

ONTARIO ENERGY BOARD

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

AND 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 subsection 19(4) and 78 of the *Ontario Energy Board Act, 1998*

REPLY SUBMISSIONS OF THE LOW-INCOME ENERGY NETWORK

The Low-Income Energy Network (“LIEN”) appreciates the opportunity to respond to issues raised by other parties in their submissions to the Board during this proceeding and to clarify its position with respect to the specific issues raised.

In particular these Reply Submissions deal with the following issues:

1. Jurisdiction of the Board
2. Board Staff Proposal for Test of Prudence
3. Further Submissions on the Specific Questions Raised in this Proceeding
4. Implementation of the Board’s Decision
5. Costs

1. JURISDICTION OF THE BOARD

Section 1 of the Act provides that in carrying out the Board’s responsibilities in relation to electricity it must be guided by the following objectives:

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.

While most of the parties to this proceeding have concentrated on the second objective, namely “to promote economic efficiency and cost effectiveness in the ... demand management of electricity”, LIEN submits that conservation and demand management activities are also required to ensure the fulfilment of the first objective, namely, “to

protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service”.

In its latest 18-month outlook¹, the Independent Electricity System Operator (IESO) indicates that there will be continuing reliance on (expensive) imports, and there are significant potential reliability constraints, particularly in the Greater Toronto Area (GTA). Immediate implementation of effective conservation and demand initiatives in the Province of Ontario is an opportunity to address the demand/supply imbalance, and reduce the importation of expensive electricity, which causes the commodity price of electricity to increase. In other words, without effective and immediate CDM initiatives all of these objectives are in jeopardy.

As LIEN has previously stated, it is concerned with the overall amount of the customer bill and not with the individual specific price components of the bill. LIEN submits that this approach is consistent with the specific wording of the objective in section 1 of the Act that the Board should be guided by the objective of protecting the interests of consumers with respect to overall “prices” and not merely with respect to the specific charges² for which the Board sets rates.

Of course the Board is not directly engaged in fulfilling these objectives; however, in carrying out its responsibilities in regulating participants in the electricity sector, the Board must rely on an arsenal of regulatory tools to ensure that the entities it regulates are also guided by these objectives in carrying out their respective responsibilities.

The Board has pointed out that it does not have the direct legislative authority to order a distributor to conduct a specific CDM program³. However, the Board does have a number of regulatory mechanisms to “encourage” utilities to fulfill section 1 objectives. For example:

The Board may impose conditions on any order that it issues whether the order is general or particular in its application.⁴

In particular a rate order may include conditions or practices applicable to the distribution of electricity.⁵

A distribution licence may prescribe the conditions under which a person may engage in an activity set out in section 57 of the Act and a licence may also contain such other conditions as are appropriate *having regard to the objectives of the Board and the purposes of the Electricity Act, 1998.*”

¹ IESO. 2005. 18 month outlook: An assessment of the reliability of the Ontario electricity system. http://www.ieso.ca/imoweb/pubs/marketReports/18MonthOutlook_2005dec.pdf

² For example distribution charges

³ See EB-2005-0315 Decision and Order, dated November 22, 2005

⁴ Subsection 23(1) of the Act

⁵ Subsection 70(6) of the Act

Conditions of a licence may include provisions specifying performance standards, targets and criteria:⁶

The Board may, on the application of any person, amend a licence if it considers the amendment to be...in the public interest, *having regard to the objectives of the Board.*⁷

The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section.⁸

LIEN submits that if the Board is serious in fulfilling its mandate and is to be guided by the objective of protecting the interests of consumers with respect to “prices and the adequacy, reliability and quality of electricity service” through conservation and demand management activities, the Board should take the broadest possible interpretation, use the Board’s powers under the Act and not artificially restrict the interpretation of Board authority.

CDM programs are urgently needed in the Province of Ontario and LDCs have a crucial role in delivering those programs. As the regulator of LDCs the Board must ensure that it uses all mechanisms at its disposal to ensure that the public interest is protected.

2. BOARD STAFF PROPOSAL FOR TEST OF PRUDENCE

Board Staff have proposed a unique and very limited test for determining whether an LDC investment in CDM is “prudent”. Board Staff has proposed that the “test for prudence related to a comparison of alternative LDC expenditures. This means that a failure to invest in a CDM initiative is only imprudent when it can be demonstrated that such an investment is more cost effective than an alternative LDC investment in distribution assets and that failure to invest in the CDM resulted in higher distribution rates than the rates would have been if the CDM investment had been made”.⁹

LIEN is concerned that Board Staff is raising this proposal at this stage in the process. As Board Staff noted¹⁰ this specific proceeding has arisen out of a number of previous Board directions with respect to LDC’s expenditures on CDM. If Board Staff had concerns with respect to the test for whether LDC’s CDM expenditures were prudent, the issue should have been raised in previous processes and not at the last minute, without warning, in this proceeding.

