

ONTARIO ENERGY BOARD

**IN THE MATTER OF THE Ontario Energy Board Act,
1998, S.O. 1998, c. 15, Schedule B, as amended;**

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

**MOTION RECORD
FILED ON BEHALF OF
ENBRIDGE GAS DISTRIBUTION INC.**

Dennis M. O'Leary
Aird & Berlis LLP
Barristers and Solicitors
BCE Place, Suite 1800
Box 754, 181 Bay Street
Toronto, ON M5J 2T9

Counsel for Enbridge Gas Distribution Inc.

I N D E X

Tab #	Description
1	Submissions of Enbridge Gas Distribution Inc., dated December 20, 2005
2	Affidavit of Michael Brophy, sworn December 2, 2005
3	Letter from David Poch, Counsel to GEC, dated December 14, 2005

TAB 1

ONTARIO ENERGY BOARD

IN THE MATTER OF THE Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Schedule B, as amended;

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

SUBMISSIONS OF ENBRIDGE GAS DISTRIBUTION INC.

A. Introduction

Enbridge Gas Distribution Inc. ("EGD") is pleased to participate in this proceeding to make submissions based upon its experience and expertise delivering gas demand side management programs in Ontario for more than a decade. EGD hopes that by making the Ontario Energy Board ("OEB or the Board"), electric local distribution companies ("LDCs"), and intervening parties aware of these experiences, redundant or needless steps will be avoided.

EGD's participation in this proceeding is limited to the issues raised in paragraph 2 of the Board's Notice of Proceeding, dated November 11, 2005, which relate to freeridership rates and attribution levels. Specifically, the Notice of Proceeding raises the following two questions:

2.1 Should the Board require LDCs to demonstrate freeridership levels for all CDM programs on a program-by-program basis?

EGD Position: For the 2006 test year, to require LDCs to demonstrate freeridership levels for all CDM programs would act as a financial and physical constraint on the delivery of CDM programs, and for the additional reasons set out in these submissions, would not be in the public interest. Simply put, it would be impractical given the level of time, cost and effort needed to conduct the types of studies that have been previously done. Freeridership rates should be set prospectively, which means that while no change should be made to the TRC Guide for the 2006 Test Year, after LDCs have

gained experience delivering CDM programs, freeridership rates for 2007 and subsequent years can be updated and prospectively set based upon empirical experiences.

2.2 Should the Board 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?

EGD Position: For the 2006 Test Year, it would be both impractical and act as a disincentive to require LDCs to develop and undertake an unnecessary and complicated exercise for the purposes of determining attribution levels. As the delivery of CDM by many LDCs is in its infancy, EGD submits that it presumptively follows that if any program is delivered jointly with a non-rate regulated third party, the LDC is responsible for enticing the non-rate regulated third party's involvement and should therefore be entitled to claim 100 percent of the benefits. In time, should justification arise for a variance in attribution levels on a program-by-program basis, these levels can be the subject of negotiation between LDCs and intervening parties and/or determinations by the Board in future annual rate cases, when specific plans are brought forward.

This submission is divided into three sections. The first section will highlight the empirical observations of EGD based upon its extensive experience delivering gas DSM. Given the unquestionable parallels between gas DSM and electric CDM, the pitfalls and concerns which EGD has suffered and expressed over the years should assist in the development and efficient delivery of CDM programs by LDCs. There is no need for the Board and electric LDCs to "re-invent the wheel" when there is a wealth of experience in Ontario which already exists. A decade of experience has led to symmetry between gas utility DSM in some areas, leaving flexibility in other areas where needed.

The second section of this submission will deal with the two issues (freeridership rates and attribution) in greater detail.

The final and concluding section will offer any recommendations that EGD suggests are appropriate for the delivery of CDM for the purposes of dealing with freeridership rates and attribution levels in years beyond the 2006 Test Year.

B. EGD's Historical Observations

(i) Introduction

EGD believes that highlighting some of the historical context and concerns which have arisen over the years during its delivery of gas DSM should be of assistance to the OEB and parties in this and subsequent proceedings dealing with electric CDM. While it is beyond the scope of this submission to review in precise detail the positions taken by various parties over the last decade, it is apparent from various decisions of the OEB that both EGD and many of the parties to this proceeding jointly believe in certain fundamental concepts which relate to DSM/CDM. EDG submits that the following review of OEB decision supports the adoption of the following principles which, while applicable to gas DSM, should also apply to electric CDM.

- (1) If it is expected that an energy utility will aggressively pursue DSM/CDM activities, the framework within which the utility must operate must support this fundamental objective by providing reasonable certainty of results;
- (2) The delivery of DSM programs and how the benefits generated by such programs are measured has evolved over time and its evolution will continue based upon empirical experiences, study and monitoring and evaluation;
- (3) Setting key assumption rates, such as freeridership rates and attribution levels prospectively, is critical. Failure to do so will result in prolonged acrimonious evaluation processes and incent some participants to propose after-the-fact studies or changes in methodology with the sole purpose of driving down any potential claim by a utility to an incentive payment. This drives up the cost to deliver DSM programs and acts as a disincentive.

