

Ontario Energy
Board

Commission de l'Énergie
de l'Ontario



RP-2005-0020
EB-2005-0523

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O 1998, c. 15 (Schedule B);

AND IN THE MATTER OF a proceeding initiated by the Ontario Energy Board to make certain determinations respecting conservation and demand management activities by Local Distribution Companies as described in the Electricity Distribution Rates Handbook and Total Resource Cost Guide pursuant to sections 19(4) and 78 of the Ontario Energy Board Act, 1998.

BEFORE: Gordon Kaiser
Vice Chair and Presiding Member

Pamela Nowina
Vice Chair

DECISION WITH REASONS

March 3, 2006

INTRODUCTION

The Issues

On November 11, 2005, the Board issued a Notice of Proceeding and Hearing, initiating this proceeding to make certain determinations regarding conservation and demand management (“CDM”) undertaken by electricity local distribution companies (“LDCs”). The Board asked parties to address three issues.

The first issue is whether the Board should order an LDC to spend money on CDM programs in an amount that is different from the amount proposed by an LDC in a test year and, if so, under what circumstances. The second issue is whether the Board should require LDCs to demonstrate free ridership levels for all CDM programs on a program by program basis. The third issue is whether the Board should order that an LDC should only be entitled to claim incremental benefits associated with its participation in a CDM program with a non-rate-regulated third party.

The Board received submissions on these three issues from the parties listed in Schedule A to this Decision.

Background

The proceeding arises out of a number of previous Board directions with respect to LDC expenditures on CDM. These are the Board’s May 11, 2005 Report on the 2006 Electricity Distribution Rate Handbook (RP-2004-0188) (the “Report”)¹; the 2006 EDR Handbook (the “Handbook”)²; and the September 8, 2005 Total Resource Cost Guide (the “TRC Guide”)³.

All of the above documents were prepared to provide guidance on the filing and evaluation of LDC rates for 2006 on a generic basis. None of them incorporate binding

¹ Available at: http://www.oeb.gov.on.ca/documents/edr_final_Boardreport_110505.pdf

² Available at: http://www.oeb.gov.on.ca/documents/edr_final_ratehandbook_110505.pdf

³ Available at: http://www.oeb.gov.on.ca/documents/cases/RP-2004-0203/cdm_trcguide_141005.pdf

orders. The Handbook specifically stated: "It is open to the Board to consider alternative rate making principles at the request of an applicant."

The Report, the Handbook and the TRC Guide therefore provide generic non-binding guidance on the approval of 2006 electricity distribution rates. With respect to CDM, the Report and the TRC Guide provided guidance on three issues relevant to this proceeding. The first related to LDC expenditures on CDM, where the Report stated:

"a specific target for 2006 is not appropriate. A distributor may apply for approval of additional spending (above the 3rd tranche) as part of its 2006 distribution rate application, but this spending must meet the Total Resource Cost test established in the Board's Conservation Manual" (p. 105).

The Total Resource Cost test has since been adopted in the TRC Guide.

The second and third issues related to the TRC Guide and the direction provided on "free ridership" values and the attribution of benefits between delivery partners. The TRC Guide provided free ridership values for each of 103 different energy efficient technologies. With respect to attribution, the TRC Guide stated:

"The Board advises LDCs that they are allowed to claim 100% of the benefits associated with a CDM program in which they jointly market and deliver the program with a non-rate-regulated third party" (p. 16).

The Board subsequently received applications from a number of LDCs with respect to distribution rates for 2006. Issues concerning the level of CDM spending arose in a number of them. The Hydro One application is one example. Hydro One did not apply in its distribution rates application for approval of additional spending on CDM beyond its third tranche allocation. A number of parties submitted that the Board should direct Hydro One to spend additional amounts on CDM. Accordingly, the Board was asked to rule in that case that Hydro One should be ordered to spend more on CDM than it had proposed in its application.

The issues regarding free ridership and the attribution of net benefits resulted from a Notice of Motion filed by Pollution Probe on October 14, 2005. In that Motion, Pollution Probe sought an order rescinding the TRC Guide's list of free rider rates. Pollution Probe also sought to revise those provisions of the TRC Guide that related to the attribution of net benefits of joint CDM programs.

