

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 TODD SHELDON
WILLIAMS, 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 |
| Donald H. Rogers, Q.C. | For Hydro One Networks |

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EXHIBIT NO. 1: Document entitled Improvements

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to DSM Incentive Recommendations for

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Enbridge Gas Distribution.

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1 --- Upon commencing at 1:33 p.m.

2 TODD SHELDON WILLIAMS: Affirmed.

3 EXAMINATION BY MR. SHEPHARD:

4 1. Q. State your name for the record, please?

5 A. Todd Williams.

6 2. Q. I'm looking at an affidavit dated --

7 MR. ROGERS: December 2nd.

8 BY MR. SHEPHARD:

9 3. Q. December 2nd. Is this your affidavit?

10 A. Yes, it is.

11 4. Q. I'll just find my notes. Let's start
12 with, you are filing this as an expert on conservation
13 matters; is that right?

14 A. Yes, I am.

15 5. Q. So this is intended to be expert
16 evidence?

17 MR. ROGERS: Yes, he is. He won't
18 understand the legal connotation, I don't think, but, yes,
19 it's opinion evidence.

20 BY MR. SHEPHARD:

21 6. Q. Okay. Now, in the past you were a
22 conservation officer and did various -- designed various
23 conservation programs at Ontario Hydro, correct?

24 A. Yes.

25 7. Q. But in recent years, except for the

1 Enbridge project in 2003, you haven't been working in
2 conservation, have you?

3 A. I've done a number of things with
4 utilities that are related to conservation, yes.

5 8. Q. Can you give me any examples?

6 A. We've looked at a number of projects
7 for the coalition of large distributors, looking at
8 potential for standby generation. We've worked with --
9 I've worked with PowerStream on a number of CDM
10 partnerships. I've worked with -- let me think.
11 Certainly those two come to mind in terms of work that
12 I've done.

13 9. Q. So in terms of, like, for example, your
14 old work was sort of program design sort of stuff but now
15 you are doing higher level policy stuff; is that fair?

16 A. No. It's actually a bit of both. It's
17 higher level policy and it's program design. The work
18 that we did for -- the work that I mentioned for coalition
19 of large distributors Enersource was related to program
20 design.

21 10. Q. Most of the consulting work you do is
22 not conservation related; is that fair?

23 A. On a weighted basis?

24 11. Q. In the last five years, let's say.

25 A. Over the past five years, I think the

1 answer is probably no, it would not be.

2 12. Q. Okay.

3 A. Over five years.

4 13. Q. It is true that, for example, you have
5 experts like Mr. Neme who lives and breaths conservation.
6 Your expertise, I'm not questioning your expertise, but
7 you certainly aren't a conservation expert in the same
8 sense that he is, that's all he does, right?

9 A. I can't comment on his expertise
10 relative to mine.

11 14. Q. You've read his material.

12 A. Yes.

13 15. Q. You've seen him in other --

14 A. I've only read his material. I have
15 not met the man, so I can't comment.

16 16. Q. Okay. On page 2 of your affidavit and
17 paragraph 5, you talk about your evidence representing the
18 views of many LDCs. I understood that you were filing
19 this on behalf of Hydro One; is that correct?

20 A. Yes.

21 17. Q. Are you also representing the views of
22 other specific LDCs?

23 A. I have not been retained by other LDCs
24 but what's portrayed here and what I've given is my views
25 based on my experience dealing with many LDCs over the

1 past eight years.

2 18. Q. Can you tell me what other LDCs share
3 the views that you put in here?

4 A. These views specifically?

5 19. Q. Yes.

6 A. This is my sense based on discussions
7 with LDCs, discussions about second generation funding, so
8 this is my sense of where a lot of them are coming from.

9 20. Q. That's not my question. My question is
10 you've said this represents the views of many LDCs. Which
11 ones? Please tell me which ones.

12 A. I said I believe it fairly represents
13 the views of many LDCs. This is my belief.

14 21. Q. Which ones?

15 A. I did not specifically ask them.

16 MR. ROGERS: Are you able to give any
17 specific examples? If not, that's the answer.

18 THE DEPONENT: Well, I can give one
19 specific example.

20 BY MR. SHEPHARD:

21 22. Q. Okay.

22 A. But, I mean, I'm not retained by them.

23 MR. ROGERS: Well, just explain to
24 Mr. Shephard you are not speaking on their behalf, you are
25 just giving your impression of what you believe their

1 attitude is, I gather.

2 BY MR. SHEPHARD:

3 23. Q. That's fair.