(ii) E.B.O. 169-III Report of the Board

The OEB held an oral hearing on generic DSM issues in November and December 1992. Many of the intervenors which exist today participated in this proceeding. While issues beyond those which are the subject of the within proceeding were considered, aspects of this proceeding, which occurred more than 13 years ago, remain relevant today. A brief review of relevant findings by the OEB and the position of parties follows.

At paragraph 15.0.2 of the Report of the Board dated July 23, 1993 (the "EBO 169-III Decision"), the OEB noted that:

All parties endorse the need for the Board to provide clear guidelines to assist the utilities in the preparation and implementation of their DSM plans.

EGD submits that the OEB was similarly motivated in respect of its development of the TRC Guideline. This is also supported by the OEB's comment at paragraph 15.1.15:

The Board is aware that gas IRP is in its infancy across North America. As a result, the Board anticipates that the initial DSM plans and forecasts may require adjustments as experience is gained during their implementation. The Board feels that it is appropriate to learn by doing, rather than wait until a higher level of certainty is achieved. (emphasis added)

EGD submits that there are great similarities between the state of gas DSM in the mid-1990s and electric CDM today, and that it remains appropriate for LDCs to "learn by doing", rather than wait for a higher level of certainty. EGD submits that this concept fully supports the continued application of the TRC Guide for the 2006 test year with adjustments based upon the empirical experience of electric utilities set prospectively for subsequent years.

This position is further supported by the Board's findings in the E.B.O. 169-III Decision. Under the chapter dealing with monitoring and evaluation, the Board acknowledged, at paragraph 11.1.1, that monitoring and evaluation of DSM programs are necessary to address freeridership and to determine whether changes to program design are necessary. EGD interprets such language as being forward looking, not retroactive in application.

In addition, the Board states, at paragraph 11.1.2, that it "recognizes that the over-allocation of resources to the monitoring and evaluation function, which includes market research and forecasting, could result in less DSM being undertaken." EGD is concerned that by requiring electric LDCs to substantiate freeridership rates for each of their programs for the test year beyond those included in the TRC Guide, the concerns of the Board will prove true in that LDCs will deliver less CDM because they are expending resources confirming freeridership rates, rather than generating TRC benefits. EGD submits that this would amount to a "paralysis by analysis", to borrow a phrase used by the OEB at page 153 of its E.B.O. 169-III Decision.

(iii) E.B.R.O. 490

The first opportunity which the OEB had to consider actual program results is the E.B.R.O. 490 proceeding. Here the Board, once again, accepted the "learn by doing" philosophy and refused to conclude, on the basis of the first five months' results that any of the DSM programs undertaken by Enbridge (then Consumers' Gas) should be either withdrawn or reduced in scope.¹

(iv) E.B.R.O. 492

In its Decision with Reasons dated December 10, 1996, the Board accepted the Company's DSM programs as proposed for 1997, and continued with its prospective view of matters by stating that it expects the Company to "continue to provide information in future rate cases on the improvements it proposes to its DSM efforts."²

(v) E.B.R.O. 495

While the DSM issues in this proceeding were primarily the subject of a Settlement Agreement, it is important to note that there was complete settlement in respect of the creation of an LRAM and significant support in favour of the establishment of an SSM.³

Importantly, all parties to this proceeding agreed to improvements in the monitoring and evaluation process, but only on a test year or prospective basis.⁴

(vi) RP-2002-0133

As a result of the Company and intervenors reaching a complete settlement in respect of DSM issues subsequent to its 1999 test year rate case, the RP-2002-0133 proceeding was the first opportunity the Board had to review EGD's DSM program in an oral proceeding for several years.⁵

¹ p. 111, E.B.R.O. 490, Partial Decision with Reasons, August 29, 1995

² para. 8.0.28, E.B.R.O. 492

³ E.B.R.O. 495, Decision with Reasons, August 21, 1997, Ex. N1, Tab 1, Sch. 1, pp. 50-53

⁴ *Ibid.*, p. 54, 2nd bullet

⁵ para. 48, RP-2002-0133, Partial Decision with Reasons, August 19, 2003

In this proceeding, there was no consensus amongst intervenors in respect of the underlying program assumptions and the application of such assumptions in relation to what was known as the "December Proposal", which represented a compromise in respect of the EGD's 2000 and 2001 SSM claims. One intervenor, Energy Probe, argued that a "no/yes" approach should be adopted which, briefly stated, amounted to a retroactive change to program assumptions based upon after-the-fact findings. To some extent the request that aspects of the TRC Guide be discarded at this late stage, relative to the 2006 Test Year, is tantamount to proposing a no/yes approach.

