

**Ontario Energy Board**

**EB-2005-0523**

**Proceeding and Hearing**

**Electricity Conservation and Demand Management Activities**

**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 (“EDR”) Handbook and Total Resource Cost (“TRC”) Guide pursuant to sections 19(4) and 78 of the *Ontario Energy Board Act, 1998*

**AFFIDAVIT OF Paul D. Ferguson**  
**Sworn on December 2, 2005**

I, Paul D. Ferguson, of the Town of Newmarket, in the Province of Ontario, **MAKE**

**OATH AND SAY:**

1. I am President of Newmarket Hydro Limited (“NHL”), and as such have knowledge of the matters to which I depose in this Affidavit.

2. NHL is a local distribution company (“LDC”) providing electricity to customers in a service area comprising the Town of Newmarket and part of the Town of East Gwillimbury, in the Regional Municipality of York, of the Province of Ontario, pursuant to the terms of license issued and imposed by the Ontario Energy Board (the “Board”) from time to time. This Affidavit is filed in accordance with paragraph 4 of the Board’s “Notice of Proceeding and

Hearing: Electricity Conservation and Demand Management Activities” herein, dated November 11, 2005.

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

3. In a letter dated May 31, 2004, the Minister of Energy provided all Ontario LDCs, including NHL, with a new framework to enable them to apply for their installment of allowable return on equity commencing March 31, 2005, subject to conditions requiring a financial commitment to reinvest an amount equal to one year’s incremental returns in certain kinds of initiatives relating to electricity conservation and demand management (“CDM”). In response to that letter, and in accordance with the Board’s Procedural Order dated October 5, 2004, NHL prepared and internally approved a Conservation and Demand Management Plan dated February 23, 2005 (the “NHL CDM Plan”), which was approved by a Final Order of the Board in File No. RP-2004-0203/EB-2005-0236 on April 19, 2005. The approved Plan, together with the last quarterly report filed by NHL with the Board since that time, are provided in Appendix 1 to NHL’s Response to Interrogatory received from Green Energy Coalition.

4. Proceedings in File No. RP-2004-0203/EB-2005-0236 specifically raised the issue of CDM in NHL’s service area, and the usual public notices were issued and opportunities for intervention arose with respect to that proceeding.

5. Since the Minister’s letter initiating the preparation of the NHL CDM Plan was sent, amendments to the *Electricity Act, 1998 Schedule A* providing, among other things, in Part II.1 for the establishment of the Ontario Power Authority (“OPA”) received assent on December 9,

2004. The objects of the OPA set out in s. 25.2 of the *Electricity Act* include specific responsibilities and activities in relation to CDM.

6. By letter dated July 25, 2005 written pursuant to s. 21 of the *Ontario Energy Board Act* and s. 25.27 of the *Electricity Act*, the Board directed the OPA to provide certain information and opinions to assist the Board 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" involving a contract or contracts to be entered into by the OPA, the costs of which, if approved by the Board, would be recovered from OPA customers.

7. In response to that letter, on September 30, 2005, the OPA submitted to the Board its *Northern York Region Electricity Supply Study* containing the information, opinions and developed recommendations requested. A complete copy of the said Study is available from the "What's New" section of the Board's website ([www.oeb.gov.on.ca](http://www.oeb.gov.on.ca)) among the documents related to the October 20, 2005 Notice of Written Hearing in the York Region Electric Supply Proceeding (EB-2005-0315). Among other things, that Study included the following findings and initiatives that are relevant to this matter:

- (a) it forecast load growth at the Armitage Transformer Station serving portions of the northern York Region (including NHL's service area) at 3.25% per year for each of the next 10 years;
- (b) 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);

- (c) 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
- (d) it suggested that other province-wide conservation initiatives be piloted in the York Region.

8. More recently, NHL has become aware, through the OPA's Submission in EB-2005-0315, that the OPA has also received further directions from the Minister of Energy dated October 6 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. Despite the fact that these initiatives involve significant program overlaps with NHL's own initiatives pursuant to the NHL CDM Plan, the OPA has stated that it sees the northern York Region (which again includes NHL's service area) as "an ideal candidate for pilot projects and early implementation" of these initiatives.

