Ontario

ONTARIO ENERGY BOARD

FILE NO.:	**EB-2005-0001** **EB-2005-0437**

VOLUME:	**32**	
DATE:	**October 12, 2005**	
BEFORE:	**Pamela Nowina**	**Presiding Member**
	Paul Sommerville	**Member**
	Cynthia Chaplin	**Member**

EXHIBIT No. 1
ON THE EXAMINATION OF
MICHAEL BROPHY IN
V
HELD ON DEC 9/05
ATCHISON & DENMAN COURT REPORTING SERVICES LTD.
TORONTO, ONT.

Madam Chair.

ENBRIDGE GAS DISTRIBUTION INC. PANEL 21; RESUMED:

MICHAEL BROPHY; Previously Sworn

STEVEN POFF; Previously Sworn

TOM JEDEMANN; Previously Sworn

NORMAN RYCKMAN; Previously Sworn

SUSAN CLINESMITH; Previously Sworn

CONTINUED CROSS-EXAMINATION BY MR. SHEPHERD:

MR. SHEPHERD: Mr. Brophy, we were talking yesterday about the 2003 rules and got into a muddle, which was my fault, as I read the transcript and so I'm going to come back and try it a simpler way to get out how the 2003 rules work and would work in the future. To do that, I want to just take you through a simple mathematical or a simple example and see if we can figure out how the 2003 rules result in TRC calculations.

When you do your TRC budget, if you like, whenever you calculate it, when you do it, you have a number of variables you have to put in the mix; right? One is number of participants; right? You have a target number of participants for a particular program; right?

MR. BROPHY: Participants are used to assess the volume target, and I think yesterday we went through how that equates to a TRC target, but that is --

MR. SHEPHERD: I'm going to take you through that.

MR. BROPHY: A factor, yes.

MR. SHEPHERD: If you take the participants and you deduct the free-rider rate, you get a net participant number; right? So if you have a free ridership of 10 percent and you expect to have 10,000 participants, then your net participants is 9,000; right?

MR. BROPHY: With the free-ridership rate I guess it could either apply that to a participant or you can apply it to the volume per participant. It ends up having the same result. It means that the company gets credit only for net of free ridership either way.

MR. SHEPHERD: It doesn't matter because it is all multiplication, right, so it doesn't matter where you put it in the multi place, does it?

MR. BROPHY: That's correct.

MS. CLINESMITH: Excuse me.

[Witness panel confers]

MR. BROPHY: Oh, I'm sorry. Ms. Clinesmith just pointed out that because we incur some costs on a per-participant basis, things liked fixed costs and other things that are per participant, that it may seem incorrect to discount the participants because then you may think, by inference, that you're discounting those costs to go out and reach those participants.

MR. SHEPHERD: No. I know that the dollar figures are after you get your volume target. You go to the m3 number and then you convert it into dollars and do the net dollars; right? That's how the calculation works?

MS. CLINESMITH: Actually, if I may and please, Mr. Brophy, correct me if I'm wrong, but in the customs projects, because they are custom and not prescriptive, the volumetric assigned to any one participant has a very wide range.

So discounting the participants could skew it. We discount the volumes.

MR. SHEPHERD: Yes, I know I understand that. But what we're talking about is the 2003 rules, which is primarily to do with the prescriptive programs; right?

MS. CLINESMITH: Excuse me, yes.

MR. SHEPHERD: I'm going to get to custom in a second but let's deal with the simpler part of it first. I'm having enough trouble with this part. Let's do this part first.

So let's say we're going to have hypothetical widgets, which are -- widgets are a thing you put in peoples homes and they save energy, okay, they're wonderful little things.

And so when you do your budget, you estimate how many participants you're going to have. You have a plan for how many participants you think you can get in that particular widget program. You can then assess what your free ridership is going to be and get a net participant number. So if you say –- your widgets, you're going to have 10,000 participants in 2006; right? Then you take -- if you assume you have a 10 percent free ridership then you would have 9,000 participants, right? It's not complicated.

MR. BROPHY: I will work through that example. I would really like to apply the free-ridership rate to the volume saving rather than the participant, but you know I think you're trying to simplify something so I will go along.

MR. SHEPHERD: You want to apply it to the annual unit savings?

MR. BROPHY: Yes.

MR. SHEPHERD: Let's do it that way. So 10,000 participants. Now, you have 100 percent attribution on most of -- one of your variables is participants; right? Then the second one is attribution and for most of your programs you have 100 percent attribution; right?

MR. BROPHY: If our current portfolio, yes.

MR. SHEPHERD: So let's assume you have 100 percent attribution, which means your total participants for that program in your budget is 10,000; that’s right? That's what you're aiming for.

MR. BROPHY: That's correct.

MR. SHEPHERD: Then do you have to estimate your unit savings, how many cubic metres you're going to save for each participants in a year, right, it's an annual figure.

MR. BROPHY: That's estimated based on I guess the theoretical widget you're putting in.

MR. SHEPHERD: That's right. So you say a widget saves 200 cubic metres every time you put it in, every year, it saves 200 cubic metres; right? For example.