Because a decision in the Hydro One case may have implications for other LDCs, the Board stated that it would hold a generic proceeding on the issue of additional spending as well as the issues raised in the Pollution Probe Motion. In order to provide certainty, this proceeding produces a Decision on these issues for 2006 that is both binding and generic.

CDM SPENDING

Positions of the Parties

The parties generally fell into three groups with respect to the level of CDM spending. The first group was firmly against the Board mandating the LDCs to spend more on CDM. The second group was supportive of mandated additional spending; and the third group supported Board-mandated spending subject to conditions.

In the first group, the Canadian Manufacturers and Exporters (“CME”), Coalition of Large Distributors (“CLD”), Consumers Council of Canada (“CCC”), Energy Probe, Hydro One Networks Inc. (“Hydro One”) and Newmarket Hydro Limited (“NHL”) argued that the Board should not order LDCs to spend funds where the LDCs are not proposing to do so.

In the second group, Green Energy Coalition (“GEC”), Pollution Probe and Schools Energy Coalition (“SEC”) firmly supported the Board mandating additional spending on CDM. GEC and Pollution Probe agreed that the Board should mandate a CDM minimum spending level of 1% of total distribution revenue in 2006, ramping up to 3% in 2008. SEC argued that the Board should mandate additional spending to achieve a particular level of results without setting firm spending limits.

The last group consisted of Ontario Energy Board Staff (“Board Staff”), Low Income Energy Network (“LIEN”) and Vulnerable Energy Consumers Coalition (“VECC”). LIEN and VECC supported the Board mandating additional spending where a) there was an inadequate amount proposed for low income customer programs, and b) the additional amount would be focused on low income customers. Board Staff proposed a prudence

test whereby the Board should order more spending on CDM if it was proven that CDM spending would be a better alternative to more expensive plant investments.

Evidence

Evidence on this issue was submitted by GEC, Hydro One, LIEN, and NHL.

GEC submitted affidavit evidence of Mr. Chris Neme of Vermont Energy Investment Inc. Mr. Neme's evidence addressed the economic and environmental benefits of acquiring CDM resources, and asserted that it was realistic to expect spending levels on the efficiency component of CDM to increase from 1% of gross distribution revenue to 3% over the 2006 to 2008 period. With respect to the roles of CDM delivery agents, Mr. Neme indicated that there is a need for consistency across the province, and that LDCs need to coordinate their approach to CDM wherever possible to avoid duplication.

Hydro One submitted affidavit evidence of Mr. Todd Williams, of Navigant Consulting. The evidence did not pertain to Hydro One's CDM programs, but rather addressed Mr. Williams's understanding of the views of LDCs on the issues in this proceeding. He asserted that there is uncertainty regarding the ongoing role of LDCs and the CDM activities that they should be undertaking relative to the Ontario Power Authority ("OPA"), the Independent Electricity System Operator ("IESO") and other entities; that this uncertainty was a key reason that many LDCs had not filed post-third-tranche CDM plans; and that the roles of the various actors should be resolved. Mr. Williams also cited operational constraints as a reason that certain LDCs may not be able to expand CDM programs at this time.

LIEN submitted affidavit evidence of Mr. David Heeney of IndEco Strategic Consulting Inc. Mr. Heeney's evidence addressed the specific energy cost burden of low income customers. Mr. Heeney indicated that these individuals are relatively more reliant on electricity as an energy source and that they spend a greater percentage of their income on electricity when compared to those with higher incomes. Mr. Heeney supported the view that the Board should order more spending on CDM where an LDC has not proposed appropriate CDM programs targeted to low income customers.

NHL submitted affidavit evidence of Mr. Paul Ferguson, President of Newmarket Hydro. That evidence was in support of a strong central role in CDM for the OPA, with LDCs implementing OPA programs locally and pursuing LDC-specific CDM programs. The evidence also reviewed the CDM implementation, funding, and administration systems in a number of other jurisdictions in North America in which a central agency played a prominent role.