Notably, in the RP-2002-0133 proceeding, GEC, through its witness, Mr. Neme, commented that freeridership is generally not controllable within the rate year. Mr. Neme also noted that freeridership is difficult to quantify for truly custom measures and that custom freeriders are not easily identifiable after the fact, let alone screened out before the fact when potential participants are aware that an incentive may be achievable.⁶

In the end, the Board questioned the degree to which the Company could manage freerider participation. Importantly, the Board stated that in its view:

In order for the existing SSM to function as an effective incentive mechanism, it is important to establish certainty before the fact in the expected performance upon which the Company would be evaluated. The Board concludes that the "no/yes" approach is not appropriate for the 2000 SSM claim, as it penalizes the Company for a matter that was beyond its knowledge at the time.

Accordingly, the Board rejected the retroactive approach proposed by Energy Probe, supporting an approach which provided certainty to a utility by establishing, before the fact, the criteria upon which a utility would be evaluated.

In the RP-2002-0133 proceeding, partial agreement was reached in respect of certain parameters and methods regarding the calculation of TRC savings. Importantly, parties who supported adopting the following rules included GEC, Energy Probe, Pollution Probe, and Schools. Specifically, the following concepts were accepted by these parties:

⁶ para. 98, RP-2002-0133, Partial Decision with Reasons, August 19, 2003

- The rules for the calculation and clearance of the SSM account need to be set out clearly in advance⁷
- For both budget and actual TRC benefits, avoided gas costs will remain fixed at the original budget values.⁸
- For 2003 only, a 30% freerider rate will be used as the actual freerider rate for custom projects.⁹
- The Company will complete its research into the freerider rate for custom projects and will work with the Consultative to develop a methodology for establishing freerider rates for custom projects in 2004 and subsequent years.¹⁰
- The results of evaluation studies and other new information that could change in input value, which becomes available after Board approval of a DSM plan, will be used to adjust the input value for the next year's DSM plan.¹¹

What the above agreement stands for is the proposition that many parties, including those who precipitated the within proceeding, support fixing assumptions prospectively, and even where information becomes available after Board approval of a DSM plan, it will only be used to adjust the input value in the next DSM plan. EGD submits that what GEC and Pollution Probe are advocating in the within proceeding is inconsistent with the approach it advocated and supported in the past. Indeed, the Board accepted and adopted the above methodologies in its Partial Decision with Reasons.¹²

Another important element of the RP-2002-0133 proceeding related to the DSM Consultative and audit process. In evidence, the Company noted that the increasing difficulty in achieving consensus among competing stakeholder interests had led to process delays.¹³ The Company also noted that the increased focus on evaluation and audit effectively moved the "ownership" of evaluation and audit decisions from the Company to the DSM Consultative group and/or the Audit Subcommittee.

⁷ March Settlement Agreement, p. 68 of 93 (Appendix B to the Partial Decision with Reasons)

⁸ Ibid., p. 69

⁹ Ibid., p. 69

¹⁰ Ibid., p. 70

¹¹ Ibid., p. 71

¹² Ibid., para. 241

¹³ Ibid., para. 283

The OEB went on to express concern about the resulting slow delivery of evaluation and audit reports and confirmed that the Consultative remained advisory in nature.

EGD submits that the lesson to be learned from this is that if the framework promotes a micro-management of conservation and demand management activities, it will both frustrate the delivery of such programs and the speed at which they are evaluated and audited. EGD submits that if the TRC Guide is effectively re-opened, requiring LDCs to prove freerider rates and develop a methodology for determining attribution levels for 2006, it will put LDCs in a position similar to EGD when it encountered consultative and audit committee difficulties in the early 2000s.

(vii) RP-2003-0203

In this proceeding, which was dealing with EGD's 2005 test year, there was complete settlement in respect of the continued use of the SSM, LRAM, and DSMVA methodologies during the test year. While all parties reserved the right to revisit these matters in subsequent proceedings, it is apparent that all parties accepted that the existing methodologies could continue, even where Intervenors might have concerns about certain aspects. Stated differently, parties recognized that there is no absolutely perfect methodology or set of assumptions. Despite this, they were prepared to agree that the existing methodologies continue. EGD submits that such an agreement is precedent for submitting that the TRC Guide should be allowed to continue for the 2006 test year in that while it may not be perfect, there is no evidence that it is so flawed that it should not continue and be revised, as appropriate, based upon actual results in 2006 for subsequent years in future proceedings.

C. Issues 2.1 and 2.2

The Company submits that the history of the evolution of gas DSM has led to the realization of the importance of setting prospectively the assumptions and levels upon which a utility's activities will be measured. This is true in respect of both freerider rates and in respect of attribution levels.

Issue 2.1: Freeridership Rates

EGD supports the notion, as noted in the Affidavit evidence of Michael Brophy, that freeridership rates should be set prospectively based upon the information available at

the time rates are set¹⁴. From the perspective of electric LDCs today, it is important to recognize that there is no practical means of generating additional studies and data to support freerider rates for use by LDCs prior to the 2006 test year. All LDCs have filed their 2006 rate applications. Several have proceeded with the settlement conference portion of their proceeding and have dates set in January and February 2006 for the oral hearing.