9. Even though the proceedings in File No. EB-2005-0315, on the face of the Board's Notice of Written Hearing, did not raise any issues relating to CDM in NHL's service area, 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.

10. The Board issued its Notice of Proceeding and Hearing in this matter on November 11, 2005. NHL welcomes this opportunity to provide evidence and, in due course, submissions that may assist the Board in these matters.

**B. Overview of the Basis for NHL's Position**

11. NHL believes that the recent legislative, regulatory, and program developments with respect to CDM, as illustrated above with respect to NHL's own service area, provide both a challenge and an opportunity for rationalization and improvement,

12. NHL asks the Board in this generic hearing to consider and adopt an approach to CDM which would encompass the following essential characteristics:

- (a) that the relevant electricity 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 or demand side management initiatives;
- (c) that the role of Ontario LDCs should be to facilitate the local implementation and delivery of these provincial CDM initiatives as well as LDC system specific initiatives in their respective service areas; and
- (d) that the Board maintain a focused role on the prudence and cost effectiveness of LDC proposed 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.

13. NHL believes that such a system 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.

14. NHL also believes that the existing legislative framework for electricity regulation in Ontario already reflects and supports this division of responsibility.

15. NHL also understands that similar overall systems or structures of CDM delivery and regulation are in successful operation, with a proven track record of success, in certain other jurisdictions, including New York, Connecticut, and Vermont. Funding for most US energy efficiency programs is through a uniform (Mils/kwh) system benefits charge levied on customer energy usage. [Of the 18 US jurisdictional rates reviewed, the charge varied from US\$0.03 mils/kwh to US\$3.00 mils/kwh. British Columbia Hydro embeds its energy efficiency charges in their overall rates.]

16. These matters are outlined briefly, below.

- (a) New York. The primary administrator for energy-efficiency programs is the New York State Energy Research and Development Agency (NYSERDA). Programs are funded through a per kwh system benefits charge collected by utilities. Prior to the establishment of NYSERDA, utility administered programs were judged to be uneven, and several utilities expressed a lack of interest in handling them. NYSERDA began to fulfill this role 1996, and was given substantial budgets beginning in 2000. Regulators concluded that designating NYSERDA as the administrator would meet a number of policy objectives (particularly market transformation goals) as well as address historical utility performance concerns. NYSERDA's administrative budget was capped at 5%, and has been able to

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.

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

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:

- (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:

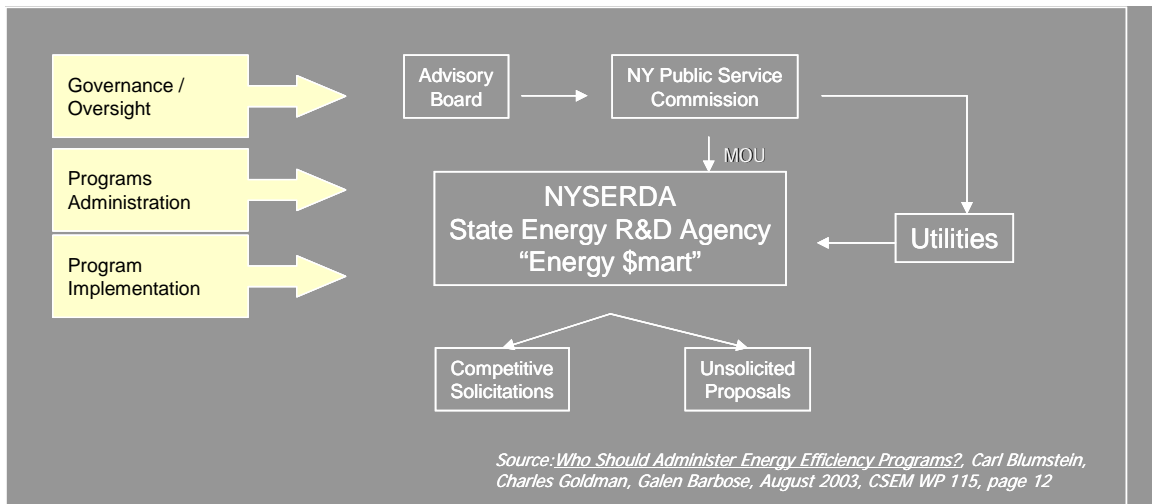
- (a) promoting consistency and fairness in the availability of CDM programs and services to customers;
- (b) promoting fairness between customers, and related accountability, in respect of the rates charged to customers for those programs;
- (c) removing disincentives, and promoting LDC participation 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.