The OPA did not file evidence in this proceeding but did intervene. In its written submission, the OPA noted that its

“statutory role in providing leadership and co-ordination of CDM in Ontario does not give it the authority to require LDCs or other parties to undertake particular CDM activities or spend specified amounts of money.”⁴

Board Findings

Jurisdiction

The primary issue the Board is asked to address in this proceeding is whether the Board should order an LDC to spend money on CDM measures in amount that is different from the amount proposed by an LDC in a test year, and if so under what circumstances.

The first question that must be answered is whether the Board has jurisdiction to make such an order in the first place. Some parties such as the CCC submit that the Board does not have jurisdiction. Other parties such as the CLD suggested the jurisdiction is ambiguous and asked the Board to clarify the Board’s position in this regard. CLD pointed to the York Region electricity supply proceeding⁵ where the Board stated that its rate making authority can address the prudence of expenditures but does not extend to ordering LDC’s to engage in specific demand management activities.

⁴ OPA Written Submission, page 2, paragraph 3.

⁵ EB-2005-0315, available at:
http://www.oeb.gov.on.ca/documents/cases/EB-2005-0315/decision_221105.pdf

Various parties have filed evidence which suggests that Ontario LDCs are not spending an adequate amount on CDM. They invited the Board to establish targets for such spending that would equate to a predefined percentage of gross revenues.

Section 71 of the *Ontario Energy Board Act* provides LDCs may engage in electricity conservation activities. Section 1 of that Act sets out the objectives for the Board.

These are twofold:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry. (emphasis added)

The Board recognized this aspect of its objectives in the recent York Region Decision, when it stated, at page 11 of the Decision;

“What this means is that the Board reviews CDM expenditures for prudence and cost effectiveness. In carrying out this review, the Board clearly has the legal authority to consider whether alternative CDM programs should be considered - whether they involve higher or lower expenditures than those proposed by an LDC.”⁶

A number of intervenors in the proceeding also pointed to section 83 of the Act:

83. (1) The Board may establish standards, targets and criteria for evaluation of performance by generators to whom section 78.1 applies, transmitters, distributors and retailers.
- (2) The Board may have regard to the standards, targets and criteria referred to in subsection (1) in exercising its powers and performing its duties under this or any other Act in relation to generators to whom section 78.1 applies, transmitters, distributors and retailers, including establishing the conditions of a licence.

A number of parties have asked the Board to establish such targets. They also submitted evidence establishing the rationale for specific spending levels or targets. For example the GEC argues that CDM funding at current levels is suboptimal; and that the Board has the jurisdiction to establish standards, targets, and criteria for CDM spending

⁶ EB-2005-0315 Decision, Page 11

and to apply conditions to LDC licenses in this regard. They argue that increased CDM efforts are consistent with government policy and sound economic practice. They claim that for fiscal 2006 it is reasonable to expect CDM spending to be at least 1% of total revenues and to ramp up to 3% by 2008.

The Board agrees that it has the authority to set targets. However, that was not the stated purpose of this proceeding and is not the issue before us. Moreover, the Board is aware of the concerns regarding overlapping jurisdiction on this subject between the OPA and the OEB.

It is significant in this regard that the OPA, as part of its recent fees case, has agreed to issue a report by the end of June of this year in which it will propose target levels of spending by LDCs, including recommendations as to the source of those funds.⁷ It seems only reasonable that any proceeding regarding specific target levels await the filing of the OPA report, given that virtually all parties agree that the OPA has a major role in CDM activity.

For the purpose of the present proceeding, it is sufficient to conclude that the Board, as stated clearly in the York Region Decision, has, in a rate case, jurisdiction to examine in a prudence review the level of CDM expenditures proposed by an LDC; and where the level is determined to be imprudent, to adjust those expenditures downward or upward in order to meet the prudence objective.

The Appropriate Test

It is established that the Board in a rate case has the authority to direct that CDM expenditures be increased or decreased. Board Staff points out that all utility expenditures are examined in rate cases on the basis of the prudence test. That test was last examined in detail by the Board in the Enbridge case involving the prudence of

⁷ EB-2005-0489 Decision, page 42, available at:
http://www.oeb.gov.on.ca/documents/cases/EB-2005-0489/vol_reviewofsettlementproposal-oralhearing_130206.doc

the Alliance contracts.⁸ As indicated there, utility expenditures are presumed to be prudent and there is an onus on those challenging them to demonstrate the lack of prudence. It was also established that prudence should be examined in light of the facts and information the utility had (or should have had) at the time it made the decision, not on the basis of hindsight.

