

EB-2005-0523

ONTARIO ENERGY BOARD

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

--- This is the Cross-Examination of MICHAEL BROPHY, on
his affidavit sworn December 2, 2005 herein, taken at the
offices of Shibley Righton LLP, 250 University Avenue,
Suite 700, Toronto, Ontario, M5H 3E5, on Friday, the 9th
day of December, 2005.

APPEARANCES:

Jay Shephard	For School Energy Coalition
Dennis M. O'Leary	For Enbridge Gas Distribution

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EXHIBIT NO. 1: Transcript excerpt of Mr.
Brophy's evidence in EB-2005-0001
proceeding.

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1 --- Upon commencing at 3:10 p.m.

2 MICHAEL BROPHY: Sworn.

3 EXAMINATION BY MR. SHEPHARD:

4 1. Q. Mr. Brophy, I'm showing you a document
5 entitled Affidavit dated December 2nd. Is this your
6 affidavit?

7 A. Yes, it is.

8 2. Q. And you are an employee of Enbridge Gas
9 Distribution?

10 A. That's correct.

11 3. Q. And you are in charge of Enbridge's DSM
12 portfolio.

13 A. That's correct.

14 4. Q. And DSM is the gas equivalent of C&DM
15 for electrical.

16 A. That's correct.

17 5. Q. All right. Now, there were three
18 questions I want to ask about conservation and they all
19 one way or another relate to the TRC guide, I guess. Is
20 it correct that in your recent rate case in your evidence
21 you made reference to and relied on the TRC guide to
22 support the positions of Enbridge Gas Distribution?

23 A. We introduced that guide and referenced
24 that because some of the concepts that are in the guide
25 are common to what we were proposing or have been using on

1 the gas side.

2 6. Q. So you were leading it in support of
3 your positions.

4 A. That's correct.

5 7. Q. All right. I'm showing you a document
6 entitled Ontario Energy Board Volume 32. Will you confirm
7 to me that this is an excerpt of a transcript of your
8 evidence at the EB-2005-0001 proceeding?

9 MR. O'LEARY: Well, I mean, we assume that
10 it is. You've produced it here. I guess we could proceed
11 on the basis that we accept that you've photocopied the
12 transcript, but, I mean, without us actually comparing it
13 to the official transcript, how could we answer that
14 question?

15 MR. SHEPHARD: Will you accept subject to
16 check this is an excerpt of the transcript?

17 MR. O'LEARY: I think that's fine.

18 MR. SHEPHARD: Okay. And I'm marking that
19 Exhibit 1 to this examination.

20 EXHIBIT NO. 1: Transcript excerpt of
21 Mr. Brophy's evidence in EB-2005-0001 proceeding.

22 BY MR. SHEPHARD:

23 8. Q. So I'm going to start with -- I wonder
24 if you can turn to page 20 in that document. Do you have
25 that?

1 A. Yeah. The copy I have, it's dog-eared
2 so it doesn't say page 20 when the copy was made but I
3 assume it's between 19 and 21.

4 9. Q. And there's a discussion here about
5 what are called the 2003 rules. Is it correct that the
6 2003 rules are a series of rules established in the year
7 2003 rate case for the calculation of TRC?

8 A. The 2003 rules aren't necessarily the
9 calculation of TRC because that formula existed before.
10 What the 2003 rules are, are a set of rules that lock in
11 assumptions prospectively so that you don't change them
12 later on after results.

13 10. Q. Good. And I'm looking now at line 23
14 where you are asked the question, the 2003 rules lock in
15 your free rider rates, and you agree with that, correct?

16 A. The 2003 rules lock in the free rider
17 rates approved by the board when we submit the plan;
18 that's correct.

19 11. Q. And so you are asked the question --
20 the next question you are asked is if you have locked in
21 10 percent free ridership for a particular program and
22 subsequent evidence shows that it was really 50 percent,
23 in calculating the actual savings you still use 10
24 percent; is that correct?

25 A. Under the 2003 rules, that's correct.

1 12. Q. And the result of that, isn't it, is
2 that because the free ridership rate is locked in, the
3 actuals -- the calculation of the actuals doesn't actually
4 produce the real actual savings, the real actual TRC
5 benefits, does it?

6 A. So maybe you can just restate --

7 13. Q. Sorry, it was a lengthy question. Let
8 me try again. Because of the locking in of free ridership
9 rates, that means that when you calculate actual TRC
10 benefits for a year, that number may not be the real TRC
11 benefits for the year, it is merely a calculation, a proxy
12 for those numbers -- for that number, right?

13 A. Yeah. When you apply the assumptions
14 approved by the board at the beginning of the year in the
15 plan you are putting forward and it includes free
16 ridership rates and you apply those at the end of the year
17 using the 2003 rules, there is allowances for new
18 information within that year to be used if it becomes
19 available in that year. So you could actually be using a
20 different free ridership at the end of the year as long as
21 it became available in that year according to those rules,
22 but -- is that what you are asking?

23 14. Q. No.

24 A. I don't have a copy of those rules in
25 front of me right now, but from my recollection, it did

1 enable, if we were doing a study and that information
2 became available in that year --

3 15. Q. Sorry, you mean before the year
4 started.

5 A. No, within the year.

6 16. Q. Within the year. So if you go halfway
7 through the year doing a program assuming that the free
8 ridership rate is 10 percent and then you receive evidence
9 that in reality it's 50 percent, then the rate, the free
10 ridership rate for the year, is 50 percent under the 2003
11 rules?