## **D. CDM Practice in Certain Other Jurisdictions**

27. Precedence for NHL's suggested approach exists in other jurisdictions. Prior to restructuring in the US and Canada, the administration, design, and delivery of ratepayer-funded energy-efficiency program activities was largely the responsibility of utilities, operating within the context of an Integrated Resource Planning process, overseen and governed by state regulators. [Note that British Columbia Hydro, as well as many other jurisdictions, continues to administer its PowerSmart energy efficiency program in this way.] However, most US states that restructured their electricity sector re-evaluated the administration and governance of energy-efficiency programs, trying to find the structures that were best suited for the new policy environment. In some, alternative structures have evolved in which program administration and governance have been taken over by non-utility entities, such as existing state governmental agencies, or non-profit corporations with boards of directors. Two states with non-utility administrative structures include New York and Vermont. Other states such as Connecticut have retained a more traditional regulatory oversight model with modifications to promote policy objectives, create program uniformity and ensure stronger oversight.

- (a) New York appears to have much in common with the Ontario. In this state, utilities divested their generation and focused on providing distribution service. Prior energy efficiency programs administered by the seven investor-owned utilities was uneven. When the New York State Public Service Commission reviewed the programs, they determined that incentives required to motivate utility performance were too high. On top of this, a number of utilities were not interested in administering the programs. As a result, regulators created NYSERDA to serve as the central administrative agency for energy efficiency programs in that state. Total energy-efficiency funding came through a uniform

“system benefits charge” to all ratepayers, although administrative functions were capped at 5% of the budget. As an independent non-profit corporation, NYSERDA developed flexible competitive procurement processes and contracts. It has served to implement policies and pursued market transformation activities, targeting various market sectors. For instance, NYSERDA devoted almost 1/3<sup>rd</sup> of its budget to programs targeted at stimulating an Energy Services Company (ESCO) industry. Overall, NYSERDA has been able to capture economies of scale by centrally administering statewide programs and has offered end users (and service providers) consistent statewide programs, which reduces the transaction costs of participating. Below is a representative graphic that shows how administration functions:



