TRC target, an SSM amount of 18 percent of TRC savings in excess of 75 percent, plus,
- For TRC savings between 100 percent and 109.9 percent of the TRC target, an SSM amount of 15 percent of TRC savings in excess of 100 percent, plus,
- For TRC savings between 110 percent up to 120 percent of the TRC target, an SSM amount of 12 percent of TRC savings in excess of 110 percent, plus,
- For every subsequent increase of 10 percent over the TRC target, the marginal SSM rate shall decline by a further 3 percent until it equals 3 percent.

This structure has been elected because we believe that the format represents an appropriate balance between shareholder and ratepayer interests. The fact that it was

developed earlier this year for Union (EB-2005-0211) is helpful to us. However, the principle of alignment of EGDI and Union mechanisms is an issue best left to the generic proceeding.

The elimination of a pivot point or target threshold is fundamentally inconsistent with the purpose of the mechanism. The core purpose of the mechanism is to incentivize the Company to achieve and surpass the established TRC target. It is a reward for exemplary performance, not a payout for any performance, no matter how meager. This observation was made by virtually every intervenor that commented on it, and is compelling. In our view, this disposes of the first two grounds advanced by the Company in support of this change in the SSM.

Structuring an SSM with a pivot point at less than 100 percent recognizes that material benefits are generated for ratepayers at lower levels of achieved savings. For example, the Company achieved significant TRC benefits in 2004 at a performance level less than 100 percent yet will likely receive no incentive payment. The Board considers the mechanism approved herein to strike an appropriate balance between fairness to the Company in recognizing benefits achieved, while retaining an appropriate incentive for exceptional performance.

The Company's argument that its proposed change in the SSM should be approved because it incorporates the same approach as that adopted for the electricity distributors is also flawed. This rationale ignores the fact that the gas utilities and the electricity utilities are at different ends of the DSM experience scale. The gas utilities have been engaged in DSM activities for a substantial period, and have developed a high degree of expertise in developing, assessing and implementing programs in a regulated environment. Most electricity distributors, in contrast, have much less experience in such programs. The establishment of the 5 percent of all TRC SSM for electricity distributors was intended to create a simple and easily implemented incentive plan in a transition period. Its simplicity was recognition of the distributors' relative lack of experience in DSM

delivery. It as likely that the electricity SSM approach will evolve into something closer to the approach followed in gas, than the obverse.

5 MARKET TRANSFORMATION PROGRAMS AND INCENTIVES

5.1 BACKGROUND

Market transformation programs are arguably a special category of DSM activity which seeks to embed, often through the introduction of energy saving equipment, industrial plant and appliances, energy savings that are substantial and of long duration. In these characteristics such programs are different than many other DSM programs, which are often shorter term approaches, more modest in their single effect.

Market transformation programs can offer very substantial and sustainable savings, but they can be more expensive to deliver. Many observers regard market transformation programs as offering highly desirable results, which can only be achieved through more programmatic, resource intensive and rigorous efforts by DSM providers.

The Company proposed to spend approximately $3.4 million in market transformation programs over the three years of the Plan for the following programs:

- Contractor Performance Program;
- White Goods;
- EnerGuide for New Houses;
- EnergyStar Windows;
- EnerGuide Label for Natural Gas Fireplaces; and
- Low Income Programs.

The Company proposed a budget of just under $1 million during the plan for a high efficiency boiler market transformation initiative. The Company proposed to focus both on hydronic boilers in sizes of 300,000 BTU and greater and high efficiency boilers that meet minimum combustion efficiencies. Pollution Probe and GEC suggested an alternative design for this program that focuses on an incentive scheme.

Some intervenors strongly supported the further development of market transformation programs and suggested that it is critical that the Company commit itself definitively to the pursuit of such programs, which offer a new and largely undeveloped opportunity for conservation gains.

While acknowledging the potential for market transformation programs, the Company's proposed commitment to these activities is marginal in light of its overall DSM budget, and dependent on the existence of specific incentives directed to the shareholder.

For example, the Company seeks approval for its participation in the Energy Star windows program, but argued that a program-specific incentive, specifically $300,000, is appropriate to encourage the Company to undertake the initiative. Some intervenors rejected this approach, suggesting that any consideration of such an incentive should be part of the next rate case.

Still others took the position that the proposed annual payment of $300,000 per year over 3 years is excessive for moving the market share by an anticipated 5 percent per year. Some intervenors were uneasy about the establishment of a separate category of DSM programs, called "market transformation" which is subject to distinct and generous incentives. In their view, such programs should be considered within the rules and practices governing DSM activities as a whole.

The Company justified a separate treatment for market transformation programs on the grounds that such programs may have impacts on system expansion expectations. That is to say, that the Company has a concern that these programs may be so successful that the anticipated and orderly economic expansion of the gas distribution system will be curtailed.