12 A. I'd have to go back and look at the
13 rules. I don't have them in front of me.

14 17. Q. Because I thought the 2003 rules said
15 that you locked it in. From the time you had your rate
16 case, you had a number, you lock that number in and that's
17 the number you use for budget, for actual for that year,
18 period, no changes.

19 A. That's the intention of the rules, is
20 that you are prospectively setting assumptions so that --
21 because as you know, I believe it sometimes takes a year
22 or two before you can clear some of these accounts. So
23 that if something comes up, you know, the day before you
24 are actually getting clearance on these, that you are not
25 reopening that and starting the process all over again.

1 18. Q. So before your proscriptive programs
2 then, one of the things that is locked in is free riders
3 but in fact the 2003 rules lock in everything except
4 participants and program spending, right?

5 A. Generally speaking, that's true. There
6 was -- one example of an exception to that is, and we
7 don't have the board's decision in our 2006 rate case, but
8 with some of the partnerships that we discussed, that we
9 would like to pursue with electric utilities, we wanted
10 flexibility from the board that if the program achieved
11 benefits, that we could work with another party such as
12 Toronto Hydro and we can allocate those benefits between
13 us in the partnership agreement so that would -- that's a
14 little outside of what, I think, you are saying you'd lock
15 in but, you know, there has to be some flexibility for
16 situations like that.

17 19. Q. Okay. I wonder if you can turn to page
18 37 and there you have a discussion about the difference
19 between the TRC calculation using the 2003 rules and the
20 TRC calculation using the most up-to-date information
21 available. Do you see that? Called the LRAM case.

22 A. Which line are you referring to?

23 20. Q. Well, the whole page is this
24 discussion. You will recall that we had from
25 Mr. Milliard's evidence, we had the LRAM case and we had

1 the SSM case and the difference was \$6 million of TRC. Do
2 you recall that?

3 A. I didn't come with that information
4 today because I didn't understand that to be in the scope
5 of the evidence that I put forward in this proceeding, so
6 I don't have that available.

7 21. Q. One of the results of locking in the
8 free rider figure is that you can get SSM based on a
9 higher TRC than you actually delivered, correct?

10 A. The actual net TRC could be greater or
11 less than what the initial estimate was using those
12 factors, but in the grand scheme of things, so, for
13 example, you take the electric LDCs, the 5 percent of net
14 TRC SSM and that's what Enbridge proposed, even if those
15 factors are off a little bit and it's using best available
16 information, nobody has provided anything better so you
17 have to accept those are the right factors, but even if
18 they are off a little bit and it meant that rate payers
19 got 93 percent of the benefits and the LDC got 7 percent
20 or the other way, rate payers got 98 percent and the LDC
21 got 2 percent, it's such a small difference on the grand
22 scheme of the benefits that are generated, it's not an
23 important factor in that calculation.

24 22. Q. It's true that in 2003 your SSM was
25 more than a million dollars higher because of the 2003

1 rules, correct?

2 A. I need to check that.

3 23. Q. You answered it in an undertaking doing
4 that calculation, right?

5 A. In the Enbridge proceeding?

6 24. Q. Yes.

7 A. If you can provide a copy of that,
8 I'm -- I don't recall that right now.

9 25. Q. It's referred to in here.

10 A. I'm sure I looked at -- if I did answer
11 that undertaking, I'm sure I did look at the two
12 calculations to confirm what the number was at that time.

13 26. Q. Will you confirm that the difference in
14 2003 between the SSM you actually got and the SSM that you
15 would have gotten had you calculated the real savings, the
16 real benefits generated, was a material amount?

17 A. It was a material amount?

18 27. Q. It was a material amount.

19 A. There was two calculations that were
20 done, and even though I don't have the numbers, I remember
21 we did an SSM calculation for TRC and then we did what was
22 an LRAM calculation and there was negotiations that
23 happened in the committee at that point to accept certain
24 numbers. So I'd have a little trouble saying that's the
25 real TRC because, you know, the company did accept some

1 adjustments to that, that we wouldn't have accepted it if
2 we were going forward saying this is the real TRC and you
3 are going to apply it to SSM. So I think we just have to
4 be careful when we are comparing those two numbers and the
5 purposes they are being used for.

6 28. Q. Okay. You've said in your affidavit at
7 paragraph 8 that utilities should not be required for the
8 2006 test year to demonstrate free ridership levels for
9 all C&DM programs on a program by program basis, correct?

10 A. That's correct.

11 29. Q. Now, you, in fact, Enbridge, does have
12 to demonstrate free ridership rates for all these
13 programs, right?

14 A. I don't think we have to but we have,
15 yes.

16 30. Q. Well, if you didn't, then how would you
17 get a free ridership rate for a program?

18 A. Enbridge has not had the luxury of
19 having a TRC guide when it started its program, so it did
20 go through a lot of these calculations and working with a
21 lot of consultants, interveners and different parties to
22 come up with appropriate rates. So that's the process
23 that we did follow.

24 31. Q. And you currently have no plan or
25 proposed plan at least to change that, right?

1 A. We look at assumptions including free
2 ridership rates on a periodic basis and do research and
3 studies to update those and we'll continue to do that and
4 we'll be looking to set those rates prospectively in each
5 rate case that we bring those forward in.

6 32. Q. Which is what you've been doing in the
7 past.

8 A. That's correct.

9 33. Q. And you have no current proposal --
10 confirm, will you, that you have no current proposal to
11 have a TRC guide for gas that would set default free rider
12 rates?

13 A. I don't believe that that's going to
14 happen.

15 34. Q. Okay. So I take it then with respect
16 to the electric utilities, you don't disagree that that
17 would be an appropriate process for them as well, to
18 demonstrate the appropriate free ridership rate for their
19 programs.

