

ONTARIO ENERGY BOARD

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*.

**REPLY SUBMISSIONS
OF POLLUTION PROBE**

KLIPPENSTEINS
Barristers & Solicitors
160 John St., Suite 300
Toronto, ON M5V 2E5

Murray Klippenstein
Basil Alexander
Tel: (416) 598-0288
Fax: (416) 598-9520

Counsel for Pollution Probe

January 6, 2006

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Issue #1: Should the Board order an LDC to spend money on conservation and demand management (CDM) programmes in an amount that is different from the amount proposed by an LDC in a test year and, if so, under what circumstances?

As noted in its written submissions, it is Pollution Probe's submission that the OEB should establish minimum CDM spending *targets* for Ontario's electric LDCs. Specifically, the minimum spending targets for their *customers'-side-of-the-meter* CDM expenditures¹ should equal 1%, 2% and 3% of their total revenues² in 2007, 2008 and 2009 respectively. This position is particularly so in light of the Board's statutory objective to *promote* (i.e. actively advance) economic efficiency and cost effectiveness in the demand management of electricity³ and the Board's statutory powers to set standards, targets, and criteria.⁴

It is Pollution Probe's additional submission that the OEB should require that all proposed CDM expenditures must pass the TRC Test on a prospective basis. If an LDC is unable to develop a portfolio of CDM programmes that meet the above criteria for 2007, 2008 and/or 2009, it is also submitted that the OEB should require the LDC to explain why it could not do so despite its best efforts.

To illustrate the application of Pollution Probe's proposed spending targets, assume that the total distribution and commodity cost revenues of Ontario's electric LDCs for 2004, which was approximately \$10.6 billion, remains constant until 2009. As a result, adoption of Pollution Probe's proposed spending targets would entail CDM spending by LDCs of approximately \$106 million in 2007,⁵ \$212 million in 2008,⁶ and \$318 million in 2009.⁷ Therefore, assuming that the LDCs' CDM programmes are as cost-effective as Enbridge's,⁸ implementation of our CDM spending recommendation would reduce ratepayers' electricity bills by \$7.6 billion.⁹

As noted in its written submissions, Pollution Probe also submits that the proposed targets should only be *minimum* targets in light of the potential benefits of additional CDM spending by LDCs, and LDCs that have the potential to cost-effectively invest an even higher level of funding on CDM should be encouraged to do so.

¹ i.e. demand response, energy efficiency, fuel switching and combined heat and power.

² i.e. distribution revenues and commodity costs.

³ *Ontario Energy Board Act*, S.O. 1998, c. 15, Schedule B (as amended), s. 1(1)2. [Motion Record for Pollution Probe – Tab 4, p. 60].

⁴ *Ontario Energy Board Act*, *supra* 3, s. 83 [Motion Record for Pollution Probe – Tab 4, p. 65].

⁵ i.e. \$10.6 billion x 1%.

⁶ i.e. \$10.6 billion x 2%.

⁷ i.e. \$10.6 billion x 3%.

⁸ Enbridge's ratio of customer bill reductions (TRC net benefits) to utility spending is 12 to 1 (See footnote 9 of Pollution Probe's Written Submissions [Motion Record for Pollution Probe – Tab 1, p. 9]).

⁹ i.e. [\$106 million + \$212 million + \$318 million] x 12.

Finally, it is also Pollution Probe's submission that the potential for Hydro One, Hydro Ottawa, PowerSteam and Toronto Hydro to cost-effectively increase their CDM expenditures in 2006 should be considered in these utilities' rates cases as noted in our previous written submissions.

1. Reply to Board Staff

According to Board Staff, the Board should only direct an LDC to invest in CDM if "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 initiative resulted in higher distribution rates than the rates would have been if the CDM investment had been made."¹⁰

Pollution submits in reply that Board Staff's proposal is economically irrational and does not promote economic efficiency or cost-effectiveness since it considers only the LDC's *distribution* rates. Distribution is only one of several rate components that contribute to the total cost of electricity for consumers, and CDM programme analysis needs to occur in the context of the *total* cost of electricity rather than a fraction of the total cost.

