

**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 (“CDM”) by Local Distribution Companies  
(“LDC”) activities as described in the Electric Distribution Rates  
(“ECR”) Handbook and Total Resource Cost (“TRC”) Guide pursuant  
to sections 19(4) and 78 of the *Ontario Energy Board Act, 1998*

**MOTION RECORD OF NEWMARKET HYDRO LIMITED**

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### **I N D E X**

TAB A	Written Submission of Newmarket Hydro Limited
TAB B	List of Evidence Relied On

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## **WRITTEN SUBMISSION OF NEWMARKET HYDRO LIMITED**

### **A. Summary of Position**

1. Newmarket Hydro Limited (“NHL”) is a local distribution company (“LDC”) providing electricity to customers in a service area within the Regional Municipality of York (“York Region”), pursuant to terms of license issued and imposed by the Ontario Energy Board (the “Board”). NHL’s position herein reflects its commitment to conservation and demand management measures (“CDM”) as an integral part of its response to forecast growth in demand for electricity and imminent system overloading in its service area. At the same time, it reflects NHL’s concerns about the current lack of CDM program co-ordination, and the potential for regulatory inefficiency, if not conflict, arising from recent developments in electricity CDM in NHL’s service area.
2. In summary, NHL’s position and recommendation to the Board herein is:
  - (a) that the relevant CDM initiatives be designed, developed, co-ordinated, implemented and monitored on a Province-wide basis by a responsible provincial body or bodies;

- (b) that there be one conservation charge in the rates charged by all Ontario LDCs to their customers, which would include all conservation-related demand side management initiatives;
- (c) that the role of Ontario LDCs be to facilitate the delivery of these provincial CDM initiatives in their respective service areas; and
- (d) that the Board maintain a broad supervisory or oversight role, focused on the prudence of expenditures related to CDM, rather than allowing this issue to arise piecemeal as a factor, potentially, in almost every LDC regulatory proceeding that may be initiated by or before the Board.

3. Such a system is supported by the existing legislative framework for electricity regulation in Ontario. It would have a number of significant benefits, including (i) equal treatment of customers, (ii) fairness in terms of accessibility and treatment as between larger and smaller LDCs, and (iii) efficiency in regulatory oversight, program development and administration, and market impacts.

4. Moreover, this system or structure of CDM delivery and regulation is already in successful operation, and has a proven track record of success, in a number of other jurisdictions. Paragraph 27 of the Affidavit of Paul D. Ferguson, the President of NHL, sworn on December 2, 2005, summarizes information about similar approaches to CDM program co-ordination and oversight in New York, Vermont, and Connecticut.

**B. Background: Recent Developments in Electricity Conservation and Demand Management in NHL's Service Area**

5. The recent developments in electricity CDM in NHL's service area that underlie its position herein are fully set out in paragraphs 3-10 of Paul D. Ferguson's Affidavit. Those developments may be summarized as follows.

- (a) In response to the Minister of Energy's letter dated May 31, 2004, NHL prepared and internally approved a Conservation and Demand Management Plan dated February 23, 2005 (the "NHL CDM Plan"), which was the subject of Board proceedings leading to approval by a Final Order dated April 19, 2005.
- (b) After the Minister's letter was sent, Part II.1 of the *Electricity Act, 1998* came into force, among other things, establishing the Ontario Power Authority ("OPA") with statutory objects and powers including specific, Province-wide responsibilities and activities in relation to CDM.
- (c) In the York Region Electric Supply Proceeding (EB-2005-0315), the Board directed the OPA to provide certain information and opinions to assist in its determination of whether and how to address the growing demand for electricity in York Region, which includes NHL's service area. That letter specifically included among the options to be considered a "Supply/Demand Reduction Option". In response to that letter, on September 30, 2005, the OPA submitted to the Board its *North York Region Supply Study* which included the following findings and initiatives relevant to this matter:
  - (i) it forecast load growth in portions of the northern York Region including NHL's service area at 3.25% per year for each of the next 10 years;
  - (ii) it adjusted total demand down by just 5%, in the 2007 year only, to account for the anticipated effects of existing CDM programs, including those in the NHL CDM Plan;