20 A. There's -- the statements I made in my
21 affidavit in simple terms around free ridership is that
22 free ridership, like other assumptions, should be set
23 prospectively and approved by the board. And in the case
24 of Enbridge, we bring forward that evidence and it's ruled
25 in our rate case interveners have and have the ability and

1 actually have come and challenged, you know, some of those
2 assumptions and they are approved prospectively. So in
3 the future for electric LDCs, as they start to, you know,
4 get more established in delivering CDM, they have the
5 ability to come forward if they think that there's better
6 information than what's been put in the TRC guide and in
7 the same vein, interveners, if they have done research and
8 can bring evidence forward that say, oh, hey, we've got a
9 better rate here to use instead of what's there, then they
10 have the ability to do that as well. But right now, with
11 the development of the TRC guide, my understanding is it
12 is using the best available information when it was
13 developed and so it is roughly equivalent to what Enbridge
14 has been doing in its rate cases.

15 35. Q. So you believe the TRC guide is in fact
16 a calculation of the correct, based on current
17 information, the correct free ridership rates for the
18 programs listed in the guide.

19 A. I can't confirm all the free ridership
20 values in the guide because I haven't gone through every
21 single one but I have done some comparison between similar
22 things that we have on the gas side and I've also been
23 instructed by SeeLine, which did a lot of consulting
24 there, that they do match the gas numbers there as well
25 but I also am not aware of any better information that's

1 been brought forward by any party to replace any of the
2 values that are in the TRC guide.

3 36. Q. So your view then is, and here is what
4 I want to do, Mr. Brophy, I want to disconnect the
5 question do you use the TRC guide number at the outset
6 from the question of locking in. I'm going to talk about
7 locking in, in a second but let's forget locking in for a
8 minute. Just talk about is the number you start with the
9 number in the guide. And if I understood what you just
10 said correctly, what you are saying is that the guide is
11 in essence like a free rider study, collective free rider
12 study, for all of the LCDs, so it's much like the free
13 ridership studies that you've done for Enbridge.

14 A. My understanding, when the TRC guide
15 was put together, it was an assessment of all the best
16 available information out there and that's what's
17 reflected in the guide.

18 37. Q. And so if in fact the guide doesn't
19 have the same level of empirical foundation as the free
20 ridership rates that you are using, for example, then
21 would that mean that your conclusions in your affidavit
22 are no longer correct?

23 A. So you are saying if the guide, when it
24 was put together, wasn't an assessment of the information,
25 the best available information out there, would it still

1 be applicable?

2 38. Q. Yes.

3 A. Well, from my read of the guide, they
4 reference some of the same studies that we are using such
5 as the Summit Blue study. So that's still the best
6 available information that we've been using and has been
7 approved by the board in our rate cases and nothing better
8 came forward in the '06 rate case either. So to that
9 extent, I believe it does reference the best available
10 information.

11 39. Q. The Summit Blue study only dealt with
12 gas conservation, right?

13 A. It was custom projects and dealt with
14 programs that were focussed on gas conservation.

15 40. Q. Okay. So let me come back to it
16 because I want to understand whether your statement "used
17 the guide" is based on your assumption that the guide is
18 just as rigorous a study as the ones you have; is that
19 correct?

20 A. I wasn't directly involved in the
21 writing of the guide so I can't state whether it is as
22 rigorous as everything we have put forward in rate cases
23 that I have been involved in. If a party had something
24 that could be provided in evidence as better information
25 and accepted, then I would suggest those parties should do

1 that because then it would build on what the guide has and
2 over time, I fully expect that numbers in the guide will
3 change in the future as more studies are done and
4 assumptions change over time and you want to refresh those
5 as well. So that's the process.

6 41. Q. So you heard me discussing this with
7 Mr. Heeney, correct?

8 A. Just a little bit at the tail end
9 there.

10 42. Q. What Mr. Heeney said was that you
11 should think of the guide, I'm paraphrasing, you will see
12 the transcript, but you should think of the guide as the
13 default number and either the LDC or interveners could
14 come in and say, no, here is better information than what
15 the guide says and so use the better information to fix
16 the free rider rate for program X. Do you agree with that
17 all prospectively?

18 A. Yeah. So if they have better -- either
19 an intervener or an LDC has better information for their
20 next rate case and they bring it forward, it should be
21 used prospectively. I agree with that.

22 43. Q. So the guide then becomes like a
23 default number. If there's no evidence, you use that
24 number.

25 A. It's the best available information at

1 the time the plan is approved and if there's better
2 information after that fact, then it applies to the next
3 plan that's approved and should be included in there.

4 44. Q. Now, you've read the evidence of
5 Mr. Gibbons and Mr. Neme?

6 A. I have.

7 45. Q. And they both say at various places
8 that some of the numbers in the guide don't appear to have
9 a strong basis in reality, right?

10 A. I believe that they've made that
11 statement.

12 46. Q. So in those cases, let's assume that
13 that's true, that there's a 10 percent number that's used
14 somewhere that -- it's just used because they needed a
15 number, they don't really have any evidence to back it up,
16 SeeLine, would it then be reasonable for the board to say
17 to a utility that wants to rely on that number, you know,
18 that number doesn't have a basis so you, utility, Toronto
19 Hydro, for example, go do a study before you rely on that
20 number?

21 A. I can't comment on the specific values
22 in the guide that Mr. Neme or Mr. Gibbons might be
23 referencing because as I've indicated, I've done some
24 review of ones that are similar types of programs on the
25 gas side to make sure they are in line but there's a lot

1 of other numbers in there that, you know, I can't
2 personally attest to because I haven't done the research.