An example is helpful to understand Pollution Probe's position. Assume that the avoided cost of electricity is 10 cents per kWh (i.e. the cost of electricity) and the underlying components of this per kWh avoided cost are as follows:

- 1 cent per kWh for distribution costs;
- 2 cents per kWh for transmission costs; and
- 7 cents per kWh for generation costs.

Under this example, all CDM programme investments that cost less than 10 cents per kWh will pass the TRC Test and reduce Ontario's total electricity bill because the benefits exceed the costs (e.g. if a CDM programme costs 2 cents per kWh but save an actual kWh, every 2 cents that is invested in conservation reduces Ontario's *total* electricity bill by 8 cents).¹¹

However, despite such a net benefit, the OEB should *not* direct LDCs to pursue such CDM investments according to the submissions of Board Staff since the cost of the CDM investment (i.e. 2 cents per kWh) is greater than the LDCs' avoided *distribution* costs (i.e. maximum of 1 cent per kWh). The OEB would only direct LDCs to pursue CDM investments that cost *less* than the avoided distribution cost (i.e. *less* than 1 cent per kWh) despite the fact that CDM programme benefits are relative to the *total* cost of electricity and not just the distribution costs. Pollution Probe accordingly submits in reply that the Board Staff's proposal is not economically efficient or cost-effective.

According to Board Staff, its economically irrational proposal is, nevertheless, in the public interest since the Ontario Power Authority ("OPA") has been given the primary

¹⁰ Board Staff Submission, December 20, 2005, para. 14.

¹¹ i.e. 10 cents per kWh – 2 cents per kWh.

responsibility for *funding* CDM.¹² However, Pollution Probe submits in reply that there is no factual basis for the Board Staff's assertion that the OPA has been given primary responsibility for funding CDM. In fact, Mr. Cass, counsel for the OPA, submitted instead that the OPA is required to ensure that its CDM activities do *not* displace CDM spending by others:

“So the contextual point of all of this, Mr. Chair, that the OPA felt it was important to bring out in this proceeding is that the OPA certainly does have a leadership role in CDM, but this is not a role that is exclusionary. *The OPA's role is not intended under the statute to be fulfilled in a manner that excludes conservation efforts by others. On the contrary, the statute is clear that the OPA is to use its procurement processes so as not to adversely impact other investment and demand management, and further the OPA is required to identify ways of reducing reliance on procurement.*” [emphasis added]¹³

Pollution Probe accordingly submits in reply that the Board Staff's proposal is not in the public interest, particularly given the OPA's position that its activities should not displace CDM spending by others.

Issue #2: Should the Board require LDCs to demonstrate free ridership levels for all CDM programmes on a programme-by-programme basis?

Issue #3: Should an LDC only be entitled to claim incremental benefits associated with its participation in a CDM programme with a non-rate regulated third party?

As noted in its written submissions, it is Pollution Probe's submission that the answer to both these questions is “yes” for the following reasons:

1. Evidence-based free-ridership levels create an incentive for LDCs to maximize the bill savings of their CDM programmes;
2. Evidence-based free-ridership rates are necessary to determine the magnitude of the CDM programme's actual MW and MWh savings;
3. Evidence-based free-ridership rates are necessary to determine if the CDM programmes are cost-effective;
4. Evidence-based free-ridership rates are necessary to identify and expand or spread CDM best practices;
5. Evidence-based free-ridership rates are necessary to prevent the LDCs from earning excessive CDM profit bonuses;
6. Only claiming incremental benefits is a prerequisite for ensuring that LDCs do not earn excessive conservation profit bonuses; and

¹² Board Staff Submission, December 20, 2005, para. 29.

¹³ EB-2005-0523, Transcript Volume 1, December 22, 2005, at p. 171.

7. Only claiming incremental benefits is a prerequisite for ensuring that the LDCs will pursue the conservation opportunities which will maximize the bill savings for their customers.