For those LDCs that are proceeding on the basis of a historical year approach, final written argument responding to intervenors argument will be filed within the next two months. The process is simply too well advanced for LDCs, en masse, to generate the information and data which would be necessary to reset freerider rates for 2006.

EGD's experience over the years has been that parties will seize opportunities to allude to after-the-fact evidence in efforts to reduce a utilities claim to having generated TRC benefits. This led to Enbridge proposing, most intervenors agreeing to, and ultimately the Board accepting and adopting the "2003 ADR Rules" in the RP-2002-0133 proceeding.¹⁵ Briefly, these rules confirm that in calculating TRC savings for the purposes of determining the SSM, program assumptions, including freeridership, should not be changed retroactively. This rule is even more important in situations where a utility is operating under a multi-year plan. The TRC Guide is clearly an attempt by the OEB to set assumption levels prospectively, and EGD submits that to sanction an attack on the TRC Guide at this late stage relative to the 2006 test year would set an unwelcome precedent for future after-the-fact attacks on prospectively set freeridership levels.

There can be no doubt that requiring LDCs to prove freeridership levels for 2006 will eat into available resources to deliver CDM programs. There will be costs associated with such activities (financial and in terms of manpower hours), all of which could more prudently be directed at delivering CDM programs.

Perhaps more importantly, if the challenge to the TRC Guide is successful, LDCs will face the prospect of uncertainty as to freeridership rates and hence the futility of

¹⁴ Affidavit of Michael Brophy, para. 8

¹⁵ Affidavit of Michael Brophy, para. 12

proceeding with certain programs, and the prospect of having to negotiate on a program-by-program basis the appropriate freeridership level for each program or face a further proceeding before the OEB to set freerider rates for 2006. Practically speaking, such proceedings could not likely occur before the summer or fall of 2006, making it unlikely that the results of such a process would be available for incorporation into the CDM plans of LDCs for 2007. This uncertainty and the prospect of further regulatory review will obviously act as a disincentive to LDCs to undertake a portfolio of CDM programs. LDCs could well be incented to only proceed with a small number of CDM programs for which the determination of the applicable freerider rate has either been established through a similar gas DSM program or is easily provable.

Given the fact that GEC and Pollution Probe have both been involved in the evolution of gas DSM, including instances where they have agreed to settlement proposals which represent a compromise, EGD fails to understand the urgency in proving, on a program-by-program basis, all of the freerider rates to be used by LDCs. To the extent that any freerider rate contained in the TRC Guide is lower than what may actually be the case, EGD submits that the difference is not sufficiently material from the perspective of potential impact on rates to warrant what GEC and Pollution Probe are proposing. Leaving aside the negative impact on the delivery of CDM programs in 2006, when one recognizes that LDCs are eligible to earn only 5 cents on every dollar of TRC benefit generated (i.e. a 20 to 1 ratio), any potential overstatement of TRC benefits which results from the use of a slightly deficient freeridership rate is not likely to generate an incentive payment of any materiality.

Issue 2.2: Attribution Levels Should Not be Changed

Mr. Brophy, in his Affidavit, provides a real-world example of the importance of allowing a utility to claim 100 percent of the benefits generated as a result of partnering with non-rate regulated third parties.¹⁶ Specifically, Mr. Brophy confirmed that the involvement of the Government of Canada, through NRCan, is the result of EGD's development of several programs and its pursuit of government support. As a result of EGD's efforts, financial support is made available by the Government of Canada for certain DSM programs, which do not have an impact on rates. All parties must be in agreement that it

¹⁶ Ibid., paras. 14 to 20

is beneficial for utilities to pursue third parties to encourage their participation. The TRC Guide simply reflects this desire by not imposing a methodology which would create a disincentive for utilities to invite and pursue the participation of non-rate regulated third parties.

EGD further submits that it is important to recognize that the utility's contribution to a DSM or CDM program may come in many ways, financial and otherwise. Utilities, as opposed to government, are in regular contact with contractors and equipment suppliers. Utilities have the ability to promote programs daily; whereas a third party, such as a government, does not. Utilities can include bill inserts supporting programs. Utilities often have regular direct contact with many of their customers, particularly existing and prospective commercial and industrial customers. Undoubtedly, these other means of promoting DSM/CDM programs have a value which would require calculation if the attack on the TRC Guide is sustained. EGD submits that there is no need to develop what will undoubtedly be a complex methodology to calculate attribution levels, which will necessarily act as a disincentive to utilities pursuing non-rate regulated third parties.

D. Conclusion

While EGD supports a determination by the Board that the TRC Guide should continue to be applicable without change for the 2006 Test Year, it does not wish its submissions here to be interpreted as support for a wholesale re-examination of freeridership rates and attribution levels in subsequent years. First, electric LDCs should be entitled to look to similar gas DSM programs and adopt similar freeridership levels. Second, incurring the cost and time to undertake a freeridership study in respect of a program should make economic sense. Until a particular program is generating material TRC benefits, the value of undertaking a freeridership study should be open to question. Third, there should be a presumption in favour of one LDC relying upon the freeridership rates determined by another LDC for programs of a similar nature.