3 47. Q. Okay. So your main focus in free
4 ridership is on the locking in concept, right?

5 --- Reporter appeals.

6 THE DEPONENT: That's one of our main
7 premises.

8 BY MR. SHEPHARD:

9 48. Q. And one of the things you've said here,
10 and I guess I want to just explore this a little bit, is
11 in paragraph 11 of your affidavit you say: "There should
12 be continuity between DSM and CDM regulatory
13 methodologies." Now, when you say that, you are referring
14 to, for example, free ridership, right? You are saying,
15 you know, the free ridership rule should be the same, and
16 you like the 2003 rules, you think they should apply to
17 them too, same set of rules.

18 A. Basically. Those assumptions have been
19 locked in prospectively on the gas side and I believe it
20 should be the same case on the electric side.

21 49. Q. Let me turn to attribution. Now,
22 Mr. Neme, in his evidence, says that free ridership and
23 attribution are basically the same thing. They are two
24 different perspectives on the same concept. Mr. Williams
25 -- Mr. Heeney has just given evidence that he agrees with

1 that and Mr. Williams has also agreed that in essence
2 that's correct. You've said they are not the same
3 concept, they are different concepts. Can you explain how
4 they are different?

5 A. I think what I've indicated is that
6 free ridership and attribution are better dealt with as
7 separate concepts. However, there is some cross-over
8 between them, so I can see the points that Mr. Neme and
9 Mr. Heeney are making. Although, when you look at
10 Mr. Neme's evidence, he goes to describe free ridership
11 and he does it one way at the beginning of his evidence
12 and a different way at the end of his evidence.

13 50. Q. Can you just tell me about that? Maybe
14 you can point out what you mean there, because I'm not
15 sure I understand it really well.

16 A. Okay. So if you look at Mr. Neme's
17 evidence on page 13, he indicates in the second paragraph
18 that free ridership -- free riders are program
19 participants who would have installed a measure on his or
20 her own even without the program. And that's consistent
21 with the way I propose to treat free ridership, and I
22 think it's consistent with what the guide says and what
23 most people generally accept as free ridership.

24 51. Q. So let me just stop you there. So I've
25 used the example with the other two witnesses, I'll use

1 the same example with you, I put in a measure in my house
2 because electricity rates are high and you, utility, had
3 no influence on me doing that, I would have done it anyway
4 regardless of your program but I heard about your program
5 so I take your hundred dollars. I'm a free rider, right?

6 A. If you would have done it anyways
7 without the program, then you are a free rider.

8 52. Q. Okay. Go on.

9 A. However, later in the -- on page 15, he
10 indicates that in the context of the -- oh, this is the
11 second paragraph again, the second sentence, it says: In
12 the context of the utility CDM initiatives, a free rider
13 is a program participant who would have installed a
14 measure on his or her own initiative even without the
15 utility's involvement, which is now a different definition
16 than what he initially stated.

17 So we had fairly lengthy discussion over
18 five days at the board on just two programs and Enbridge
19 has a portfolio of over 40 programs, and during the
20 discussion, it's quite easy to take a program that a
21 customer would -- that influenced what the customer ended
22 up installing and the program gets credit for it because
23 they say, I was involved in that program, it influenced my
24 decision and it's also fairly easy in a free ridership
25 study to determine people that would have done it without

1 the program.

2 But when you start to introduce programs
3 that are a partnership, as Enbridge has been doing and had
4 been endorsed by the board, they want us to do more
5 partnerships and expand the pie and all those things, then
6 you've got benefits that happen because of a program. And
7 if you look at the partners in that program, it's up to
8 the partners within that program to determine who should
9 get credit for what pieces of the program.

10 So in any given program, Enbridge starts up
11 or is involved in the initiation of we've got delivery
12 agents, we might have partners that help in funding.
13 There's many different aspects that are involved in a
14 successful program and when we discuss with those program
15 partners what each program partner is entitled to, that's
16 where it's determined who would get credit for what pieces
17 in the program.

18 53. Q. Well, but I guess you have different
19 motivations if not all of the partners are regulated or
20 profit-making entities. So, for example, if you have a
21 joint program with the Ministry of Energy of Ontario, you
22 have a profit incentive to get the maximum attribution to
23 you. The Ministry of Energy doesn't have any profit
24 incentive to get maximum attribution, do they?

25 A. In practical terms, every program that

1 Enbridge brings forward in its portfolio and asks for 100
2 percent attribution, it's because Enbridge was central to
3 the development and delivery of that program. I think it
4 has been, and especially lately, a mistake for some
5 interveners to think that the relative incentive provided
6 in one year really dictates who made that program happen
7 and the success of that program. So I think you have to
8 look at all the factors that are involved in developing
9 and delivering that program in order to determine where
10 the credit lies.

11 54. Q. Okay. So that's a good jumping-off
12 point. I used the example with Mr. Heeney and I'll put it
13 to you as well, let's take a random utility, Toronto
14 Hydro, let's say, Toronto Hydro says we think a particular
15 program for a certain group of urban dwellers would be
16 really successful and would be a really good idea and they
17 go to the federal government and they convince the federal
18 government to implement such a program. Toronto Hydro
19 doesn't deliver it. They don't provide the money but it
20 -- totally because of their effort in identifying the
21 opportunity in getting the feds to fund it and deliver it,
22 should they get an incentive for it?