- (iii) it announced the initiation by the OPA itself of a procurement process for a target of a further 20 MW of demand response initiatives in York Region, as part of the 250 MW province-wide procurement initiatives the OPA is conducting pursuant to a letter of direction from the Ministry of Energy dated June 15, 2005; and
  - (iv) it suggested that other province-wide conservation initiatives be piloted in York Region.
- (d) The OPA subsequently received further directions from the Minister of Energy dated October 2 and 20, 2005 to assume responsibility for certain provincial initiatives relating to reducing demand and consumption by residents of low income and social housing, appliance change-out, and efficient lighting. These initiatives involve significant program overlaps with NHL's own initiatives pursuant to the NHL CDM Plan. Yet the OPA has stated in a Submission dated November 14, 2005 in EB-2005-0315 that it sees the northern York Region, including NHL's service area, as "an ideal candidate for pilot projects and early implementation" of these initiatives.
- (e) The Board's Notice of Written Hearing in File No. EB-2005-0315, on its face, dealt with the implementation of new facilities to meet forecast demand for electricity in York Region, and did not raise any issues relating to CDM in NHL's service area. Yet both Green Energy Coalition and Pollution Probe filed interventions in that proceeding which sought to raise CDM issues. In its Decision and Order therein dated November 22, 2005, the Board concluded that in the circumstances, including the commencement of this proceeding, it was not necessary to address CDM in that proceeding. NHL is aware of similar interventions and decisions in a range of proceedings involving rates and other issues and other LDCs.

- (f) The Board issued its Notice of Proceeding and Hearing in this matter on November 11, 2005, raising questions as to whether LDCs should be ordered to spend more money on CDM and whether the current criteria for Board approval or disallowance of LDCs expenditures on CDM require adjustment.

6. This recent history of multiple initiatives and regulatory proceedings involving issues of CDM in NHL's service area highlights three critical concerns underlying NHL's position herein, specifically:

- (a) the urgent need to co-ordinate LDCs' CDM initiatives taken in response to the Minister's letter of May 31, 2004 with those of the OPA taken pursuant to the directions from the Minister dated October 2 and 20, 2005;
- (b) the potential for CDM issues to be raised, piecemeal, in almost every Board proceeding involving LDCs; and
- (c) the potential for inefficiency, uncertainty and for outright disincentives to LDC expenditures on CDM arising from the criteria for Board review of LDC expenditures as part of its rate-setting jurisdiction.

7. As a small LDC with a critical need for cost-effective implementation of CDM programs in its service area, NHL's position seeks to avoid any such lack of co-ordination, inefficiency, uncertainty or disincentives, whether they arise at the program level or from the regulatory process.

### **C. The Current Legislative Scheme**

8. In accordance with s. 25.1 of the *Electricity Act, 1998*, the OPA has assumed 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's integrated power system plans are bound to reflect any Minister's directives relating to the development and implementation of CDM. Further, as noted above, the OPA has received directions from the Minister of Energy under which it has assumed delegated responsibility for significant program and investment initiatives relating to CDM.

9. Broad powers are given to the OPA under ss. 25.2(4) to (6) to accomplish this mandate in relation to CDM. These powers are exercisable primarily by contract, presumably because 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. Similarly, there is no explicit requirement that these powers be exercised in the same way or to the same extent in all areas of the Province, presumably because the need for CDM programs and activities may vary significantly from one area to another.

10. The costs of the OPA's CDM activities are recoverable under s. 25.20, via the IESO, from electricity ratepayers as a single charge applied uniformly to all ratepayers in the Province.

11. 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. 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.

12. 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. 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 co-ordinated by means of their interpretation or regulatory application.

13. Without some further direction from the Board, Ontario LDCs (and particularly smaller LDCs such as NHL) have been at some risk in pursuing CDM initiatives, beyond those currently approved and underway as a result of the Minister’s letter.