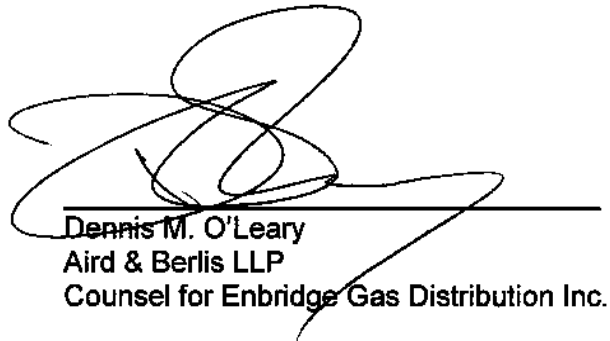
Fourth, there should be no presumption against the freeridership rates set out in the TRC Guide. If intervenors are greatly concerned about a freeridership rate in respect of a particular program, they can express this concern informally through the consultative process with an LDC and, if no agreement can be reached on a different freeridership rate and/or the LDC refuses to undertake a study because it believes that there is

sufficient evidence supporting the existing rate, the matter should proceed to the OEB for determination. It should not be presumed that the applicable rate in the TRC Guide is inapplicable.

All of these recommendations are consistent with developing a framework for the delivery of CDM which operates efficiently, without retroactive changes in methodology, and in recognition of the role and responsibility of the utility to develop CDM plans and deliver results.

All of which is respectfully submitted.

Dated: December 20, 2005.



Dennis M. O'Leary
Aird & Berlis LLP
Counsel for Enbridge Gas Distribution Inc.

TAB 2

ONTARIO ENERGY BOARD

IN THE MATTER OF THE Ontario Energy Board Act,
1998, S.O. 1998, c. 15, Schedule B, as amended;

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

AFFIDAVIT

I, **MICHAEL BROPHY**, of the City of Toronto, Ontario, MAKE OATH AND SAY AS
FOLLOWS:

1. I am employed with Enbridge Gas Distribution Inc. ("EGD" or "Enbridge") as
Manager, DSM and Portfolio Strategy. In this role I have responsibility for oversight of
EGD's demand side management ("DSM") portfolio. Where I indicate that I have been
advised by any other individuals, I verify believe it to be true.

2. Enbridge has been delivering regulated DSM programs and generating benefits
for ratepayers in the province since 1995. According to Mr. Chris Neme, a witness
called on behalf of the Green Energy Coalition in the Enbridge 2006 Rates Case (EB-
2005-0001), Enbridge has, in this period, delivered over one billion dollars in net
benefits, having expended under \$83 million (in constant 2005 dollars). The natural gas
volumetric savings over this period total approximately $560 \times 10^6 \text{ m}^3$.¹ As a result, EGD is
the most experienced provider of DSM programs in the province.

3. EGD only recently became aware of this proceeding. Enbridge participated in
the RP-2004-0188 proceeding in which the Board approved the 2006 Electricity
Distribution Rate Handbook. EGD's participation related to the Board's consideration of
the conservation and demand management provisions of the Handbook and the

¹ Chris Neme, *Implementing Enbridge's Role in Ontario Conservation Culture*, EB-2005-0001, Ex.
L-9-1, June 30, 2005

subsequently approved Total Resource Cost Guide, issued September 8, 2005. EGD was not only a listed intervenor in the RP-2004-0188 and RP-2004-0203 proceedings, but it cross-examined expert witnesses, filed written submissions and responding submissions, and was specifically referenced in the Report of the Board, dated May 11, 2005.

4. Enbridge filed a Notice of Late Intervention, dated November 11, 2005, in the 2006 Electricity Distribution Rate Application proceeding (RP-2005-0020). Presumably as a consequence, the Company did not receive a copy of the Board's Notice of Proceeding and Hearing Electricity Conservation and Demand Management Activities, (the "Board's Notice") dated November 11, 2005, in proceeding EB-2005-0523. Enbridge notes that this proceeding was only posted on the Board's Web site on November 16, 2005, which is the day following the date required by the Board in its Notice for the filing of interrogatories. Attached hereto as Exhibit "A" is a true copy of the above Late Intervention of Enbridge.

5. This Affidavit is filed pursuant to paragraph 4 of the Board's Notice, which requires the filing of evidence by December 2, 2005.

Enbridge's Interest in this Proceeding

6. In addition to the role EGD played in the proceedings which led to the development of the 2006 EDR Handbook and the TRC Guide, the TRC Guide has been filed as an Exhibit (K30.4) in EGD's 2006 Rate proceeding (EB-2005-0001), and EGD has made reference to both the TRC Guide and the Report of the Board, dated May 11, 2005, in its Argument. Briefly, Enbridge supports the development and setting, on a prospective basis, of the various assumptions, including freeridership rates and attribution levels that will be used by utilities for the development, monitoring and evaluation of CDM/DSM programs.