4 A. Okay. One that I know of would be
5 PowerStream.

6 24. Q. So PowerStream shares the views that
7 you express in this affidavit.

8 A. I believe.

9 25. Q. And pages 2 through 5 of your
10 affidavit, and I'm going to come back to some of the
11 details, but I want sort of a general view, this is about
12 what the budgets of the LDCs should be, right, for a
13 conservation, this section 2 through 5?

14 A. Hmm-hmm.

15 26. Q. And I couldn't determine, when I looked
16 at this, whether what you were saying, and I want you to
17 tell me which is true, whether what you were saying is the
18 board should never order an LDC to spend more than it
19 thinks it should on conservation in CDM or whether you
20 were saying that that rule should only apply during this
21 transitional period until they get more experience.

22 A. What I was saying was at this time I
23 don't believe the board should order the LDCs to spend
24 more than they have requested or more than they already
25 have through third tranche funding.

1 27. Q. Okay. But you have said it would be
2 unusual and unprecedented for the board to order them to
3 spend more money. I took it from that that you were
4 saying you should never do this, you should never tell
5 them to spend more than they want to spend.

6 A. At this time, I don't think it's
7 appropriate.

8 28. Q. That wasn't my question.

9 A. Right.

10 29. Q. Enbridge, for example, Enbridge is
11 experienced in this area.

12 A. Yes.

13 30. Q. Would it be appropriate for the board
14 to order Enbridge to spend more on conservation?

15 MR. ROGERS: Mr. Shephard, there is a legal
16 connotation to your question that I don't think he can --
17 he can't give you a legal answer.

18 MR. SHEPHARD: I'm not asking the legal.

19 MR. ROGERS: His opinion.

20 BY MR. SHEPHARD:

21 31. Q. I'm asking an expert opinion, what's
22 good policy.

23 MR. ROGERS: Assuming they had the power to
24 do so.

25 THE DEPONENT: Can you repeat the question

1 then with the caveat on the...

2 BY MR. SHEPHARD:

3 32. Q. Yes. With a utility that is
4 experienced in conservation programs, is it appropriate
5 for the board to say you should spend more than you've
6 told us you want to spend?

7 A. I can't answer that without the
8 context. I've given the context here in terms of what I
9 see as the context for the electric LDCs today and I've
10 answered that in that context.

11 33. Q. I'm trying to get at a specific answer
12 to my original question. I said, is this just a
13 transitional rule or do you intend it to be a rule that
14 applies to everybody forever? Is it your intention that
15 the board's approach should be if you ask for X, we won't
16 order you to spend more to everyone? It's a question of
17 principle that I'm asking.

18 A. No, I understand the question. I
19 honestly don't know if that's the board's role given, you
20 know, with respect to the government and the board in
21 terms of a policy question.

22 MR. SHEPHARD: Off the record.

23 --- Off-the-record discussion.

24 BY MR. SHEPHARD:

25 34. Q. So I take it from what you are saying,

1 that you don't think the appropriate role for the board is
2 to require LDCs to spend more on conservation; is that
3 fair?

4 A. I'd have to answer that in context and
5 you haven't given me any context for the question, and
6 I've answered it in context of today and you are asking
7 me -- anyway, so that's...

8 35. Q. Well, okay. I think I'm entitled to a
9 straight answer on this. Look it, it's a simple thing.
10 You can say in this transitional period, because it's a
11 transitional period, you shouldn't order the utilities to
12 spend more money. I understand that and we are going to
13 get to that in a second.

14 A. Yeah.

15 36. Q. But I'm asking the next question. If
16 it wasn't a transitional period, would you still be saying
17 the same thing, don't order them to spend more money, as a
18 matter of principle?

19 A. There's too many unknowns in that
20 question, Jay.

21 37. Q. Okay. Let's approach it a different
22 way then. Under what circumstances do you think it would
23 be appropriate for the board to say to an LDC, you should
24 be spending more money on conservation? We are going to
25 order you to spend more money on conservation. Give me

1 examples or parameters, factors.

2 A. If the framework were certain, the
3 rules were clearer and the spending was, by definition --
4 by the definition of the board asking an LDC to spend the
5 money, it was deemed to be prudent when it was ordered.

6 38. Q. Sorry, the framework was certain, the
7 rules clear and the expenditures deemed prudent?

8 A. Those would be at least, sort of, three
9 context aspects that would come to mind.

10 39. Q. So the board should never, for example,
11 say to a --

12 A. Sorry, and can I add something?

13 40. Q. Go ahead.

14 A. And there was comfort that the
15 utilities could have the capacity to wrap up their
16 spending. I mean, I guess I'm trying to -- that's
17 implicit in the previous comments.