23 A. Would that have been included in the
24 plan approved by the OEB or is that separate from that?

25 55. Q. It might well have been something that

1 they were going to do as part of their -- it was their
2 conservation group, they went up and lobbied the federal
3 government.

4 A. If they included it in their CDM plan
5 approved by the board and that assumption was that they
6 were doing this so that they could get credit and that's
7 approved by the board as part of their plan, then they
8 should get credit.

9 56. Q. So when the board has that in front of
10 them, should they approve giving the credit?

11 A. During that proceeding where that plan
12 is put forward, there will be arguments on both sides and
13 the evidence will be brought forward and whatever
14 resolution happens from that proceeding is what's going to
15 happen, and if Toronto Hydro intended only to do it if
16 they got credit and during the hearing it was deemed that
17 they are not going to get credit, then they have the
18 decision whether or not to proceed with that knowing that
19 they won't get credit.

20 57. Q. The preliminary question though is
21 should they get credit in the first place? Should the
22 board say, yes, you get credit? The assumption is the
23 program is only going to happen if Toronto Hydro talks the
24 feds into it.

25 A. I believe there's a very firm basis

1 there for them to get credit for that.

2 58. Q. They should get credit, okay. And
3 that's consistent with the view you've expressed in your
4 affidavit, right?

5 A. I believe so.

6 59. Q. Now, the program has gone into effect,
7 it's a smashing success, saving after saving, we are ten
8 years later, it's still working, should they still get
9 full credit?

10 A. The same process would have to be done
11 where they are going through on the tenth year now back to
12 the board and requesting approval of a plan and they have
13 the option either to put that in their plan or not to be
14 judged with the evidence there.

15 60. Q. No, but they don't have to do anything
16 anymore. After year one, they've done everything they
17 were going to do. They convinced the feds to do it, the
18 feds are doing it. So every year they could put in their
19 plan, we want to take credit for this program we did last
20 year, could they still do that? Because there's -- the
21 federal government program is still producing new savings
22 every year, new TRC every year.

23 A. And they are losing load because of
24 that program every year as well?

25 61. Q. And they have an LRAM for that.

1 A. So if you are saying that they are
2 losing load and shouldn't be kept whole on the LRAM
3 because it's something that they influence, then I think
4 there's again a good argument on why they should get
5 credit for those results as well.

6 62. Q. So they should continue to get credit
7 even though they are not doing anything. Excuse me, can I
8 go off the record.

9 --- Off-the-record discussion.

10 THE DEPONENT: Well, I think you've already
11 established that it wouldn't have happened without them.
12 The board has judged that they should get LRAM because
13 they are losing load because of it, so I believe they have
14 the option to apply for SSM there. Whether they decide to
15 or not, it would have to be a management decision that
16 they make heading into the plan.

17 BY MR. SHEPHARD:

18 63. Q. And if they want to, they should be
19 able to.

20 A. Yeah, there's a basis for them to make
21 that argument.

22 64. Q. Okay. Let me give you another example.
23 You and, that is Enbridge, and Union Gas had water heater
24 programs for years to set back temperatures, to change how
25 they were manufactured, et cetera, again, incentives for

1 manufacturers for higher efficiency, et cetera, and the
2 result of that was that now you don't have those programs
3 anymore because the standards have changed, correct?

4 A. That is correct.

5 65. Q. Should you have credit for that? You
6 did it.

7 A. We haven't been claiming credit for
8 that.

9 66. Q. I understand but it would be fair if
10 you got credit, right? You did it.

11 A. I think the rule of thumb that we've
12 been using for that type of situation is once the
13 standards change, we generally wouldn't be claiming credit
14 for it and that was one of the reasons in our recent rate
15 case, because this did come up, on why things like pivot
16 point mechanism are no longer applicable because, you
17 know, you could have standards change in a year and under
18 that kind of old mechanism, which is inflexible, it can't
19 adjust for that. TRC can. So it can deal with it within
20 the year but then, you know, after the year, generally
21 once standards change, Enbridge at least hasn't been
22 claiming credit for those.

23 67. Q. But I guess I'm asking you a more
24 specific question though. In the case where a standard
25 change is because you caused it to change, which is it

1 would be a fair conclusion on water heaters, right?

2 Between you and Union Gas, you probably changed how the
3 manufacturers did this, correct?

4 A. We were involved in that, yes.

5 68. Q. So whether or not you choose to claim
6 credit for that, I take it consistent with your other
7 evidence, you think it would be appropriate if you wanted
8 to claim credit for that, that you could.

9 A. I believe we could have put together an
10 argument and brought that forward to the board but as I
11 stated earlier, the rule of thumb we've been using as
12 guidance internally, generally when the codes changed, we
13 haven't been claiming credits so we didn't go forward with
14 that.

15 69. Q. All right. One of the things that's
16 happened in the last couple of years is that -- the last
17 few years is that utilities and other people involved in
18 conservation have identified market transformation as
19 something that doesn't really fit within existing SSM
20 structures; is that right?

21 A. That's correct.

22 70. Q. And in fact, you have -- Enbridge has
23 and I think other utilities have taken a lead in trying to
24 find new ways of incenting the activity of transforming a
25 market, right?

1 A. Enbridge, interveners, board staff, a
2 lot of people have been trying to focus on how do you get
3 a right incentive for things like market transformation
4 and we have some experience, even in our 2005 approval
5 from the board, on things like the windows market
6 transformation program that's external to the SSM.

7 71. Q. So I guess the reason I ask that is
8 because it strikes me that influencing other players like
9 the federal government or the provincial government to be
10 more active in the marketplace through being persuasive or
11 through showing leadership also doesn't fit neatly within
12 the SSM, does it? It has the same problem.