⁶ Paragraph 70(2) (g) of the Act

⁷ Subsection 52 (b) of the Act

⁸ Subsection 70.1(1) of the Act

⁹ Board Staff Submission, dated December 20, 2005, paragraph 14

¹⁰ Board Staff Submission, dated December 20, 2006, paragraph 1

LIEN finds it incredible that Board Staff would actually propose a test for prudence that in fact *favours* the building of additional physical plant over corresponding CDM measure to reduce the load. Board Staff are suggesting that the utility must be able to establish that the investment in CDM would be *more* cost effective than an alternative LDC investment in distribution assets. According to Board Staff, even if the CDM investment were *equally* cost effective, then it would not pass the proposed test of prudence.

Board Staff appears to be taking a very narrow interpretation as to the role of the LDC. The distribution of electricity is only a part of the integrated system of the delivery of electricity in the province and the activities of LDCs in the distribution of electricity should not be considered in isolation from the activities of other participants, such as generators, transmitters and retailers. As previously stated LIEN is concerned about the financial impact of the entire utility bill and not merely the distribution component of it. It makes no sense to LIEN for the Board to only be concerned about the financial impact that LDC initiated CDM activities will have on distribution charges and ignore the financial impact on other electricity bill components.

LDC CDM activities cannot and should not be taken in isolation. Not only are LDCs involved in the distribution of electricity, but they also play a critical role in the overall delivery of CDM initiatives. The Board Staff proposal would appear to ignore this role and to artificially reduce the role of LDCs to merely the distribution of electricity through its physical plant.

The Board Staff proposal puts too narrow an interpretation on the system benefits of CDM activities. Deferring or avoiding investment in additional distribution assets is only one of the benefits of conservation and demand management. CDM will also have other economic benefits in the electricity sector in general. It will alleviate the necessity to build other physical plant, such as transmission assets and generation assets. It will lower the overall demand on the system and therefore reduce the cost of the electricity commodity. In addition, it will have benefits in the quality of electricity service by improving adequacy and reliability. As well, there are benefits, both monetary and non-monetary, beyond the electricity sector, including environmental and health benefits.

The Board has a positive obligation to *promote* demand management.¹¹ The test proposed by Board Staff is in fact a disincentive to CDM by requiring utilities to be able to demonstrate for each and every program that investment in CDM is economically more advantageous than a corresponding investment in distribution assets. Requiring LDCs to meet a higher standard of prudence for CDM activities than for other operational decisions would have a chilling effect on CDM activities, from an administrative and regulatory perspective.

LIEN is, quite frankly, at a loss to discern how the Board Staff proposal, biased in favour of the expansion of physical plant as opposed to conservation and demand management initiatives, could in any manner be in the public interest.

¹¹ Section 1 of the Act

In the past, the Board has adopted the Total Resource Cost Test (the “TRC Test”) in determining whether certain resource acquisition¹² CDM activities are economically efficient and cost effective, and therefore prudent: LIEN submits that the TRC Test should be retained as the general test for prudence of resource acquisition CDM expenditures at this time.¹³

LIEN also submits that LDCs should have a balanced portfolio of CDM activities that may include other CDM initiatives such as information programs or market transformation activities. LDC should not be prohibited or penalized from engaging in such activities even though the application of the TRC Test is not appropriate. If an LDC wishes to engage in these activities, the general test for prudence should apply.¹⁴

3. FURTHER SUBMISSIONS ON THE SPECIFIC QUESTIONS RAISED IN THIS PROCEEDING

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

LIEN submits that it would be helpful for the Board to provide guidance as to what the Board thinks is an appropriate range of investment for a utility to make in CDM. While LIEN does not have a specific proposal, it does not find the proposals of Pollution Probe or GEC unreasonable.