18 41. Q. So when you say the framework is
19 certain, what do you mean?

20 A. The rules around the framework.

21 42. Q. For example, you mean, like, free rider
22 rules and that sort of thing?

23 A. Yes.

24 43. Q. Okay. So as long as you have a clear
25 set of rules, that's solved, right?

1 A. Your framework would be certain, yes,
2 if the framework is certain.

3 44. Q. And then you are saying that if, for
4 example, the board said to Toronto Hydro, we think you
5 should spend \$20 million on conservation next year, we've
6 looked at how big you are and all the sorts, we think 20
7 million is the right number, you are saying that if Hydro
8 One spends 20 million, the board couldn't later say, well,
9 some of that spending you spent was not prudent? They
10 couldn't say that?

11 A. Who is the utility in question?

12 45. Q. Toronto Hydro.

13 MR. ROGERS: He said Toronto Hydro and then
14 you switched utilities.

15 MR. SHEPHARD: Did I? I'm sneaky.

16 BY MR. SHEPHARD:

17 46. Q. You are saying the board wouldn't be
18 able to then later look at how they spent the 20 million
19 and say, no, that was wrong how you did that?

20 A. If a utility has flexibility to request
21 funding such as it does today, such as they do today, and
22 they choose to ask for a certain amount of funding, in my
23 mind they are saying this is what we believe is
24 appropriate, all right? If someone asked them then to do
25 something other than what they believe appropriate, then I

1 do believe that it should be deemed to be prudent if they
2 are ordered to do it.

3 47. Q. Okay. Let's just, before we leave
4 this, let's assume that the board agrees with you, let's
5 assume, but they think that the LDCs in general are not
6 spending enough money on conservation, they've read
7 Mr. Neme's paper where they -- the percentages and the
8 board says, You know what, we think more would be better.
9 What tools do you believe the board should use to cause
10 the LDCs to spend more on or to do more in conservation
11 short of ordering them to have a higher budget?

12 A. The first thing is the framework needs
13 to be clarified, the roles and responsibilities of the
14 LDCs vis-a-vis the OPA and the Ministry and other agencies
15 that may be involved in CDM needs to be clarified, and
16 just to go back, I think you recognize there's a number of
17 aspects to the framework that, you know, when I say
18 framework, it involves a number of things. They would
19 need to be certain. And I think as well, frankly, time.

20 48. Q. Just to gain experience and expertise,
21 knowledge.

22 A. Yes.

23 49. Q. Okay. Now, you have some LDCs that
24 don't actually want to do conservation, right? I mean,
25 we've seen some that have been very reluctant; is that

1 true?

2 A. I'm not aware.

3 50. Q. You are not aware of any that are
4 reluctant to do conservation?

5 A. No.

6 51. Q. Okay. You've read the evidence of
7 Newmarket?

8 A. Yes.

9 52. Q. Newmarket said that they should be out
10 of the conservation business after the third tranche;
11 isn't that right?

12 MR. ROGERS: Take a look at it.

13 THE DEPONENT: I didn't interpret it the
14 same way.

15 BY MR. SHEPHARD:

16 53. Q. No. Okay. Let me ask this a different
17 way then.

18 A. Okay.

19 54. Q. If an LDC today doesn't want to spend
20 its third tranche money on conservation and there's some,
21 right, that haven't applied for the third tranche, true?

22 A. I don't know for a fact.

23 55. Q. Hypothetically let's assume that.

24 A. Okay.

25 56. Q. And so they are not spending anything

1 on conservation, they don't even want to spend their third
2 tranche on conservation, in those circumstances, should
3 the board say, Hang on a second, we think that your rate
4 payers are entitled to have you involved in this and we
5 think you should be doing it? Is that appropriate for the
6 board to do?

7 MR. ROGERS: Once again this is not a legal
8 question, Mr. Shephard. You are asking about his opinion
9 for policy.

10 BY MR. SHEPHARD:

11 57. Q. Yes.

12 A. I think it's appropriate. I think it's
13 more appropriate to ask how do we get conservation
14 programs to those customers.

15 58. Q. And ordering the utility to do it isn't
16 an appropriate way of doing it.

17 A. It's one way but I don't necessarily
18 say that that's the most appropriate way.

19 59. Q. So it's a case by case basis.

20 A. It's back to the context question.

21 60. Q. So there might be some cases in which
22 the board should in fact say to that utility you should go
23 do this.

24 A. The board should look long and hard at
25 alternatives.

1 61. Q. Are there circumstances in which the
2 board should order utilities to go to conservation even
3 though they didn't want to?