7. As well, Enbridge has partnered with Toronto Hydro to deliver C&DM programs and may deliver CDM programs on behalf of other LDCs.

8. Enbridge's interest in this proceeding is limited to Issue 2 set out in the Board's Notice. Specifically, Enbridge takes the position, for the reasons set out in this Affidavit, that utilities should not be required for the 2006 test year to demonstrate freeridership levels for all CDM programs on a program-by-program basis. Enbridge submits that

freeridership rates should be set prospectively based upon the best information available at the time the rates are set. This is what occurred when the Board issued the TRC Guide. The process should not be allowed to degenerate to the point where freeridership rates are subject to challenge based upon information and analysis undertaken subsequent to the year in which the CDM or DSM programs are delivered.

9. Based upon its years of experience, Enbridge submits that the Board should not approve a process whereby intervenors are incited to bring forward after-the-fact information for the purposes of attempting to reduce a utility's apparent entitlement to claim TRC benefits. It has been Enbridge's experience that the prospect of ratepayer groups being able to influence the level of TRC benefits generated after the fact by retroactively arguing that freeridership rates should be changed leads to delay and unnecessarily complicates the regulatory process.

10. Enbridge also has an interest in this proceeding in respect of the Board's determination of the rules applicable to the attribution of benefits from CDM/DSM programs. Enbridge's experience is that where the attribution rules allow a utility to claim net TRC benefits, despite the fact that a program is delivered jointly with a non-rate regulated third party, the utility is incited to promote partnering and the sourcing of additional funding to facilitate CDM/DSM programs. It would work as a disincentive to utilities who would otherwise seek out partners and non-ratepayer sources of funding for CDM/DSM initiatives if the attribution rules are changed to reduce a utility's entitlement to claim TRC benefits. Enbridge submits that this is not in the best interests of ratepayers in that the incentive to develop partnerships and deliver programs on the most cost-effective basis would be compromised if the attribution rules are changed.

11. Enbridge submits that its interest in this proceeding, in addition to the specific issues identified above, also exists in respect of its belief that, to the extent practical, there should be continuity between DSM and CDM regulatory methodologies.

Freeridership Rates

12. Prior to 2003 ADR agreement, Enbridge was faced with requests to adjust freeridership rates without supporting studies. This issue was resolved in Enbridge's 2003 Rates Case ADR settlement which created what is known as "2003 ADR Rules". The Board decision in RP2002-0133 confirmed that in calculating TRC savings for the

purposes of determining the SSM, program assumptions including freeridership will not be changed retroactively. For the purpose of C&DM programs of electric LDC's, Enbridge submits that freeridership should also be set prospectively.

13. I was advised by SeeLine Group Inc. that the freeridership rates in the TRC Guide relied heavily on the freeridership rates in the natural gas sector which have been studied and developed over time based upon the best available information.

Attribution Rules

14. The attack on attribution rules is not limited to this proceeding. In the 2006 Enbridge Rates Case, EB-2005-0001, certain intervenors have similarly alleged that Enbridge's ability to claim 100 percent of the net TRC benefits generated in several programs should be denied. Specifically, the Green Energy Coalition ("GEC") has suggested that the freeridership rate in respect of the EnerGuide for Houses program, and the Commercial DAP program, be substantially increased, based simply upon the ratio of the financial incentives made available to potential participants by Enbridge relative to the financial incentives made available by NRCan. While GEC proposes that the freeridership rates be increased, it justifies the increases under its proposed "Attribution Principle".² Enbridge submits that it is erroneous to confuse the two concepts. The fact that GEC is proposing a change in the attribution rules and using that to justify an increase in freeridership rates is an example of what can be expected if the attribution rules are changed. Enbridge submits it will only add greater uncertainty to the process.

15. The view of intervenors that propose change to the attribution rules fails to consider the historical origin of many CDM/DSM programs, including Enbridge's efforts to solicit government support and the numerous non-financial means in which Enbridge supports relevant programs. Turning specifically to the origin of programs, it should be noted that Enbridge was a key supporter in the Home Performance Rewards pilot project (later became EnerGuide for Houses), along with the Ontario Ministry of Environment, developed by Green Communities Association and carried out in cooperation with Peterborough GreenUp. Enbridge was not only involved in the program development

² Chris Neme, *Implementing Enbridge's Role in Ontario Conservation Culture*, EB-2005-0001, Ex. L-9-1, June 30, 2005, p. 22

that led to EnerGuide for Houses, but has continued to support the program to ensure the ongoing achievement of results.