In the case of CDM spending there is a specific issue that has not been determined in previous cases. That is, when would the proposed spending level on CDM by an LDC be considered to be imprudent? Put differently, what is the test of imprudence when it comes to CDM spending by LDCs?

Board Staff in their submissions say that LDC expenditures should be presumed to be prudent unless they are demonstrated to be unreasonable. That is the usual test with respect to prudence and the Board accepts it.

However, Board counsel goes on to argue that the prudence test for CDM expenditures relates to a comparison of alternative LDC expenditures. This, they argue, means that a failure to invest in a CDM initiative is only imprudent where it can be demonstrated that CDM investment is more cost effective than an alternative LDC investment in distribution assets. The failure to invest in CDM in that instance results in higher distribution rates than would have been the case had the CDM investment been made.

The Board finds that this test is too narrow and restrictive. There will be very few cases where the test is met. In fact, it is highly unlikely that any of the third tranche spending of some \$163 million that is being invested across this Province in the three years between 2005 and 2007 would meet that test.

It is also important to remember that previously, the Board established the TRC Test as the condition of approving expenditures beyond third tranche.⁹ Implicit in that is that if

⁸ RP-2001-0032, Enbridge Gas Distribution Inc, Decision, paragraph 3.12.2

⁹ Report, page 103, available at: http://www.oeb.gov.on.ca/documents/edr_final_boardreport_110505.pdf

the TRC Test is met, those expenditures by an LDC will be deemed to be prudent. If that test applies to prudent CDM expenditures when proposed by an LDC, it must also apply to prudent CDM expenditures proposed by the third parties.

Of course, the examination of the investments on the basis of the TRC Test may not be the end of the matter. The utility may have good reasons why it cannot carry forward an investment. Some of those reasons have been offered in this case. LDCs may say that they are spending as much on CDM as they can currently handle. This argument is made in the context of the third tranche expenditures. LDCs point out that they are in start-up mode, and that it would be unwise to increase expenditures over third tranche levels at this point, until they have greater experience with their programs, including the ability to evaluate them.

And the prudence of spending by LDCs could be impacted by any statement with respect to government spending. This would be particularly the case should the government establish target levels of CDM spending for LDCs. It now appears as the result of the recent Decision in the OPA Fees¹⁰ case that such targets will be established. So while the TRC is one element of the prudence test, OPA recommendations as to the target level of LDC spending on CDM could become another element.

It is important to remember that this proceeding is restricted to the question of whether additional spending beyond third tranche levels should be mandated by the Board in the 2006 rate cases. In light of the recent decision by the OPA to shortly issue a report recommending the appropriate levels of CDM spending by LDCs, the Board concludes that it should not order any spending above the level proposed by the LDC's in the 2006 rate cases. That is not to say that a different result might not be warranted in future years.

¹⁰ EB-2005-0489 Decision, available at: http://www.oeb.gov.on.ca/documents/cases/EB-2005-0489/vol_reviewofsettlementproposal-oralhearing_130206.doc

Given that conclusion, the Board also concludes that it is not appropriate at this time to fully define the test of prudence with respect to CDM spending. That could be materially impacted by the OPA report. It is best deferred until that report is received.

There is one outstanding issue remaining. VECC and LIEN argued that a special case exists with respect to CDM spending on low-income programs. The Board fully understands the importance of CDM in that sector. However, there is not enough evidence before the Board at this time to formulate a rule different than the general principle stated above.

FREE RIDERSHIP

Positions of the Parties

The TRC Guide provided direction on “free ridership” values and the attribution of benefits between delivery partners, and stated that LDCs are allowed to claim 100% of the benefits associated with a CDM program in which they jointly market and deliver the program with a non-rate-regulated third party.