As previously submitted, low-income consumers are a group that has been specifically targeted by the Minister as deserving of special attention.¹⁵ This direction was given to LDC almost 2 years ago, and LIEN submits that LDCs have had sufficient opportunity to respond to and include low-income directed CDM programs within their CDM portfolios. Therefore each LDC proposal for CDM spending should include a minimum spending target for CDM activities specifically directed at low-income consumers. Where an LDC comes forward without programs for low-income customers, there should be a heavy burden on the LDC to explain to the satisfaction of the Board why it has been impossible for the LDC to comply.

¹² Resource acquisition CDM activities are those activities that are designed to reduce electricity use on the electricity system directly.

¹³ There may also be circumstances in which it is practical to substitute either a more comprehensive test, such as the Societal Cost Test (SCT) which incorporates environmental externalities, or to adopt a simpler surrogate for the SCT

¹⁴ See Board Staff Submission, dated December 20, 2005

¹⁵ See Minister’s letter to LDCs dated May 2004.

Whether the Board should require LDCs to demonstrate free ridership levels for all CDM programs on a program-by-program basis

LIEN acknowledges that it would be beneficial for free ridership levels to be determined for CDM programs on a program-by-program basis for the reasons set out by Pollution Probe.¹⁶

However, for reasons stated in our previous submission it is not effective or efficient for each LDC to be required to demonstrate free-ridership rates on a program-by-program basis.. LIEN would rather the money be spent directly on CDM programs rather than on an expensive analysis of the programs.

LIEN notes that the current TRC Guide contains free ridership values for standard technologies, and these are to be used as a surrogate for free ridership values for standard programs. These standard values should apply to LDC programs that are similar to these standard programs. LIEN submits that the free ridership value for programs directed at low-income customers should be fixed at zero. LDCs should be able to rely on these values in the evaluation of their CDM activities.

However, the evaluation of CDM initiatives is an ongoing iterative process. Values will change not only among CDM programs, but also within a particular program over time. It is in the public interest and in the interests of all of the parties to use the best available data.

The Board should establish a process to update the TRC Guide on an ongoing basis. LIEN notes that the OPA has indicated a willingness to assist LDCs with free rider studies and analysis.¹⁷ The Board may require larger LDCs e.g. where the anticipated net benefits are greater than 1.5 million dollars, to specifically conduct free ridership studies of their programs.

In addition, an intervenor or an LDC should have the opportunity to apply to the Board for changes in the TRC Guide as better data became available. LIEN anticipates that many of these changes will be minor and technical in nature and can be dealt with expeditiously by the Board. Where proposed changes are significant, all interested parties should have the opportunity to be involved.

For applications presently before the Board, all parties should be entitled to rely on the information and principles as are currently set out in the TRC Guide.

¹⁶ Pollution Probe Submission, Affidavit of Jack Gibbons, December 3, 2005.

¹⁷ See Ontario Power Authority Submission , December 20, 2005, paragraph 15.

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 third party CDM activity.

LIEN reiterates its position that there should be special encouragement given to joint LDC and non-rate regulated third party CDM programs. After reviewing the submissions of the other parties, in the alternative, LIEN could accept the proposal that the Board raise the incentive rate and the corresponding conservation profit bonuses for these specific programs.¹⁸ LIEN recognizes the concern that it is beneficial to know the true benefits and costs of all CDM activities instead of overstating the incremental savings that are created by utility participation in these joint programs.

4. IMPLEMENTATION OF THE BOARD'S DECISION

LIEN is concerned that the "Rules of the Game" should be clear, and unambiguous and should not be subject to change in mid-stream. As previously indicated, LDCs have had ample opportunity to include CDM programs specifically targeted to low-income consumers, in each of their CDM portfolios. If this is not the case, there should be a heavy onus on the utilities to provide a satisfactory explanation, why this has been impossible.

LIEN submits that all other decisions made by the Board in this proceeding should be prospective in application and should not alter previous decisions of the Board. While LIEN would like to see more CDM spending beyond the third tranche than has been applied for, LIEN appreciates that LDCs have made their decisions based on the best available information at the time. LDCs should not be required by this proceeding to spend specific amounts on CDM in determining 2006 rates. Likewise, parties should be able to rely on the principles and data set out in the TRC Guide as it exists at the time of their application, including free ridership rates as well as the allocation principles.

5. COSTS

LIEN submits that it has participated responsibly and reasonably in these proceedings and that it has contributed to the Board's understanding of the issues. LIEN respectfully requests that it be awarded 100% of its costs, reasonably incurred, in participating in this proceeding.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED BY
LOW-INCOME ENERGY NETWORK**

January 16, 2006.

¹⁸ See for example GEC Motion Record, p.15 para. 57 .