13 A. There are some of those issues on the
14 regular programs that fall within the SSM because in order
15 to develop a program and deliver it and to get partners on
16 board and it's a fairly long process, you have to work
17 with a lot of different players and, you know, there's a
18 lot of coordination and work that has to be done there.
19 That's magnified many times when you get into market
20 transformation where it's not as easy to measure a
21 showerhead going in or a furnace going in, you are dealing
22 with removing market barriers which have a much greater
23 effect on energy efficiency in society if you can remove
24 those barriers, so it's much more difficult once you get
25 into market transformation.

1 72. Q. I'm trying to talk though about more
2 conventional programs and your role in causing other
3 people to implement conventional-type programs. An
4 example is the Energuide for Homes program, right? This
5 is one in which Enbridge had a key role at the outset.

6 A. Enbridge has had a key role and
7 actually continues to on that and it's -- you know, in
8 start-up of a large program like that with many different
9 players, it's particularly difficult for Enbridge and its
10 other program partners to get things moving and there's a
11 lot of barriers.

12 73. Q. And in some respects, what happened
13 there is like my Toronto Hydro federal government example,
14 right? You went to the feds and you said, We think this
15 is a good idea, and you convinced them to come up to the
16 table, correct, to a certain extent?

17 A. Well, I'd say that the Energuide's for
18 Home example is -- and I'm not crystal clear on the
19 example you gave on Toronto Hydro because it was kind of a
20 hypothetical and I don't know all the particulars of that
21 example, but on the Energuide for Home, for instance, we
22 have business partners like Enerquality which we've worked
23 with and have supported them, and without our support,
24 they may not exist or be able to continue promoting and
25 they are one of the, kind of, main players that Enbridge

1 is working with to try and get this off the ground. So
2 it's more than just federal government in that case. The
3 federal government supports that program, is willing to
4 put some funding behind it, but some of the benefits that
5 an LDC like Enbridge brings to the table is the delivery
6 channels and the knowledge of the customers in its
7 franchise area to get these programs working. So NRCan at
8 a federal level doesn't have those tools that Enbridge
9 does to make those programs happen.

10 74. Q. Well, to a certain extent, in things
11 like that, you can just play quarterback, right? That is,
12 even if you don't do anything in terms of tangibly
13 delivering the program, if you just make sure everybody
14 else has the right role, you still add value, right?

15 A. If we can leverage other players in the
16 marketplace to achieve the same result, then we would try
17 and do that.

18 75. Q. Okay. So what Mr. Neme says is you can
19 measure -- in some cases you can measure the extent to
20 which your involvement in a program, that is Enbridge's
21 involvement in a program, is making a difference to how
22 many participants there are. So, for example, you can
23 look at different provinces and you can see whether the
24 take-up rates are markedly different in your area than in
25 another area, right?

1 A. Yeah. I don't agree with that
2 statement overall. Most of our programs, if not all, when
3 you start to look at how we work with business partners
4 and the program itself, those results wouldn't be there if
5 Enbridge hadn't been involved. So this concept of we
6 bring on a new business partner and we can do
7 incrementally, you know, 1,000 more showerheads, you say,
8 well, should Enbridge get credit for that because really
9 that incremental 1,000 more showerheads is because we
10 brought on our new business partner. So I don't think
11 that analysis really holds water.

12 76. Q. Well, it's true, isn't it, that if the
13 federal government had thought up the Energuide for Homes
14 program on its own, you weren't involved at all, there
15 would still be a certain number of participants in
16 Ontario, true?

17 A. If the Energuide program had been
18 developed without any involvement from Enbridge and had
19 results, then Enbridge would not be claiming credit for
20 that.

21 77. Q. I understand but it's true that -- it's
22 unlikely that your involvement is the only reason why
23 there are participants in Ontario, right? It's one of the
24 reasons.

25 A. As indicated in the letter that we have

1 received from NRCan, our involvement was critical to there
2 being that program and so -- and again, we discussed this
3 at our proceeding as well, in that, you know, if you
4 wanted to do a test where you removed Enbridge to see if
5 programs failed, I don't think that's the right thing to
6 do but, you know, you could do a test where you pull all
7 LDCs ahead of conservation and see if the other partners
8 could have done anything without them. You know, that's
9 equivalent to what I think the experiment would have to be
10 to see if Mr. Neme's assumptions are correct or not.

11 In fact, the analysis that he is doing to
12 result in other jurisdictions where there might not be an
13 LDC providing support for NRCan is roughly equivalent to
14 the issue of spillover and free drivers which hasn't come
15 up yet in this issue where within the Summit Blue report,
16 and there's evidence on this, Enbridge and its partners
17 can start up programs and you will get results in other
18 areas which are great or you could even get results that
19 were not -- we missed a track because they are doing extra
20 things. We go into a plant and we convince them to be
21 more energy efficiency (sic) and they say, this is great,
22 we should have been doing this all along, and then they
23 start doing some other projects but they don't come in
24 through our programs and so we are losing load and there's
25 spillover on that. And when you take the spillover

1 effects into account, instead of being around a 30 percent
2 free ridership rate, the study indicates that it should
3 really be in the range of about 16 to 25 percent because
4 there's actually more happening than you can actually
5 track in that kind of scenario.

6 78. Q. So the problem with the approach being
7 used by somebody like Chris Neme is that it basically only
8 gives you credit when you write a cheque and it doesn't
9 give you credit for all the other stuff you are doing to
10 make things happen; is that fair?