4 A. It would depend on the context.

5 62. Q. Well, no, you see, that's not a
6 contextual question. You either say, yes, there are
7 circumstances but it depends on the context or, no, there
8 aren't any circumstances in which the board should order
9 that. There's no context thing here. There's a yes or a
10 no.

11 A. There could be circumstances.

12 63. Q. In which the board -- it would be
13 appropriate for the board to order them to do something
14 like that; is that right?

15 A. I'm thinking because I'm trying to
16 think of the circumstances when that would arise and I
17 frankly don't think there would be much likelihood of
18 that.

19 64. Q. Let me ask another question then. A
20 large LDC, doesn't matter which one, does conservation for
21 its third tranche, spends a lot of money, \$5 million a
22 year, let's say, for three years, learns stuff, gets some
23 results, decides at the end of the three years, end of
24 2007, doesn't want to do it anymore, comes in the next
25 year, no conservation expenditures in its plan, is it

1 appropriate for the board in those circumstances to say
2 hang on a second, you are a big utility, you should be
3 doing this?

4 A. I think it depends on the
5 circumstances, Jay.

6 65. Q. All right. One of the things you said
7 is we are in a transition period now.

8 A. Hmm-hmm.

9 66. Q. And the electricity LDCs are learning
10 about C&DM. How long do you think that transition period
11 should last before they start to have rules that are more
12 appropriate to mature conservation programs?

13 A. Three to five years.

14 67. Q. Okay. One of the things you said in
15 paragraph 11 is it's very important for the roles of the
16 LDCs to be clarified relative to OPA, to the board and
17 other players. If the Ontario Energy Board simply said,
18 Look, LDCs, this is the role we want you to play, is that
19 enough or does it have to be agreed -- does everybody else
20 have to sort of weigh in with their opinion as well?

21 A. I think everyone else needs to be on
22 board.

23 68. Q. So you need some sort of joint decision
24 between government, the OPA, the OEB, like that before
25 they are really clear to go ahead; is that fair?

1 A. Yes.

2 69. Q. In paragraph 15 of your affidavit, you
3 talk about Mr. Goulding's evidence in the EDR proceeding
4 and you said at the end of that that if you do too much
5 too soon, and I'm quoting, that would "cause problems for
6 customers, create risks for the LDC and reduce the overall
7 effectiveness of their C&DM plan." Tell me what you mean
8 by that. For example, how would it cause problems for
9 customers, if they rush into it too fast?

10 A. If you don't have the delivery
11 mechanism in place for the programs fully cleaned up,
12 like, sort of operating smoothly, then I think there's a
13 potential for confusion for customers. There's potential
14 for poor customer service. They might call and maybe the
15 whole phone setup is not set up or the whole sort of,
16 let's call it, sort of program enrollment may not be
17 working smoothly. So there's those risks there.

18 70. Q. So when you say cause problems for
19 customers, you are talking about customer inconvenience,
20 that sort of thing.

21 A. That's one aspect, yes.

22 71. Q. Well, are there others?

23 A. If you rush a program to market too
24 soon, then I think there's another risk for customers in
25 terms of perhaps it's the wrong technology or perhaps

1 there may be ancillary flow-on problems that people
2 weren't aware of, that they didn't look at close enough.
3 So those are the sorts of problems that I'm referring to.
4 72. Q. And the only way you can really avoid
5 that sort of stuff is by taking the time to plan
6 carefully, right?

7 A. Yes.

8 73. Q. Now, of course there's a natural
9 tension here, right, because the government wants
10 conservation as fast as possible, as much as fast as
11 possible, but to do it right, you have to slow down and be
12 careful; is that correct?

13 A. Yes.

14 74. Q. How do you balance those two? I mean,
15 this whole discussion about budgets is about balancing
16 those two, isn't it really?

17 A. Yes.

18 75. Q. So you are an expert in this area.
19 Tell us how you should balance those two.

20 A. As I've stated in paragraph 23,
21 clarification of the framework and so to speak the rules
22 of the game, clarification of the roles of the LDCs
23 vis-a-vis the OPA and the other players, more certainty
24 for the LDCs in terms of how they would be able to
25 demonstrate, clearly demonstrate, the prudence of their

1 CDM spending. I think those are the sorts of things that
2 need to be put in place before -- so the LDCs can move
3 along and then be comfortable to, you know, if they feel
4 it's appropriate, to ask for additional money.

5 76. Q. But then that has nothing to do with
6 the balancing of the need for speed and conservation and
7 the need to plan carefully, does it?