5.2 BOARD FINDINGS

The disputes which characterize this aspect of the Company's DSM proposal are profound, and concern nothing less than the appropriate future direction of its DSM

activities. It is quite likely that the conventional DSM activities of the Company have hit, or will hit a plateau where their effectiveness diminishes. This outcome is likely given the entry of new players in the DSM environment, most notably the electricity distributors and the government, and the fact that many DSM programs directed to "low hanging fruit" have already achieved most of what they can achieve. The next natural step in the evolution of this activity is likely to be development of market transformation programs. These programs have a different economic profile than most current DSM activities. Their effect is often expected to be long term, their implementation may also be long term, and their costs are often higher than conventional programs.

The nature of this development is treated most effectively in GEC's evidence, which suggested that the Company is at a "crossroads" with respect to its DSM portfolio.

For these reasons, the Board will examine market transformation programs, the budget process associated with them and the appropriateness of program specific incentives in the generic proceeding. In that proceeding, the Company should be prepared to document its concerns about the presumed limitations on system development and growth occasioned by market transformation programs, if it wishes to have its concerns on this aspect considered.

In the interim, pending the completion of the generic proceeding, the Board will approve the Company's market transformation budget of $987,000 for 2006. The Board expects that the market transformation programs that are part of the DSM plan will be included in any proposed DSM plans for 2007 and 2008.

The Board also approves the Company's proposal respecting the EnergyStar windows project, including its proposal for a potential $300,000 incentive for the shareholder provided the program meets its 5 percent market impact target. The Board has some concerns that the target may be overly cautious. Certainly Mr. Neme, in his evidence, suggested that a more ambitious target is warranted. The fact is that few in the Ontario environment have much directly relevant experience in such programs, and while the

experience in other jurisdictions is and will be helpful as this aspect of DSM develops, the Board considers that the Company's proposal is not unreasonable. The Board will regard this program as in the nature of a pilot program, learnings from which will inform future practice.

GEC and Pollution Probe recommended that the Board mandate a condensing boiler market transformation project, which would have the Company support purchases of such boilers by industrial customers through direct purchase subsidy equivalent to 50 percent of the incremental costs associated with the purchase.

It would appear that this kind of program is very like the kind of market transformation effort that may be needed to achieve conservation targets in the future. The Board is reluctant however to mandate the program, without a more thorough evidentiary foundation. Accordingly, we will require the Company to work with intervenors to develop such a program for its next rate case. The Company's resulting proposal should attempt to expose all elements of the program, and the remaining points in dispute between itself and the intervenors. The Board recognizes that there may be consequential changes to this approach arising from the generic proceeding.

The Board has the same view with respect to the market transformation program directed to low income consumers and directs the Company to engage in the same process as outlined above to develop an approach to this aspect of market transformation.

The Board is concerned that the Company has not focused sufficient attention on the circumstances effecting the participation of low income consumers. The issue of programs for low income consumers will be addressed in the generic proceeding. However, to ensure attention to this issue in EGDI's 2007 case, the Board requests that the Company provide an exposition and explanation of its conservation planning for this category of customer at the time of its next rate proceeding.

6 DEMAND SIDE MANAGEMENT VARIANCE ACCOUNT (DSMVA) MECHANISM

6.1 BACKGROUND

The DSMVA is a variance account which is designed to enable the Company to track and recover amounts expended on DSM activities in excess of the Board-approved DSM budget. As currently defined, the recovery of such excess spending is limited to a ceiling of 20 percent over the Board approved budget. In addition, the Company may only recover the funds captured in the account if it has achieved 100 percent of its forecast energy savings, which is its volumetric savings target. The Company proposed to modify the existing mechanism of the DSMVA to permit recovery of excess spending after only 80 percent of the volumetric savings target having been achieved. The 20 percent excess spending ceiling would be retained. In fact, the Company has proposed that the volumetric savings "target" should be eliminated for the purposes of its plan, and replaced with a volumetric savings "estimate". This proposed innovation is designed to address what the Company feels is a flaw in the existing structure of the DSM. It contends that for shared saving incentive purposes, it should not have to attain a hard energy savings target, but rather should get credit, and revenue, for any and all savings attributed to its program. The savings target then becomes a savings estimate. This aspect of the Company's proposal is dealt with in Section 4 of this Partial Decision. For the purposes of the discussion in this section of the Partial Decision, the Board will use the prevailing terminology, which is "volumetric savings target".

The Company has outlined the following rationale for its request to reduce the threshold for access to the DSMVA to 80 percent:

- There is equal uncertainty in the forecasting of volumetric estimates as there is in forecasting DSM expenditures. In recognition of this, the Board should relax the 100 percent rule.
- There is a risk in accessing the DSMVA if the Company believed it had achieved the volumetric target, but learns through the audit process that the volumetric target had not been achieved and that the expenditures are therefore not recoverable.