11 A. I think that's part of the problem with
12 his position.

13 79. Q. All right. The other extreme though is
14 that if you take the view that you get credit for all of
15 the program's benefit that isn't generated by other rate
16 regulated entities, which is your position, right?

17 A. We have the ability to apply for that.

18 80. Q. Then that allows you to basically
19 piggy-back on something in which you have no role at all,
20 throw in a dollar and get full credit as Mr. Gibbons has
21 said in his example in his evidence, right?

22 A. If you go back, and this is, I think,
23 the third time now that the issues around the TRC guide
24 have been looked at, Mr. Gibbons had responded when the
25 draft was done --

1 81. Q. Sorry, let me just stop you. Sorry, I
2 want to keep you on my question and I know you are going
3 to it eventually but I just want to keep it a little bit
4 focussed. His suggestion is the other extreme is you get
5 credit where you don't really have much of a role at all
6 and that is a danger if you get 100 percent attribution,
7 isn't it?

8 A. I don't think that is a danger
9 personally because just as we've gone through in the
10 recent Enbridge case where -- when we did an assessment on
11 our programs, we believed that we should receive 100
12 percent attribution for those programs. But it's not
13 given that we would automatically receive that when we
14 went in. We were able to demonstrate and provide evidence
15 that shows that we should and people can question that,
16 but no evidence was put forward that suggested that was
17 inappropriate. So in future rate cases for electric LDCs
18 on a prospective basis, when they are there with their CDM
19 plans, interveners have the ability to question certain
20 program assumptions including whether they should get 100
21 percent attribution or not.

22 82. Q. But that's not what the guide says,
23 right? The guide says they get 100 percent, period.

24 A. Well, that's why it's a guide.

25 83. Q. So let me give you another example. So

1 suppose Barrie Hydro says we are going to -- we like this
2 Energuide for Homes thing and so you -- Enbridge is giving
3 you 50 bucks. Well, if you don't take the Enbridge money,
4 if you take our money, we'll give the 100 bucks if you
5 sign up for Energuide for Homes. Should they get credit
6 for all the savings from Energuide for Homes in their area
7 if they do that? They did nothing to create that program.
8 They are just piggy-backing, right? Is that okay?

9 A. So they are going outside the program
10 partners of Enbridge and NRCan and trying to set
11 theoretically their own set of rules.

12 84. Q. They are saying, you know what, sign up
13 for it, here is a cheque.

14 A. I don't believe that in that case they
15 would be able to achieve 100 percent attribution because
16 of that financial contribution that they gave as an
17 incentive in one year.

18 85. Q. It wouldn't be fair. It just wouldn't
19 be fair. It's like a parasitic program. I don't mean
20 that in a pejorative way. It's a program that's just
21 tacked on to somebody else's.

22 A. I don't believe that would be fair, and
23 I don't believe it would actually happen.

24 86. Q. I think you are probably right. And
25 you don't see the guide as allowing that. You think that

1 the guide is sort of a default, as you have a default 100
2 percent attribution, but that in reality for any given
3 LDC's CDM plan, rate payers or LDCs should be able to say,
4 here is the right number for this program. Here is the
5 right attribution number, and here is our evidence.

6 A. For future CDM plans, if better
7 information exists, then people should be coming forward
8 with it.

9 87. Q. Now, one of the other possibilities is
10 that you accept that joint programs in which the utilities
11 role is relatively small should be incented differently.
12 Instead of being simply thrown into the SSM one size fits
13 all, it may be appropriate to treat them more like market
14 transformation and say, if you achieve this result, you
15 get the feds to introduce a program, you'll get a million
16 dollar incentive or whatever.

17 A. I'm a little confused on the question.
18 I think you are asking about market transformation again.

19 88. Q. No. I'm using market transformation as
20 the analogy. I'm asking whether you should treat program
21 -- treat utilities actions that are not to deliver their
22 own programs but to get somebody else to deliver a
23 program, you should treat them the same way as you treat
24 market transformation with specialized incentives that are
25 appropriate to the goal.

1 A. I don't believe that that's what I
2 proposed in my evidence.

3 89. Q. No, it isn't what you proposed in your
4 evidence. I'm asking whether that sounds like it makes
5 sense to you.

6 A. Maybe I could just reiterate so I
7 understand what you are asking.

8 90. Q. Sure.

9 A. You are saying that a company -- an LDC
10 initiates a new program but then goes out and has another
11 party do the delivery on its behalf, so it doesn't have to
12 do the delivery.

13 91. Q. Well, no, it's somebody else's program,
14 they just convinced them to do it.

15 A. Okay. So it's somebody else's program.

16 92. Q. Yes. The Toronto Hydro goes to the
17 feds and says introduce this program, convinces them to do
18 it.

19 A. I think all the parties that are
20 partners in that program would have to get together and
21 work out the allocation of the benefits of that.

22 93. Q. Would it make sense for the board to
23 say, you know, this isn't the sort of thing that an SSM
24 was intended for? What you've done is you've done a
25 one-shot thing, which is a very good thing and we think

1 you should be rewarded for it, but you shouldn't get to
2 clip coupons forever on this one-shot thing, so we'll give
3 you a fixed amount if you achieve this result, just like
4 market transformation.

5 A. I'm still having a little trouble with
6 the example. So it's NRCan's program, for example, and an
7 LDC is coming forward to --

8 94. Q. An LDC convinces them to introduce the
9 program.

10 A. To introduce the program. Okay.

11 95. Q. Just as you did with Energuide for
12 Homes. And instead of the utility getting full credit for
13 all the saving from the program, you say, well, really
14 it's really NRCan's program. The LDC's role was different
15 than if it was all their program. So because of that, the
16 LDC should have a different type of incentive; does that
17 make sense?