8 A. My sense is that those two would go --
9 like time wise, would likely go hand in hand.

10 77. Q. But they are not related. They might
11 happen in parallel but the reality is, isn't it, that what
12 you are talking about is LDC risk there, isn't it?

13 A. Yes.

14 78. Q. This is not about whether you can do it
15 right in that time but whether you are reluctant to do it
16 because you have too much risk.

17 A. No, I don't see it that way.

18 79. Q. Well, aren't you talking about
19 reluctance of the LDCs to do it with the current risk
20 profile of the C&DM?

21 A. Yes.

22 80. Q. That's the whole essence of this
23 argument, isn't it?

24 A. I think there's another aspect of risk,
25 is the risk of, you know, being able to spend the money

1 effectively and prudently.

2 81. Q. Okay.

3 A. All right. So it's not just the
4 framework.

5 82. Q. Okay. Just before we leave this budget
6 area, which is obviously the biggest of these issues that
7 we are talking about, I guess one of the things I don't
8 understand is why demonstrating the prudence of C&DM
9 expenditures would be any more difficult than
10 demonstrating the prudence of any other expenditure that
11 they have in their budget. What is different about it
12 that makes it harder to demonstrate prudence?

13 A. One, it's a new area for them,
14 right? I mean, in terms of demonstrating the prudence of
15 an expenditure on wires or maintenance or customer
16 service, those are all -- those are all aspects of the
17 business they've been doing for however many years,
18 perhaps a century. CDM is new for them, so there's a
19 question about their own experience in the area.

20 And secondly, there's a question about how
21 would the board -- what are the rules to demonstrate
22 prudence, and I think the rules around that are still not
23 clear. The rules around kind of pure wires-type
24 activities are, you know, quite clear. So you've got the
25 mix between rules on the experience on the wire side and

1 the rules for demonstration and prudence versus relative
2 inexperience on the CDM side and lack of clarity on the
3 rules with respect to CDM, so it's very different.

4 83. Q. Of course, if they were concerned about
5 demonstrating prudence, one of the things they could do to
6 reduce that risk is by investing in staff and expertise
7 that would allow them to have a better knowledge of this,
8 right? Indeed, eventually they have to do that, right?

9 A. That would be one way.

10 84. Q. But they do have to do that sooner or
11 later, don't they?

12 A. To do what?

13 85. Q. Invest in staff and expertise in
14 acquiring the resources to be more knowledgeable in the
15 field.

16 A. I haven't seen it said that they have
17 to do that.

18 86. Q. Well, if they don't, then they won't be
19 able to effectively deliver conservation, will they?

20 A. Sorry, I was speaking incrementally to
21 what they are doing today and that was the context of that
22 answer.

23 87. Q. But one of your points is that they are
24 still going up the learning curve, true?

25 A. Yes.

1 88. Q. And in order to get up the learning
2 curve, they are going to have to invest in the resources,
3 the expertise necessary to get to the top of the learning
4 curve, right?

5 A. And I think they are investing today,
6 yes.

7 89. Q. Okay. And they can do that by going
8 out and hiring people who already know about this or they
9 can train their internal people.

10 A. Yes.

11 90. Q. All right. It's true that electric
12 utilities in other jurisdictions are doing a lot more in
13 conservation than the LDCs here, in some other
14 jurisdictions?

15 A. Some other and there are lots of
16 jurisdictions where they are doing less.

17 91. Q. Okay. And in some cases, as we saw in
18 examples in Mr. Neme's evidence, they've ramped it up
19 faster than Ontario, true?

20 A. I think a lot of the examples, at least
21 from my knowledge, a lot of those jurisdictions had
22 programs in place already. This is my understanding, that
23 I believe he used the Vermont example and the New York
24 example and I believe my understanding is that there were
25 existing programs in place. The entities came out of, in

1 a sense, nowhere. The entities were established but there
2 was an existing, let's call it, CDM program base from
3 which the entities could draw on. That's my understanding
4 of the background of those two jurisdictions that he
5 referred to.

6 92. Q. So are these facts that you know or is
7 that just your guess as to what they might be?

8 A. It's not a guess. It's my
9 understanding.

10 93. Q. Perhaps --

11 A. And I cannot give you a reference at
12 this point, if that's your question.

13 94. Q. Well, I'm going to ask you to undertake
14 to provide that. I mean, you are basically saying that
15 Mr. Neme's evidence is incomplete, it doesn't tell the
16 whole story. So I'm going to ask you --

17 MR. ROGERS: He didn't say that, in
18 fairness, Mr. Shephard. You may deduce that.

19 BY MR. SHEPHARD:

20 95. Q. Okay. Well, I'm going to ask him. Is
21 that what you are saying?

