C. <u>The Current Legislative Scheme</u>

17. As of December 9, 2004, the establishment of the OPA in accordance with s. 25.1 of the *Electricity Act, 1998* has introduced into the Ontario electricity market a new provincial government body with a strong mandate related to CDM. Under ss. 25.2(b), (f) and (g), the OPA is mandated to both *conduct independent planning* for demand management and conservation of electricity, and to directly contract for and *engage in activities* that promote or facilitate these ends. Pursuant to ss. 25.30(2)(d) the OPA, in preparing its integrated power system plans, is bound to follow any Minister's directives relating (among other things) to the development and implementation of CDM. Further, as noted above, since its establishment, the OPA has received directions from the Minister of Energy that effectively require it to assume delegated responsibility for significant program and investment initiatives relating to CDM that were previously undertaken by the Government of Ontario, directly.

18. Broad powers are given to the OPA under ss. 25.2(4) to (6), including specific powers to accomplish this mandate in relation to CDM. It is noted that these powers are exercisable primarily by contract, and there is no explicit requirement that they be exercised in the same way or to the same extent in all areas of the Province. NHL believes this is appropriate, both because the need for some CDM programs and activities may vary significantly from one area to another, and because some CDM initiatives may require the involvement of LDCs as well as a variety of public bodies and private service providers to achieve their goals effectively.

19. After submission and approval of its budget, the costs of the OPA's CDM activities are recoverable under ss. 25.20, via the IESO, from electricity ratepayers in the form of a single charge applied uniformly to all ratepayers in the Province.

20. By contrast, the powers and responsibilities of Ontario LDCs with respect to CDM programs and recovery of costs are qualified and expressly made secondary to provincial government policies. Under ss. 71(b) of the *Ontario Energy Board Act* and ss. 29.1(1) of the *Electricity Act, 1998*, LDCs have a discretion (but not a responsibility) to provide services "that would assist the Government of Ontario in achieving its goals" in relation to CDM, and even that authority is "subject to such rules as may be prescribed by the regulations". LDC expenditures of CDM are also subject to review by the Board under its general rate review jurisdiction, and hence subject to potential disallowance on grounds relating to their prudence or cost effectiveness. NHL is concerned that these provisions have the potential to create disincentives to LDC initiatives in the area – resulting in a patchwork of CDM program design, activity or inactivity, and costs across the Province – unless they are interpreted as a mandate to facilitate the delivery of provincial CDM initiatives in the respective LDC service areas.

21. Moreover, as the recent experience in NHL's own service area well illustrates, the existence of these LDC powers alongside those of the OPA has the potential to result in duplication of effort and expense, and potential loss of accountability in the area of CDM, again, unless they are properly coordinated by means of their interpretation or regulatory application.

22. As a result of recent developments, and the statutory scheme outlined above, without some further direction from the Board, Ontario LDCs are at some risk in pursuing CDM initiatives, beyond those currently underway as a result of the Minister's letter on LDCs rates of return or subsequently contracted with the OPA. This generic proceeding offers a welcome opportunity to provide some input to the Board as to what that direction should be.

23. In that regard, NHL notes finally that the Board has recently recognized some limitations on its own powers and responsibilities in relation to CDM. Specifically, in its Order and Decision of November 22, 2005 in EB-2005-0315, the Board has indicated that:

(a) the OPA has the ability to provide a number of CDM programs and services without prior Board approval;

(b) where the OPA does so under a Minister's direction or pursuant to a Board-approved procurement process, the Board performs no review of the CDM costs incurred by the OPA;

(c) similarly, LDCs have the ability to provide a number of CDM programs and services without prior Board approval; and

(d) the Board has no statutory authority to direct LDCs (or all of them) to provide such programs or services.

24. The principal issue raised by the Board's Notice of Hearing in this proceeding is whether, in light of this statutory scheme, the Board should nevertheless order LDCs, or some of them, to spend an amount of money on CDM programs or services that is different than the amount proposed by the LDC, itself, in a given year, without however thereby requiring the LDC to engage in specific CDM activities.

25. Based on recent experience in the NHL service area, I believe such an approach by the Board would have the potential to create still more confusion, uncertainty, duplication, and inefficiency in this area, without necessarily addressing the issues of patchwork program and service delivery in this important area in Ontario. I believe a better approach for the Board to consider would include:

promote market transformation as well as capture economies of scale, while offering end users and service providers with consistent statewide programs.

(b) Vermont. The Legislature chose to consolidate energy efficiency administration under a single non-profit "Energy Efficiency Utility" in 2002. This utility is responsible for administration, program design and implementation, and is responsible (through a performance contract) to the Vermont Public Service Board (PSB). A separate Fiscal Agent collects funds from utilities and pays Efficiency Vermont, subject to a Contract Administrator's approval. Centralizing the administration of energy efficiency programs for Vermont's 22 small utilities provided economies of scope and scale, consistency of programs, and reduced regulatory burden.

(c) Connecticut. Administration of energy efficiency programs is handled directly by the state's two large investor-owned utilities, subject to oversight by the Connecticut Department of Public Utility Control (DPUC). Funding for programs is through a systems benefit charge authorized by legislation. An ongoing lack of uniformity of programs between the utilities was addressed through the creation of the Energy Conservation and Management Board (ECMB) in 1998. The ECMB provides a forum for public input and makes recommendations to the DPUC and Legislature on policies, program design and mix, and budgets. Connecticut elected to maintain regulatory oversight, rather than create a contract model in energy efficiency administration. With only two large utilities reviewed, this approach did not create an undue regulatory burden.

(a) formally recognizing and articulating the role of Ontario LDCs to facilitate the local implementation and delivery of provincial CDM initiatives, including those within the mandates given to the OPA by Minister's directions, as well as LDC system specific initiatives, in their respective service areas; and

(b) formally recognizing that the LDCs administrative costs related to the implementation of these OPA programs and services in their service areas will be recognized and recoverable through the Board's ratemaking process.

26. NHL believes that this approach has a number of advantages including:

(a) promoting consistency and fairness in the availability of CDM programs and services to customers;

(b) promoting fairness between customers, and related accountability, in respect of the rates charged to customers for those programs;

(c) removing disincentives, and promoting LDC participation in provincial CDM initiatives, both for programs and services that can appropriately be provided on a province-wide basis, and for locally adapted or system-specific programs;

(d) promoting a fairer allocation of the costs of CDM initiatives as between all provincial ratepayers and the LDCs ratepayers;

(e) removing other barriers to participation by LDCS in CDM initiatives, such as program design costs and cost recovery risks;

(f) reducing duplication and overhead in CDM program design and monitoring costs; and

(g) promoting regulatory efficiency.