It is Pollution Probe's further submission that none of these rationales for evidence-based free ridership rates or the incremental allocation of benefits rule were challenged during the Board's oral hearing of this matter on December 22, 2005, and therefore they could and should be given considerable weight by the Board.

However, the LDCs asserted that requiring evidence-based free-rider rates and/or attribution rates would inappropriately slow down the implementation of CDM programmes and/or cost too much money in 2005 and/or 2006.

Pollution Probe does not believe that the LDCs' arguments are persuasive. However, if the Board is persuaded by the LDCs' arguments, Pollution Probe alternatively submits that the Board should simply exempt the LDCs from a *mandatory* obligation to calculate the TRC net benefits of their CDM programmes in 2005 and/or 2006 and the LDCs also accordingly withdraw their commensurate possibility of receiving the corresponding conservation profit bonus.¹⁴ Pollution Probe further submits in the alternative that LDCs who *voluntarily* develop evidence-based free-ridership and allocation rates for some or all of their CDM programmes should still be eligible for the corresponding conservation profit bonus.

The result of these alternative submissions by Pollution Probe would be that LDCs who are not able to develop evidence-based free-ridership and/or allocation rates simply would not earn conservation profit bonuses because they are not using evidence-based values. Pollution Probe submits that it is imperative that the Board should *not* permit the LDCs to calculate the TRC net benefits of their CDM programmes and receive a corresponding conservation bonus by using "phantom" inputs; otherwise, the integrity of the Ontario Energy Board and the LDCs' CDM programmes would be tarnished and brought into disrepute. The OEB should follow the IESO's lead and insist that all CDM measurement and resulting calculations are verifiable.¹⁵

It has been submitted by others that special encouragement should be given to joint LDC and non-rate regulated third-party CDM programmes. While Pollution Probe also does not find these submissions persuasive, Pollution Probe alternatively submits that if the OEB wishes to give special encouragement to the establishment of such joint LDC/non-rate regulated third party CDM programmes, the Board could raise the incentive rate of the corresponding conservation profit bonuses for these specific programmes¹⁶ instead of overstating the incremental savings that are created by utility participation. If Ontario is to keep its lights on at the lowest possible cost, it is essential that we know the *true* benefits and costs of all CDM and supply-side options. Adoption of "phantom" values

¹⁴ i.e. 5% of the TRC net benefits that they create for their customers (See *e.g.* the Affidavit of Jack Gibbons at paras. 11-13 [Motion Record for Pollution Probe – Tab 2]).

¹⁵ See *e.g.* Written Submissions of Pollution Probe at p. 11 [Motion Record for Pollution Probe – Tab 1].

¹⁶ i.e., establish a bonus rate greater than the current 5% that the OEB has already approved.

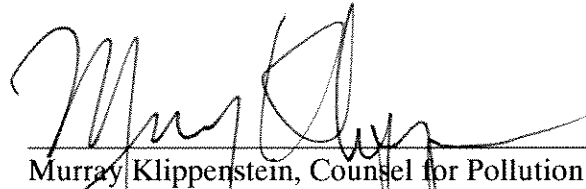
that may overstate the benefits of the LDCs' CDM programmes are accordingly not in the public interest.

Costs

As noted in our written submissions, Pollution Probe submits that it has participated responsibly and reasonably in this proceeding, and has contributed to the Board's understanding of the issues. It is Pollution Probe's respectful request that it be awarded 100% of its reasonably incurred costs of participating in this proceeding. As the Board is aware, Pollution Probe has no pecuniary interest in the outcome of this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

January 6, 2006


Murray Klippenstein, Counsel for Pollution Probe


Basil Alexander, Counsel for Pollution Probe

KLIPPENSTEINS
Barristers & Solicitors
160 John St., Suite 300
Toronto, ON M5V 2E5

Murray Klippenstein
Basil Alexander
Tel: (416) 598-0288
Fax: (416) 598-9520

Counsel for Pollution Probe