22 A. It would be helpful if the evidence
23 also explained what the context was in those jurisdictions
24 and whether there was a CDM, a number of CDM programs in
25 place from which those two entities can draw.

1 96. Q. Okay. So then I'm going to ask you to
2 undertake to fill in those gaps in that factual
3 information with the information that you know, the
4 references that you know that demonstrated that they
5 didn't go from a stand and start, that they went from a
6 base and what that base was.

7 MR. ROGERS: Well, I'm just thinking here.
8 I'm not sure that you are entitled to ask for undertakings
9 on a cross-examination but it is in the context of the
10 board, so I'll give you that undertaking, Mr. Shephard, to
11 make reasonable efforts to try --

12 THE DEPONENT: We can do that.

13 BY MR. SHEPHARD:

14 97. Q. Thanks very much.

15 Then I want to turn -- I just want to ask
16 one more question about this, and that is you talk about
17 the framework rules. These are the rules relating to how
18 you calculate TRC, for example? Is that the type of thing
19 you are talking about?

20 A. That would be one aspect.

21 98. Q. So things like measure lives, free
22 ridership.

23 A. Those would all be related to TRC
24 calculations.

25 99. Q. Okay. Are there other framework rules

1 in addition to those rules relating to TRC calculations
2 that you think are currently uncertain?

3 A. Yes.

4 100. Q. What are they?

5 A. There's a number of aspects of the TRC
6 calculation, I think. I think there's questions with
7 respect to timing.

8 101. Q. Timing of what?

9 A. Timing in terms of whether it's loss
10 revenue recovery or whether it's SSM.

11 102. Q. Sorry, I don't understand that.
12 Explain again.

13 A. I think there's uncertainty in terms of
14 the timing at which those, let's call them, framework
15 tools would provide their intended relief.

16 103. Q. This is the tools that you use to
17 calculate TRC?

18 A. No.

19 104. Q. So which tools are you talking about?

20 A. The TRC is, I think, only one aspect of
21 the framework, the calculation of that.

22 105. Q. I'm looking for the other aspects.

23 A. And I just gave you one. Another
24 aspect would be the timing under which, say, an SSM would
25 be recovered, the time frame over which an SSM would be

1 approved, the time frame over which an LRAM would be
2 approved, what the requirements would be for demonstration
3 of those. So I think there's -- so in addition to the
4 TRC, there's a lot of question about -- a lot of
5 uncertainty with respect to the documentation that would
6 be required as well as the time frame that it would take
7 to sort of get that through the process so to speak.

8 106. Q. So these all relate to either SSM or
9 LRAM.

10 A. Sorry, and to prudence of -- just plain
11 prudence of investment absent LRAM and SSM which is great
12 recovery.

13 107. Q. And what aspects of prudence do you see
14 are uncertain at this point? Which rules relating to
15 uncertainty do you think are uncertain at this point?

16 A. I've just given a number, right.

17 108. Q. I didn't hear any, sorry. We are
18 talking about prudence now.

19 A. Hmm-hmm.

20 109. Q. I didn't hear any relating to prudence
21 or uncertainty. I heard SSM and LRAM. I get that.

22 A. Okay. This is with respect to third
23 tranche for second generation funding.

24 110. Q. You are the one who said the framework
25 is uncertain. I'm asking for examples of how it's

1 uncertain. You said one is prudence. So please explain.

2 A. I believe that a lot of LDCs are not --
3 have concerns about their ability to demonstrate the
4 prudence of their CDM expenditures.

5 111. Q. They think the board will think that
6 they wasted money foolishly or the board might think that?

7 A. No. I think they have concerns about
8 their ability to demonstrate the prudence of their
9 investment.

10 112. Q. No, I understand that and I'm asking
11 why would they have those concerns? They don't have those
12 concerns with, you know, putting up wires.

13 A. They've been putting up wires for a
14 hundred years.

15 113. Q. So it's back to their inexperience.

16 A. It's a developing frame -- it's a
17 development, let's call it, relationship.

18 114. Q. Okay. I want to turn to free
19 ridership. I only have a couple of questions on free
20 ridership. There are two things about free ridership here
21 and I want to make sure that we understand both of them.
22 One is do you use the numbers in the TRC guide, right?

23 A. Hmm-hmm.

24 115. Q. And the second is whatever numbers you
25 use, are they locked in to budget and actual, right? Okay.