18 A. I don't believe so because I think
19 those two scenarios, we look at programs that we develop
20 and deliver ourselves without any channel partners or any
21 other partners.

22 96. Q. Yes.

23 A. Very similar to programs that are
24 developed where we do have partners. So they are
25 equivalent, in my mind, because they are achieving the

1 results but in one case you've partnered and in the other
2 case you've decided not to.

3 97. Q. Mr. Heeney has suggested a default rule
4 for attribution in which you split based on financial
5 contribution with a multiplier. So you get credit for the
6 fact that you contribute more than just your financial
7 contribution. I take it from your evidence that you don't
8 think -- conceptually that's just not the right way to do
9 it, right?

10 A. I think it's much better the program
11 partners get together and are able to determine how
12 attribution should be allocated than just putting in a
13 prescriptive inflation factor on there.

14 98. Q. It could also be the board doing it up
15 front, right? Instead of you and NRCan agreeing how you
16 split up credit for something, you could go to the board
17 and say, well, we have talked with NRCan and we think we
18 should do it this way and then the board can independently
19 say, well, we think you shouldn't get that much credit,
20 you should get this much credit instead. That would be
21 fair, right?

22 A. That's in fact what's happening.

23 99. Q. Okay. And that should be done on a
24 program by program basis.

25 A. Free ridership rates are brought

1 forward on a program basis or in the case of business
2 markets, it's more of a sector basis but that's because
3 that's the way the study was done.

4 100. Q. Okay. Just one second. And where the
5 LDC does not come in with evidence of the appropriate
6 attribution with respect to a particular program, do you
7 believe that then the right answer should be use the 100
8 percent that's in the guide?

9 A. In a CDM plan brought forward to the
10 board in a future year by an LDC, they would have to have
11 an assumption in there. So you are saying that they've
12 put an assumption in and they don't have any argument to
13 support it? Is that --

14 101. Q. No evidence to back it up. They are
15 just using the guide's 100 percent. Would it be fair for
16 the board to say, no, you have to give us some evidence to
17 back this up?

18 A. Well, I think that it would be examined
19 during the proceeding and the board would make its
20 decision on whatever information is available. The best
21 information that's been brought forward in the proceeding.

22 102. Q. I'm asking is it appropriate to say to
23 the LDC show us some evidence on your assumption?
24 Generally speaking. Obviously there's going to be an
25 exception.

1 A. Generally speaking, I think you have to
2 have some sort of argument on why you are coming forward
3 with that.

4 MR. SHEPHARD: Okay. Those are my
5 questions. Thanks a lot.

6 EXAMINATION BY MR. O'LEARY:

7 103. Q. I have just a couple of re-exam
8 questions, and they relate to Mr. Shephard's questions of
9 Mr. Brophy about -- the question he asked you during the
10 rate proceeding and it was page 20, but if you go back to
11 page 19 , this is of Exhibit 1, if I've got the right
12 page. Go off the record for a second.

13 --- Off-the-record discussion.

14 BY MR. O'LEARY:

15 104. Q. So looking at page 37, Mr. Shephard
16 asked you some questions about the impact on the SSM as a
17 result of applying the 2003 rules, and the question I had,
18 first of all, is could you explain the difference between
19 the SSM methodology which was used to calculate the reward
20 for 2003 in the Enbridge case and the methodology that's
21 proposed for the LDCs for 2006?

22 A. The SSM methodology that Enbridge had
23 in 2003 was based on a pivot point whereas the electric
24 LDCs don't have a pivot point. They are sharing in the
25 net TRC benefits that are being generated from the program

1 and they are being shared, so rate payers receive 95
2 percent and the LDC would receive 5 percent. So they are
3 not really equivalent comparators because if you have a
4 pivot point and there's small differences in what people
5 think the net TRC is, it's actually magnified as an issue
6 because you have to hit a target before you achieve that
7 and then the percentage is so much greater to actually
8 make it meaningful after you've hit the pivot point that
9 it's magnified by quite a bit more than it would have been
10 with the percent of TRC --

11 105. Q. Right. And what you are referring to
12 is the fact that under the 2003 methodology, after you
13 exceeded the pivot point, there was a percentage that you
14 were entitled to of the TRC generated but that was
15 significantly higher than the 5 percent which is proposed
16 for 2006 LDCs. In other words, there was a declining
17 series of percentages in the methodology.

18 A. Yes. The pivot point that was in place
19 in 2003, and subject to check, but I believe it was the
20 same as what was '04, so once you hit the pivot point,
21 then you would be at 18 percent and then it was a
22 declining kind of scale kind of as you went over that
23 pivot point in steps. So it was a shifting scale actually
24 downwards the more you produced rather than percent of net
25 TRC.

1 106. Q. So my question is really just is it
2 fair to compare any number which Mr. Shephard has
3 referenced as being the difference in what Enbridge earned
4 if the 2003 rules were applied? Is it fair to compare
5 that number with the situation involving the LDCs because
6 of the differences in the methodologies?

7 A. I think the situation would have been
8 different for Enbridge in 2003 if we had a percent of TRC
9 rather than a pivot point in that year.

10 MR. O'LEARY: Okay. Thanks.

11 --- Whereupon the proceedings adjourned at 4:20 p.m.

12

13 I HEREBY CERTIFY THE FOREGOING

14 to be a true and accurate

15 transcription of my shorthand notes

16 to the best of my skill and ability.

17

18

19

20

Voula Kirkos, CSR

21

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