16. In terms of the involvement of the Government of Canada, through NRCan, it is important to note that after Enbridge first developed these programs, it then pursued government support, suggesting that these were appropriate programs for which government financial support should exist. An example of this is the EnergyStar program. Enbridge worked closely with Enerquality and provided funding to the EnergyStar pilot project. Enbridge also helped bring forward the proposal to NRCan. The program was approved by NRCan and now is a full fledged conservation program.

17. Confirmation that NRCan accepts that Enbridge is responsible for the initial development and a substantial portion of the existing promotion of the programs is found in a letter, dated June 22, 2005, from NRCan, wherein it believes that it is appropriate for Enbridge to claim all of the TRC benefits associated with the program in its franchise area. Attached hereto and marked as Exhibit "B" is a true copy of the NRCan letter.

18. In addition to the financial incentive which is part of these Enbridge programs, Enbridge also contributes in non-monetary ways. These include working with the Government of Canada, participating in community events, supporting and participating in conferences, promoting various programs through networking with business partners, bill inserts, and various forms of media.

19. The conclusion which should be drawn is that utilities should be incented to bring program partners to the table for both the financing and delivery of CDM/DSM programs. If the attribution rules change such that a utility is only entitled to claim some incremental amount, utilities will not pursue partnering opportunities. This will negatively impact the development of Ontario's conservation culture.

20. Moreover, those that have advocated some sort of analysis to determine the net TRC benefits which are generated as a result of a utility's participation in a program understate its potential complexity. Consideration of a utility's DSM/CDM programs should not be limited only to the relative financial contributions of the partners in a single year. Any assessment must identify and account for the many other ways in which utilities support programs such as the examples described earlier in this affidavit. How to value these non-financial contributions becomes a source of additional unnecessary

negotiation. Accordingly, Enbridge submits that the Board should not advocate the development of yet a further complicated methodology.

Confusion Between Freeridership Rates and Attribution

21. In many instances, intervenors use the terms "freeridership rates" and "attribution" inter-changeably. Technically, they are not the same and should be distinguished. A freeridership rate is intended to capture those ratepayer participants in a DSM/CDM program that would have undertaken the applicable energy efficiency measure, even if the DSM/CDM program did not exist. For example, furnaces naturally wear out and are replaced, regardless of a utility's CDM program. A certain percentage of efficient replacements will occur in any event.

22. Freerider rates are a different calculation than attribution levels which, in the example of programs that are jointly delivered by two or more rate-regulated entities results in a sharing of the net TRC benefits between the entities delivering the programs. However, in instances where a utility is central to the development of a program that is delivered jointly or in a partnering with non-rate regulated entities, the utility should be entitled to claim 100 percent of the net TRC benefits generated because it was responsible for securing the third party support and funding which is not recovered in rates.

Conclusion

23. The Board has already conducted a proceeding to review the Draft TRC Guide. As part of this process the Board already considered parties comments (including Pollution Probe's submission) before issuing the Final TRC Guide. Enbridge feels that reopening this issue after it has already been addressed will create more uncertainty to the LDC's when pursuing C&DM/DSM initiatives.

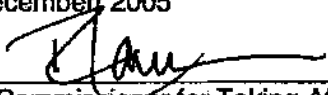
24. Enbridge therefore submits that the rules in respect of freeridership rates and attribution levels should remain as stated in the TRC Guide. Enbridge submits that there is no cogent reason to amend the rules at this time. Finally, Enbridge submits, in the alternative, that if the Board accepts all or some of the submissions for change by intervenors, these changes should not be implemented for the purposes of 2006 rates, as utilities have undoubtedly prepared their CDM/DSM plans for 2006 based upon the

existing rules. To now change the rules "midstream" could be detrimental to their CDM/DSM programs. Any changes should not be implemented until the 2007 test year.

SWORN before me at Toronto

Toronto this 2nd day of

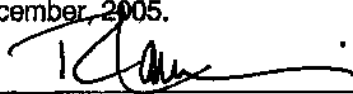
December 2005


A Commissioner for Taking Affidavits

)
)
) 
) **Michael Brophy**

Richard A. Lanni
Barrister & Solicitor

The attached is Exhibit "A" to the Affidavit of Michael Brophy, sworn before me this 2nd day of December, 2005.



A Commissioner for Taking Affidavits

ONTARIO ENERGY BOARD

IN THE MATTER OF THE Ontario Energy Board Act,
1998, S.O. 1998, c. 15, Schedule B, as amended;

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

LATE INTERVENTION OF ENBRIDGE GAS DISTRIBUTION INC.