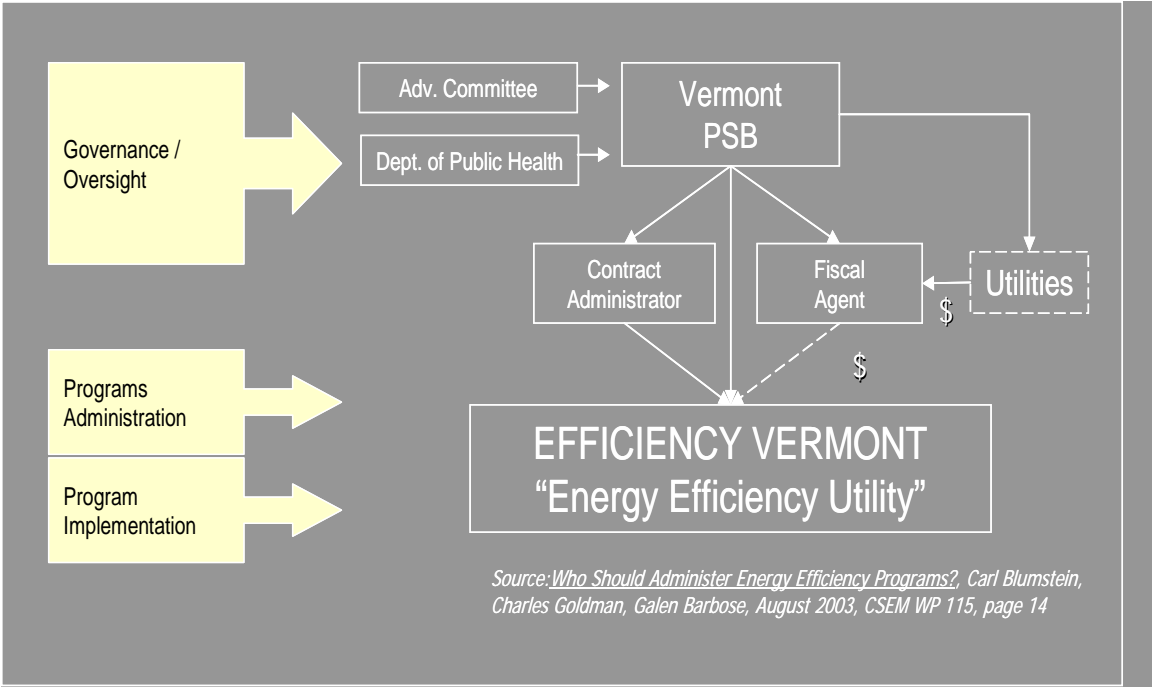
Spending and reductions in New York State are shown in the table below:

<b>Year</b>	<b>Annual Spending (Millions)</b>	<b>Cumulative Annual Electric Reductions (GWh) <sup>(3)</sup></b>	<b>Cumulative Annual Peak Demand Reductions (Summer MW) <sup>(3)</sup></b>
1998	\$1.2 <sup>(1)</sup>	0	0
1999	\$2.6 <sup>(1)</sup>	81	17
2000	\$26.3 <sup>(1)</sup>	243	52
2001	\$94.0 <sup>(2)</sup>	399	106
2002	\$153.4 <sup>(2)</sup>	1,183	348
2003	\$115.2	1,772	440
2004	\$115.2	2,198	481
2005	\$115.0	2,623	622
2006	\$135.8	3,156	856
<b>Total</b>	<b>\$758.7</b>	<b>11,655</b>	<b>-----</b>

(b) The state of Vermont made the decision to transition to a central administrator for its energy-efficiency programs despite holding off on restructuring. Its small customer base (approximately 600,000 residents) and 22 utilities made individual energy efficiency programs costly and burdensome to administer for regulators and utilities alike. Vermont decided to consolidate the administration of energy-efficiency programs under a single Energy Efficiency Utility. This utility handles administration, program management, design and implementation. The Vermont Department of Public Service provide program and policy evaluation, while an Advisory Committee – composed of appointed stakeholder representatives – provide a channel of communication. A Fiscal Agent collects the system benefits charge from utilities and pays the utility, “Efficiency Vermont”, based on approval of the Contract Administrator. The Contract Administrator is also responsible for contract management and verifying performance. Vermont has developed a single source approach for their energy efficiency programs. This

makes sense for their geographic region and others with similar characteristics.

Below is a graphic of their governance and administrative structure.