1 So the numbers in the TRC guide, I haven't even read them,
2 we'll talk about that later, but let's talk about the
3 locking in question. Now, this is not the first time that
4 you've talked about locking in, is it?

5 A. No.

6 116. Q. In fact, you've consistently said that
7 you think that number should be locked in -- the free
8 rider number should be locked in, true?

9 A. I've given evidence along those lines,
10 yes.

11 117. Q. So I'm showing you, and I'm going to
12 ask that this be marked as an exhibit, I'm showing you a
13 document headed up Improvements to DSM Incentive
14 Recommendations for Enbridge Gas Distribution, Exhibit 1.
15 And I'm marking that as Exhibit Number 1.

16 EXHIBIT NO. 1: Document entitled
17 Improvements to DSM Incentive Recommendations for
18 Enbridge Gas Distribution.

19 BY MR. SHEPHARD:

20 118. Q. Were you one of the authors of this?

21 A. Yes.

22 119. Q. And in this, it's correct that you
23 recommended that free ridership be one of the locked in
24 parts of the calculation for TRC, correct?

25 A. That would have been the gist of it.

1 I'm just trying to find the specific recommendation.

2 120. Q. Well, remember, you were talking about
3 a new incentive mechanism in this, a new calculation of
4 the SSM in this particular paper but one of the foundation
5 items was lock in the exogenous variables. If you take a
6 look at page 5, in the last paragraph on that page.

7 A. Hmm-hmm.

8 MR. ROGERS: If you could say yes or no,
9 please.

10 THE DEPONENT: Sorry, yes.

11 BY MR. SHEPHARD:

12 121. Q. Okay.

13 A. With respect to the framework, right.
14 This is the framework.

15 122. Q. Well, this was the rules for
16 calculating TRC, right?

17 A. Yes.

18 123. Q. And in fact, there's about nine
19 variables, aren't there? There's measure life and there's
20 avoided gas costs and there's a bunch of them, and of
21 those nine variables, tell me whether this is correct, the
22 only two variables that you think should not be locked in
23 are number of participants and program costs. Every other
24 one should be locked in.

25 A. That would provide more certainty.

1 124. Q. So the answer is yes.

2 A. Yes.

3 125. Q. Okay. And the reason for that is you
4 want the company to be -- the utility to be able to focus
5 on the things they can control.

6 A. Yes.

7 126. Q. And they can control how much they
8 spend and they can control how many customers they get
9 into the program.

10 A. Yes.

11 127. Q. But everything else they can't really
12 control.

13 A. I think the key point here is
14 certainty, right? Give them certainty and let them focus
15 on the key variables and keep the rules -- you know, lock
16 in the rules so they can go on and get the job done.

17 128. Q. If you turn to page 8 of this exhibit,
18 please.

19 A. This one, okay.

20 129. Q. And this is the set of principles that
21 you say should be applied in creating an SSM.

22 A. Hmm-hmm.

23 130. Q. Is that right?

24 A. Yeah.

25 131. Q. And the last of those bullets is, and

1 I'm quoting: The incentive should be based on results
2 achieved for rate payers, not just effort expended.

3 A. Yes.

4 132. Q. So the point is they should not get a
5 reward -- tell me whether this is true. They should not
6 get a reward unless they -- except for benefits they
7 actually achieved, correct?

8 A. As measured how?

9 133. Q. We are talking reality.

10 A. Benefits as measured by the framework,
11 yes.

12 134. Q. Okay. So it's not benefits actually
13 achieved, it's benefits calculated to have been achieved
14 based on certain assumptions, correct?

15 A. Yes. This is with respect to an
16 incentive mechanism. Benefits was -- yes.

17 135. Q. And if it turns out that the
18 assumptions in the formula are wrong, you can demonstrate
19 that they are wrong, your position is you shouldn't change
20 them. Even though you know the benefits aren't being
21 created, you shouldn't change the assumptions because that
22 creates uncertainty for the utility, right?

23 A. That new information should be applied
24 going forward prospectively.

25 136. Q. So, for example, it's true, isn't it,

1 that for 2003, this is for the 2003 rate case, for 2003,
2 in fact isn't it correct that the actual SSM for Enbridge,
3 whom you were giving evidence for, was actually based on
4 \$6 million of additional TRC that didn't occur, that
5 wasn't created?

6 A. I can't comment. I did not look
7 closely at that.

8 137. Q. When Mr. Brophy comes here, I'll ask
9 him that, but I want to ask you this question. On the
10 approach you've taken, that could happen, right?