1. Enbridge Gas Distribution Inc. ("Enbridge Gas Distribution" or the "Company") hereby applies for intervention in this proceeding pursuant to the above-captioned matters.
2. Enbridge Gas Distribution is a transmitter of natural gas in Ontario and serves many of the same customers as numerous electric local distribution companies. As well, it manages and delivers a significant number of demand side management programs which are, in many instances, quite similar to programs proposed by or being delivered by electric distribution companies. Indeed, the Company has partnered with Toronto Hydro to deliver on its behalf certain C&DM programs, and it may deliver programs on behalf of other LDCs.
3. Enbridge Gas Distribution has a direct interest in all matters of jurisdiction, substance, and procedure in the regulation of public utilities, and in any decision of the Board which may create a precedent affecting the Company's own applications.
4. Enbridge Gas Distribution reserves the right to be heard in English, to appear by or with counsel of its choice, to cross-examine on all subject matters in this hearing that may relate to its interest, to adduce evidence on specific matters that are relevant to these proceedings, and to present argument.
5. Enbridge Gas Distribution requests one (1) copy of the evidence and submissions of the Applicants and other intervenors, and any notices or correspondence to be forwarded to:

Ms. Lorraine Chiasson
Assistant Regulatory Coordinator
Enbridge Gas Distribution Inc.

Telephone: (416) 495-5962
Facsimile: (416) 495-6072

Mailing Address:

P.O. Box 650
Scarborough, Ontario
M1K 5E3

Address for Personal Service:

500 Consumers Road
Willowdale, Ontario
M2J 1P8

- and to -

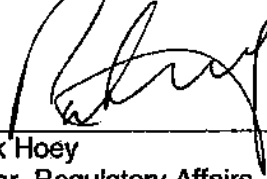
Mr. Dennis M. O'Leary
Aird & Berlis LLP
Barristers and Solicitors
BCE Place, Suite 1800
Box 754, 181 Bay Street
Toronto, ON M5J 2T9

Telephone: (416) 865-4711
Facsimile: (416) 863-1515
E-mail: doleary@airdberlis.com

Enbridge Gas Distribution will not be seeking an award of costs.

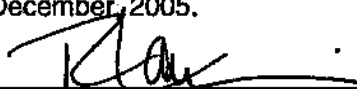
DATED AT Toronto, Ontario, this 2nd day of December, 2005.

ENBRIDGE GAS DISTRIBUTION INC.



Patrick Hoey
Director, Regulatory Affairs

The attached is Exhibit "B" to the Affidavit of Michael Brophy, sworn before me this 2nd day of December, 2005.



A Commissioner for Taking Affidavits



Natural Resources
Canada

Ressources naturelles
Canada

Exhibit B

Ottawa, Canada
K1A 0E4

June 22, 2005

Kathleen Hunt
Program Manager
Enbridge Gas Distribution
500 Consumers Road
North York, Ontario
M1K 1P8

Re: Enbridge's involvement in the EnerGuide for Houses program

The Office of Energy Efficiency at Natural Resources Canada acknowledges the key role that Enbridge has played in the success of the EnerGuide for Houses program in the Enbridge franchise area.

Enbridge has a rich history of participation and program support of EnerGuide for Houses. Enbridge was a key supporter in the Home Performance Rewards pilot project, along with the Ontario Ministry of the Environment, developed by the Green Communities Association and carried out in cooperation with Peterborough GreenUp. This initiative was the initial pilot project to use Canada's EnerGuide for Houses home energy rating system while offering a homeowner rebate to carry out energy efficiency retrofits in the home. Enbridge supported the project as a part of the Sustainable Peterborough project, and continues to include these activities as a part of the DSM portfolio.

Enbridge was not only involved in the program development that led to EnerGuide for Houses, but has continued to support the program to ensure the ongoing achievement of results. In summary, we believe that Enbridge should continue to report all of the energy savings in dwellings where the space-heating is supplied by natural gas in your franchise area to the Ontario Energy Board due to your role as an ongoing active program partner and supporter.

We hope you continue to support and drive results for this program.

Sincerely,

Barbara Mullally Pauly
Senior Chief, Housing Programs
Office of Energy Efficiency
Natural Resources Canada

Canada

TAB 3

14 December 2005

Mr. Dennis O'Leary
Counsel to Enbridge Gas Distribution Inc.

By e-mail

Dear Sir

Re: EB-2005-0523

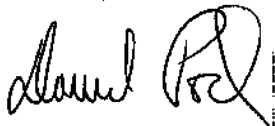
We understand that Enbridge seeks a clarification of GEC's position on the retroactive application of freerider rates to avoid the need for cross-examination of Mr. Neme and I am pleased to provide you with the following in that regard.

For purposes of calculating SSM we do not advocate retroactive adjustment. GEC endorses the prospective application of assumptions and rules similar to the rules included in the 2003 settlement agreement with Enbridge. We advocate a pre-approval process (in rate cases or otherwise) coupled with the ability of LDCs to rely on precedent where they are delivering the same program that has been pre-cleared by another LDC.

Initial free rider assumptions will be based on best available information at the time the CDM/DSM Plan is approved. This may include local market data and analysis of similar programs and free rider assumptions for such programs in other jurisdictions. In some cases, initial free rider rates will need to be based on somewhat limited information and as program evaluations are completed, assumptions can and should be revised prospectively for application to future SSM periods.

I trust this assists you. Feel free to quote or file this letter as required.

Sincerely,



David Poch
Counsel to GEC