Pollution Probe’s Motion asked the Board to rescind the *a priori* rates in favour of program by program free rider rates, demonstrated by the LDCs in the evidence accompanying their applications. A subsidiary issue is whether the pre-authorized values would be used for the purpose of determining incentive claims in subsequent rate years, or whether those values would be updated based on information obtained during the implementation period.

CME, GEC and Pollution Probe supported the concept that free ridership rates should be established on the basis of a program by program analysis.

Board Staff, CLD, CCC, Enbridge Gas Distribution Inc (“EGDI”), Energy Probe, Hydro One, LIEN, NHL, and SEC did not support a change to the TRC Guide. Some of these parties indicated their support for the values in the TRC Guide as default values that can be challenged and that stricter requirements and greater evidence may be required when making an incentive claim.

Evidence

Evidence on this issue was submitted by EGDI, GEC, Hydro One Networks, LIEN, NHL, and Pollution Probe.

EGDI submitted affidavit evidence of Mr. Michael Brophy of Enbridge. Mr. Brophy's evidence focused on the effects of setting values for free ridership prospectively or retrospectively. Mr. Brophy indicated that allowing these values to be set retroactively unnecessarily complicates the regulatory process.

GEC submitted affidavit evidence of Mr. Neme. Mr. Neme indicated that free ridership values cannot be fixed to technologies since the values are a function of the design of a CDM program. Mr. Neme indicated that requiring program specific free rider rates would lead to better program design and less budget waste.

Mr. Williams' evidence for Hydro One indicated that requiring free ridership values on a program by program basis was inconsistent with the transitional nature of the third tranche CDM framework. Mr. Williams claimed that it was of primary importance for LDCs to have these values fixed prospectively to avoid risks related to cost recovery, lost revenue and any potential CDM incentive. Mr. Williams indicated that to require program by program free ridership analysis at this stage would delay, and divert funds from, implementation of CDM.

LIEN submitted affidavit evidence of Mr. Heeney. Mr. Heeney indicated that, like the case in other jurisdictions, the free ridership values provided in the TRC Guide should remain as deemed estimates until better information becomes available and incorporated into the TRC Guide on a prospective basis. Mr. Heeney specifically addressed the issue of free ridership values for low income customers indicating that the values should be zero given the constrained ability of this specific customer segment to participate in CDM.

Mr. Ferguson, of Newmarket Hydro Ltd stated that the issue of free ridership is best resolved at the provincial level given the current framework, and that it was neither practical nor desirable to require utility-program-specific free ridership values.

Pollution Probe submitted affidavit evidence of Mr. Jack Gibbons of Pollution Probe. Mr. Gibbons claimed that fixed free ridership values reduce an LDC's incentive to produce actual bill savings for customers. Mr. Gibbons indicated that as a result, it is possible that the incentives for CDM programs which are not effectively designed would be unjustifiably high.

Board Findings

The specific issue before the Board is whether to require LDCs to demonstrate free ridership levels for all CDM programs; the broader issue is how best to balance the need to promote vigorous utility CDM efforts with the need to ensure that utility customers do not underwrite excessive CDM program costs.

For clarity, the Board confirms that its usage of the term 'free rider' corresponds with the Board Staff definition; i.e., free riders are defined as those participants in a conservation program who would have installed the energy conservation measure even if there had been no program.

The level of free ridership in CDM programs affects the assessment of TRC cost effectiveness in the first instance; the higher the free ridership rates, the lower the net benefits of utility expenditures on the program. Secondly, if an LDC incentive mechanism is in place for the program in question, the level of net benefits may affect the level of the utility incentive payment associated with the program.

The Board acknowledges at a conceptual level that the inclusion of benefits obtained from free riders in the cost effectiveness evaluation of a CDM program overstates the benefits derived from the utility expenditure. The difficulty that the Board and stakeholders have faced throughout is that the very concept of free ridership is rooted in the unobservable motivations of CDM participants: at best, detailed studies can hope to infer or extrapolate free ridership rates based on purchasing activity prior to the program or direct questioning of participants. No method can claim to reveal a 'true' or 'actual' rate of free ridership. All figures for rates of free ridership are estimates, and therefore the question becomes whether the estimates are reasonable for the intended uses. In

turn, this can be determined by assessment of the methodology used to derive the figures as well as the currency and relevance of the studies.