11 A. Yes, and it can go the other way too.

12 138. Q. Exactly. You've said in paragraph 30
13 that in your view the utilities would have to come to the
14 board in advance to get their free ridership rates
15 approved if they couldn't rely on the guide, right?
16 That's what you've said here.

17 A. I said it would be prudent for them to
18 do so, yes.

19 139. Q. All right. And that that would cause a
20 delay and it would be a problem, right?

21 A. Yes.

22 140. Q. But that assumes you are locking in
23 position, right? If in fact you calculate TRC based on
24 actual benefits, the best information you have at the
25 time, then you wouldn't lock in your free ridership in

1 advance, would you?

2 A. I would still want to take another -- I
3 would still want to take a fresh look at free ridership.
4 If it's going to be something different and it's deemed in
5 the TRC guide, then I think it would be prudent to take a
6 look at it, take a fresh look at it, and see what you
7 think the numbers might be for your specific program.

8 141. Q. Okay. The last thing I want to ask you
9 about is attribution.

10 A. Hmm-hmm.

11 142. Q. Sorry, hang on a second. Let me ask
12 you one more thing about free ridership. Paragraph 34,
13 you are talking about the locked in nature of free
14 ridership and you say that the board, "retains the option
15 to address any significant discrepancies related to free
16 ridership and other characteristics through its rates
17 setting process." Do I understand you to be saying there
18 that if the results are really wonky, the board can come
19 in after the fact and say, you know what, we are not
20 giving you an SSM for that because you didn't actually
21 achieve the benefits?

22 A. That's my understanding.

23 143. Q. Okay. So generally speaking, free
24 ridership should be locked in but in extreme cases, if it
25 really produces bad results, you would agree the board can

1 go in after the fact and fix those bad results.

2 A. I would agree the board has, based on
3 my understanding, now has the capability to do that, yes.
4 144. Q. I'm not asking a legal question. I'm

5 asking the policy question. Is it appropriate for them to
6 do that?

7 A. No, I don't believe it is.

8 145. Q. Okay.

9 A. It's inconsistent with having them
10 locked in.

11 146. Q. Now, Mr. Brophy in his affidavit, I'm
12 turning to attribution, Mr. Brophy in his affidavit says
13 free ridership and attribution are not similar concepts.
14 You say in paragraph 35 free riders and incremental
15 benefits are closely related which sounds to me like you
16 are saying they are very similar concepts, attribution and
17 free ridership; is that right?

18 A. I believe they are, yes.

19 147. Q. And Mr. Neme says in fact, and you've
20 heard him, I think, say this on more than one occasion,
21 that attribution is really a type of free ridership.

22 A. Hmm-hmm.

23 148. Q. It should, right?

24 A. Yes.

25 149. Q. So I guess my question is if you have

1 free riders that are free riders because the price of
2 electricity went up, they weren't influenced by the
3 program, they would have done it anyway because of price
4 of elasticity, you agree that those free riders should not
5 be credited to the utility, right?

6 A. Are we talking about -- I mean, are we
7 back to the aspect of locking in free riders?

8 150. Q. No. I'm talking about the basic
9 concept. So the basic concept is if you put in a measure
10 because electricity is expensive, not because the
11 utilities suggested it, then that's a free rider, it gets
12 excluded. That's why you have free rider rates, right?

13 A. If you would have otherwise done it
14 absent the program.

15 151. Q. Okay. So how is it different to say if
16 the government, the federal government, let's say, has
17 convinced you to do it already and the utility didn't
18 convince you to do it, the government did, then aren't you
19 just as much a free rider?

20 A. If you would have done it absent the
21 program, I would say yes.

22 152. Q. Well, okay. So herein lies the problem
23 with attribution, is the utilities want to describe the
24 program as being the whole program including the
25 involvement of the governments, right? But another way of

1 looking at it is to say if you would have done it absent
2 the utilities involved, then you are a free rider. That
3 would be a fair way of doing it, right?

4 A. And I think when there is information
5 on that, that comes available from the valuation efforts,
6 then I think everyone can look at that on a going-forward
7 basis.

8 153. Q. And that would be an appropriate way to
9 do it.

10 A. That's why I think they are linked,
11 yes.

12 MR. SHEPHARD: Excellent. That's all. Do
13 you have any redirect?

14 MR. ROGERS: No.

15 --- Whereupon the proceedings adjourned at 2:27 p.m.

16
17 I HEREBY CERTIFY THE FOREGOING
18 to be a true and accurate
19 transcription of my shorthand notes
20 to the best of my skill and ability.

21

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24

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Voula Kirkos, CSR
Computer-Aided Transcription