14. In its Order and Decision of November 22, 2005 in EB-2005-0315, the Board recognized some limitations on its own powers and responsibilities in relation to CDM, and specifically 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.

15. With this background, NHL now turns to consider the specific issues raised by the Board in the questions posed in its Notice of Hearing herein.

**D. Whether the Board Should Order LDCs to Spend More on CDM**

16. The principal issue raised by the Board's Notice of Hearing in this proceeding is whether the Board should order LDCs, or some of them, to spend amounts of money on CDM programs or services that are different than the amounts proposed by the LDC, itself, in a given year.

17. NHL notes, first, that in its recent Report on the 2006 Electricity Distribution Rate Handbook, the Board accepted the submissions of "most parties" and agreed that mandating spending on CDM "is not appropriate, as distributors have already made commitments for a three year period." More recently, the Board's Procedural Order No. 2 in RP-2005-0020/EB-2005-0378 relied on this finding to support its decision not to permit mandatory CDM to be an issue raised in the ongoing Hydro One rate hearings.

18. More importantly, however, based on recent experience in its own service area, NHL believes the implementation of mandatory CDM spending by the Board would have the potential to create still more confusion, uncertainty, duplication, and inefficiency, without addressing the issues of patchwork program and service delivery in this important area.

19. Rather, NHL submits that a better approach for the Board to consider would include:

- (a) formally recognizing and articulating the role of Ontario LDCs to facilitate the delivery of provincial CDM initiatives, including those within the mandates given to the OPA by Minister's directions, in their respective service areas;
  - (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; and
  - (c) requiring the presentation of both OPA and LDC costs relating to CDM as a single "conservation" charge on the bills delivered to ratepayers.
20. 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 (particularly among smaller LDCs) 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 smaller 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.

**E. The “Free-ridership” Issues Raised by the Board**

21. NHL believes that, on the approach it urges, the issue of “free-ridership” among customers taking advantage of CDM programs and services who would have provided or acquired the same benefits for themselves in any event, regardless of the program or service, is an issue to be resolved at the provincial level, by means of the design of the programs and services to be offered. This issue should not be relevant to LDC cost recovery, as may currently be the case under the TRC Guideline, because it would risk creating further disincentives to LDC participation in CDM program and service delivery.

22. With respect to the specific issue posed under s. 2.1 of the TRC Guideline, NHL believes it is neither practical nor desirable to require *LDCs* to demonstrate free-ridership levels on a program by program basis, particularly where the programs are designed or co-ordinated on a province-wide basis.

23. With respect to the second issue posed under s. 2.2 of the TRC Guideline, based upon NHL’s experience with “non-rate-regulated third parties” in the private sector, NHL submits that no change to the Guideline is warranted. Private enterprises such as HomeWorks and Ecosystem pursue a business plan which uses the leverage obtained by gaining access to the LDC’s customers to maximize their rate of return, independent of and without reference to the “incremental benefits” to the system demand and load that are relevant under s. 2.2.

24. With respect to provincially funded programs, or those involving any other public sector bodies, NHL submits that “success” should be measured in terms of meeting or exceeding the provincial (or other public) targets applicable to that program, rather than in terms of the mechanism currently provided by s. 2.2 of the Guideline.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

December 20, 2005

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**List of Evidence Relied On**

1. Newmarket Hydro response to Interrogatories of the Green Energy Coalition (filed November 22, 2005) and the following attachments:
  - (a) Conservation and Demand Management Plan of Newmarket Hydro Limited, February 23, 2005;
  - (b) Newmarket Hydro Limited, First Quarter Submission (OEB form CDM2005Q1), May 3, 2005;
  - (c) Newmarket Hydro Limited, Second Quarter Submission, July 29, 2005; and
  - (d) Newmarket Hydro Limited, Third Quarter Submission, October 31, 2005
2. Affidavit of Paul D. Ferguson, sworn and filed on December 2, 2005