The Board is not persuaded that there is sufficient evidence or argument in this proceeding to overturn the use of the free ridership rates set out in the TRC Guide. The Board is of the view that requiring all individual LDCs to exhaustively 'demonstrate' free ridership levels on a program by program basis is an enterprise with certain and significant costs but uncertain benefits. Whatever benefits might be obtained through incremental improvements in accuracy at this stage would necessarily be eroded if not offset by the direct costs of obtaining them. Furthermore, requiring each utility to go through such an exercise would necessarily involve a significant duplication of effort. This approach is contrary to the Board's goal of developing a regulatory environment that is conducive to the accomplishment of CDM objectives.

The Board therefore finds that the free ridership parameters set out in the TRC Guide will stand as default values for the corresponding programs, for the purpose of 2006 electricity rate applications and until further notice from the Board. In individual applications and for individual programs, the Board will not preclude applicants or intervenors from bringing evidence to support different rates, but the presumption will be in favour of the default values. Parties wishing to overturn those values will be required to demonstrate that the issue is material with respect to the revenue requirement, and will assume the burden of proof.

Having made this ruling, the Board nevertheless expects and may in future direct LDCs to file updated studies of free ridership rates, or with due notice it may adopt other approaches to establish revised default values for prospective application.

Many of the same considerations apply to the issue of whether free ridership rates should be updated to 'actual' values for the purpose of calculating any CDM incentives related to programs that were approved prospectively. Such a requirement would necessarily involve the applicants, other stakeholders, and the Board in duplicative and potentially protracted efforts to resolve free ridership figures which would nevertheless be estimates even after the fact. The Board is also of the view that any particular set of free ridership rates is unlikely to persist indefinitely, and has provided in this Decision the opportunity for any stakeholder to bring evidence supporting revised and improved

estimates in subsequent rate proceedings. Therefore, the Board further confirms that upon the prospective approval of CDM plans inclusive of associated free ridership rates for a particular rate period, those free ridership rates will be applied as necessary for the calculation of any CDM incentive payments corresponding to that plan and rate period.

ATTRIBUTION OF BENEFITS

Positions of the Parties

With respect to the attribution of program net benefits associated with an LDC's participation in a CDM program with a non-rate-regulated third party, Board Staff, EGDI, Hydro One, the CLD and NHL did not support a change to the TRC Guide. Other parties held the view that LDCs should only claim attribution for the incremental benefits resulting from their CDM efforts.

Evidence

Evidence on this issue was submitted by EGDI, GEC, Hydro One, LIEN, NHL, and Pollution Probe.

Mr. Brophy for Enbridge asserted that changing the attribution rules to reflect the current financial contribution of delivery partners is simplistic, and fails to consider the LDC's non-financial contributions and its role in developing programs. Mr. Brophy also stated that the proposed change would reduce the incentive for LDCs to cooperate in the delivery of CDM/DSM and negatively affect the development of a conservation culture.

Mr. Neme for GEC indicated that attribution was a form of free ridership and that there is no rationale to treat this type of free ridership differently than any other.

Mr. Williams for Hydro One claimed that, like the free ridership issue, changing the current guidelines would be inconsistent with the transitional nature of the third-tranche CDM framework and further study of this issue by LDCs would delay and divert funds from implementation.

Mr. Heenev for LIEN indicated that to implement the proposed change to the attribution rule would be counter to government's policy of encouraging partnerships and synergies in CDM. Mr. Heenev indicated that attributing benefits on the basis of a formula related to financial contribution would retain sufficient incentive for LDCs to partner in the CDM programs and that any attribution of benefits between parties should be determined prospectively.

Mr. Ferguson for NHL asserted that a distinction was required between private and public entities. Mr. Ferguson indicated that there was no change required to the TRC Guide with respect to partnerships with private business, but that a different approach was required for partnerships with public institutions.