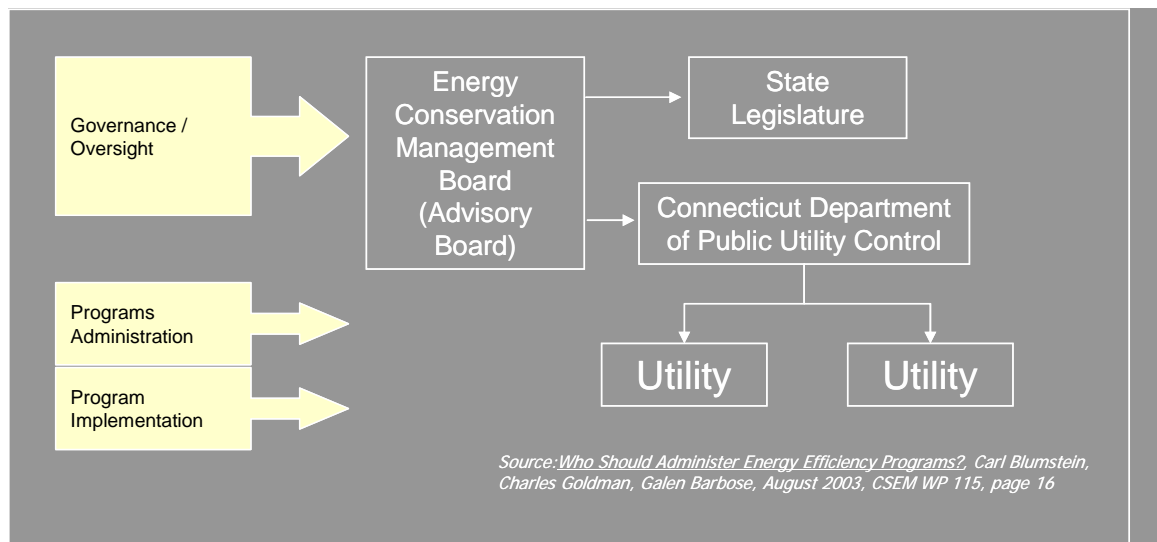


The reductions witnessed in Vermont are shown in the table below:

BENEFITS BY SECTOR			
	BUSINESS	RESIDENTIAL	TOTAL
BENEFITS ACHIEVED IN 2004			
Annual kWh Savings	33,625,000	24,731,000	58,356,000
Lifetime Economic Value	\$24,352,000	\$13,967,000	\$38,319,000
CUMULATIVE BENEFITS ACHIEVED 2000 - 2004			
Annual kWh Savings	121,560,000	89,598,000	211,158,000
Lifetime Economic Value	\$101,168,000	\$71,107,000	\$172,275,000

(c) Connecticut, with its two large utilities, opted for a more traditional regulatory approach to governance and administration. In developing its oversight and administrative approach, there was concern that previous programs were not

uniform, and that the utilities financial disincentives were such that the Department of Public Utility Control (DPUC) required substantial staff resources and financial incentives to motivate the utilities. The DPUC wanted to reduce costs and increase market presence as well as improve their ability to promote policy objectives. The Energy Conservation Management Board (ECMB) was created, an independent advisory board that would provide a venue for public input and make recommendations to both the Legislature and the DPUC. Funding was provided through a system benefits charge as part of state restructuring legislation. Connecticut as been successful in ensuring the ECMB is an effective advocate for achieving DPUC policy goals. Its recommendations are accepted as part of the program design, budgeting and policy review process. Below is a graphic depicting the Connecticut oversight and administrative structure.





**E. The “Freeridership” Issue Raised by the Board**

28. NHL believes that, on the approach it urges, the issue of “freeridership” 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. To make this issue relevant to LDC rate recovery, as may currently be the case under the TRC Guideline, only risks creating further disincentives to LDC participation in CDM program and service delivery.

29. 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 freeridership levels on a program by program basis, particularly where the programs are designed or coordinated on a province-wide basis.

30. 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, no change to the Guideline is warranted. Our partnerships with enterprises such as HomeWorks and Ecosystem indicates that they 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 of the Guideline.

31. With respect to provincially funded programs, or more generally those involving any other public sector body, NHL believes that “success” would be better measure in terms of meeting or exceeding the provincial (or national or municipal) targets applicable to that program would be more appropriate than the mechanism currently provided by s. 2.2 of the Guideline.

32. This Affidavit is sworn to provide evidence and support submissions to assist the Board in respect of the matters set out in the Board's "Notice of Proceeding and Hearing: Electricity Conservation and Demand Management Activities" herein, dated November 11, 2005.