- Under the current structure, if actual results for a given year are very close to the savings estimate near year-end, the Company does not have adequate time to take advantage of the DSMVA. The Company's proposal of reducing the threshold to 80 percent, would allow access to the DSMVA earlier to support its programs. The Company submitted that this is consistent with the conservation culture which the government of Ontario is promoting.
- The Company submitted that reducing the threshold to 80 percent is not equivalent to increasing the budget by 20 percent. The Company witness acknowledged that Board approval will be required to clear the DSMVA. Therefore, the onus remains on the Company to show that the use of funds is reasonable and used in a cost-effective manner.

Some intervenors argued that the Company's proposal to access the DSMVA after only 80 percent of the volumetric target is achieved is unnecessary. They asserted that the Company already has an incentive to achieve energy savings beyond its target through the SSM.

No intervenors supported the proposed change to the DSMVA.

6.2 BOARD FINDINGS

The School Energy Coalition ("SEC") submitted that the Board should allow the Company to access the DSMVA only for spending on TRC benefits in excess of 100 percent of the TRC target. In SEC's view, it is inappropriate to commit additional funds before the TRC target has been met. The TRC target is based on monetization of the volumetric energy savings achieved by the Company's plan. It is a widely accepted metric which takes into account a variety of factors which attempt to place a specific monetary value on energy use avoided by conservation.

In the Board's view, in considering the recovery of overspending a metric based on the money value of the savings is most appropriate.

In addition, the Board considers that, while all forecasting is subject to some degree of uncertainty, this area is no more prone to forecast error than any other aspect of Company operations. The Company's argument that this uncertainty should result in a relaxed approach to thresholds governing the variance account misses the central point. The Board approves a budget for the DSM plan and expects the Company to operate within its limitations. Excess spending in any amount is not a desired outcome. Where it occurs, it is reasonable to permit recovery of overages only when the core objectives of the plan have been realized, and only to a defined ceiling. For the purposes of the variance account going forward this means that excess spending less than 20 percent of the Board approved budget may be recovered, but only where the Company has achieved its TRC target. The Board recognizes that there may be circumstances where the Company may not be certain of recovery late in the year, because it is uncertain as to its achievement of its TRC target. The cure for this eventuality is not relaxed targets or softened thresholds. The appropriate response is enhanced program tracking and forecasts.

7 RECOVERY OF DSMVA FOR 2002 AND 2003

7.1 BACKGROUND

The Company is seeking approval for the clearance of $252,000 recorded in the 2002 DSMVA, and $1,008,000 in the 2003 DSMVA, plus interest.

The Company submitted that it has complied with the mechanics of the DSMVA and that it is appropriate for the 2002 and 2003 DSMVA to be approved for clearance on January 1, 2006.

7.2 BOARD FINDINGS

The Board did not hear any material arguments from intervenors opposing the clearance of the 2002 and 2003 DSMVA. The Company has stated that it has exceeded the threshold volume targets in those years and has complied with the requirements of the DSMVA.

SEC proposed that, in future, the Board should require the Company to submit evidence demonstrating that all of the conditions for clearance have been met. The Board considers that there is merit in the suggestion at least to the extent that we will include this issue as part of the filing requirement aspects to be considered in the generic proceeding.

The Board approves clearance of $252,000 recorded in the 2002 DSMVA and $1,008,000 in the 2003 DSMVA plus interest.

8 EARNINGS SHARING FOR THE DELIVERY OF ELECTRICITY PROGRAMS

8.1 BACKGROUND

The Company is seeking approval from the Board for its earnings sharing proposal in respect of earnings generated by DSM services provided under contract to electric LDCs. The Company proposed to retain one half of all net earnings generated through program development and delivery services provided to electric LDCs. The other half would be credited to ratepayers. The Company proposed to establish a deferral account to track and retain amounts generated by this activity, for disposal in its next rate case.

The Company submitted that its experience delivering certain DSM programs and contacts with key channel partners offer electricity LDCs an option of partnering with the Company to accelerate results and leverage the Company's existing processes and infrastructure to the benefit of the ratepayers of each utility.

Some intervenors submitted that a 50:50 earnings sharing proposal is far too generous to the utility shareholder, given that it appears that it is based on leveraging existing programs and may not involve a great deal of incremental work.

8.2 BOARD FINDINGS

As outlined in the previous section of this Partial Decision, the Company has developed considerable expertise in the management of the DSM portfolio. Sharing of this expertise

supports the advancement of a conservation culture. A revenue incentive provides motivation to the Company to share its expertise.

The Board approves the Company's proposal in respect of earnings generated through its partnering with electric LDCs to develop and deliver cost-effective conservation and demand management programs. This approval is for the test year only. The Board considers that the issue of the terms of and the appropriateness of gas utility engagement as a service provider to electricity LDCs should be included in the range of questions referred to the generic proceeding.

The Board approves the Company's request to establish a deferral account to track and account for revenues generated by this activity during the test year.

The matter of intervenor and Board costs will be addressed in the final decision.

Dated at Toronto, December 22, 2005

Signed on behalf of the Panel

Original signed by

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Pamela Nowina
Presiding Member and Vice Chair