Mr. Gibbons for Pollution Probe indicated that the current guideline would reward LDCs for the portion of savings which their CDM programs did not exclusively create. In particular, the Pollution Probe evidence established that in hypothetical but plausible scenarios, LDCs could receive incentive payments that exceeded the value of incremental bill savings that were produced by their participation in a jointly executed CDM program. This result would occur when the incremental contribution made by an LDC's participation was small relative to the overall base upon which incentive payments would be calculated. The Pollution Probe evidence stated that such a result would not occur were the incentive payments to LDCs based on an LDC's incremental contribution to the program's net benefits, rather than the total of the program's net benefits.

Board Findings

The issue before the Board is how to attribute or apportion the benefits of a CDM program for the purposes of calculating an LDC incentive amount, when the program in question is jointly undertaken by an LDC and a non-rate-regulated entity such as a government. At present, the TRC guide states that LDCs are entitled to claim 100% of the net benefits arising from such a joint program for the purposes of incentive calculations.

At issue is the empirical question of establishing what proportion of the total net benefit was 'caused' by a given party in a joint program, which is obviously arguable and may be difficult to establish objectively. Therefore the issue becomes one of finding a reasonable balance between the cost of determining what the proportion should be deemed to be, and the risk that customers (or LDCs) will bear an undue cost due to a mis-determination of that proportion. LDCs argued, and the Board agrees, that if the cost of the determination is too high financially or in terms of regulatory burden, an undesirable disincentive to the undertaking of the program will result. A similar outcome will result if the deemed proportion is set at a level too low. Customers may incur an opportunity cost if an otherwise desirable program is not implemented due to these factors. Conversely, the Board strives to prevent undue direct costs from being borne by customers. It is clear that, in the absence of any evidence of contribution by the LDC, ratepayers could pay a substantially larger incentive to the LDC than they are recovering in benefits.

The TRC guide took the blanket approach of reducing the determination cost to zero and maximizing the CDM incentive for LDCs. This also had the effect of eliminating the potential opportunity cost to customers of failing to implement an otherwise desirable program. This approach was simple and definite. However, the Board believes this approach could result in undue incentive payments to LDCs.

In the regulation of natural gas utilities, the Board has taken the view that the centrality of the utility's role in achieving TRC benefits is the key determinant of the allocation of benefits. In the Enbridge Gas Distribution Inc Decision, EB-2005-0001¹¹, the Board found 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." (p. 8)

In that Decision, the Board agreed with EGDI's description of a central role.

¹¹ Available at: <http://www.oeb.gov.on.ca/documents/cases/EB-2005-0437/decision-231205.pdf>

“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.” (p. 7)

In the case of electricity distributors, the Board finds that it is impractical for LDCs to determine the precise proportion of the TRC benefits attributable to their actions in joint programs with non-rate-regulated entities. However, the Board is concerned that the current TRC Guide creates too great a possibility that rate payers will pay incentives for benefits that are more appropriately attributed to another party.

Therefore, the Board finds that attribution of TRC benefits must be made on a case by case basis, determined by the centrality of the role played by the LDC in the program. If the utility plays a central role in a program, 100% of net benefits may be attributed to the utility. For simplicity in the case of electricity LDCs, a greater-than-50% funding of a program within the LDC’s service territory establishes a central role. The LDC’s role may be central at a lesser financial contribution if other factors such as initiation of the partnership, initiation of the program, or implementation of the program are present.

The Board anticipates that this matter will not directly affect the 2006 electricity rate applications, since the disposition of any CDM incentive amounts will necessarily occur subsequent to the 2006 rate year.

The Board will issue an amendment to the TRC Guide to reflect this Decision.

DATED At Toronto, March 3, 2006

Original signed by

On Behalf of the Panel
Gordon Kaiser
Presiding Member and Vice Chair

SCHEDULE "A"

PARTIES MAKING SUBMISSIONS

Canadian Manufacturers & Exporters

Coalition of Large Distributors (Enersource, Horizon Utilities, Hydro Ottawa, PowerStream, Veridian Connections, Toronto Hydro)

Consumers Council of Canada

Electricity Distributors Association

Enbridge Gas Distribution

Energy Probe

Green Energy Coalition

Hydro One

Low Income Energy Network

Newmarket Hydro

Ontario Power Authority

Pollution Probe

School Energy Coalition

Vulnerable Energy Consumers Coalition