MR. BROPHY: If that's the assumption, yes.

MR. SHEPHERD: So then -- but you're saying that you take your free ridership and you apply it to that 200? You don't apply it to the number of participants; you apply it to the savings.

MR. BROPHY: Yes. So if you assume that it was 200 cubic metres that was saved, and you had a 10 percent free ridership then you would take 20 off of that, you'd be left with a net per participant of 180.

MR. SHEPHERD: But it doesn't matter whether you apply it to the participants or the unit savings, it's the same result; right?

MR. BROPHY: For the m3 savings, I believe mathematically it would work out to the same.

MR. SHEPHERD: Exactly. So whatever way you do it, at the end of the day you have a volume number for those 10,000 participants, 180 net savings each of 1.8 million M-cubed per year; right?

MR. BROPHY: Subject to check. I don't think I brought my calculator. But I believe so.

MR. SHEPHERD: 180 times 10,000. 1.8 million. Will you accept that subject to check?

MR. BROPHY: Yes, I will.

MR. SHEPHERD: Okay. So we were talking about the difference between volume target and TRC. That number is the volume target for that program; right?

MR. BROPHY: That would be the volume target for that program, yes.

MR. SHEPHERD: All right. So then once you've got the volume target, you have to do two things. First of all, you have to extend it over the measure life; right? Because it doesn't just save energy for one year, it saves energy for a number of years; right?

MR. BROPHY: You'd have a measure life for that widget, yes.

MR. SHEPHERD: Let's say the widget is 10 years, so then you take your 1.8 million and you multiply it by 10 to get 18 million cubic metres; right?

MR. BROPHY: That's simple math but you discount it.

MR. SHEPHERD: Okay. You discount it because savings ten years from now aren't as valuable as today; right?

MR. BROPHY: They're worthless, they're just as valuable, but they're worthless in today's dollars.

MR. SHEPHERD: That's right. Exactly. Time value of money. Then you take that total, whatever it is, and you multiply it by your avoided gas cost to get your gross TRC benefit; right?

MR. BROPHY: Yes. We would take the avoided gas costs over that time horizon and we would apply it to those volumes saved and we would discount it over the measured life to bring you to what the value would be today.

MR. SHEPHERD: Okay. So then you have a dollar figure that's your gross TRC benefit but you have to deduct two things from that. You have to deduct how much does the customer spend, right, to put this widget in.

MR. BROPHY: That would be the -- you would take the incremental costs that the customer spends. So the customer may be -- it's hard to say in the widget realm, but if they were needed to buy a widget anyways but just not one that was --

MR. SHEPHERD: High-efficiency widget.

MR. BROPHY: Oh, a high-efficiency widget. Then you would take the incremental costs that they would have been spent versus the cost to go to the high efficiency widget and that's the cost you subtract.

MR. SHEPHERD: So you take that times your number of participants; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: Now, do you reduce your number of participants for your free riders? Your customer costs can't include the customer costs for the free riders; right?

MR. BROPHY: Again, I don't think we applied the free ridership to the participants, but I believe it is done on an apples-to-apples basis.

[Witness panel confers]

MR. RYCKMAN: To the best of my knowledge, it picks up to full costs. So if you've got ten customers out there at a 10 percent free-ridership rate, you have a cost associated with those 10 customers of which you're claiming the benefits for 90 percent of those.

MR. SHEPHERD: That's not fair, is it? Why would you deduct the costs for the free riders?

MR. BROPHY: I would need to go back into the actual model. I didn't realize we were going to get into kind of cell-by-cell calculation of the program, but I can check that if you would like.

MR. SHEPHERD: Okay, thanks. Anyway you deduct that.

Then you get a total and you have to deduct from that your program costs; right?

MR. BROPHY: We would subtract program costs at the end as well, yes.

MR. SHEPHERD: So you would get a net TRC benefits for the program, right, for that, the widget program you get a net. That's your budget; right?

MR. BROPHY: Roughly.

MR. SHEPHERD: That's your -- that would be if you add them all up for all of your programs, that's your pivot point; right?

MR. BROPHY: Roughly speaking on a -- if you were to do it on an individual program basis, that would be correct.

MR. SHEPHERD: And then the last part of the calculation is you take all of those totals, all those net TRCs, and you deduct your overheads for all of your programs; right?

MR. BROPHY: Any of the costs related to those that weren't included in the program costs you've already subtracted, then you would subtract those at that time.

MR. SHEPHERD: And that net number, that is your budget pivot point; right? That's your target pivot point, if you like? That's where you're going.

MR. BROPHY: That's mathematically how you would calculate that.

MR. SHEPHERD: Okay. Now, we heard yesterday that you don't actually calculate that before the year; right? For

2006, you haven't calculated it yet. You don't know what you're going for, really.

MR. BROPHY: We don't have a pivot point for 2006.

MR. SHEPHERD: No, but if you had the same rules, and in the normal case -- okay. For 2003, you didn't have a number before 2003 was over that you were managing to; right? You managed to the volume number, which is way up the calculation; right?

MR. BROPHY: We had an agreement, as outlined in the settlement agreement, that gave a volumetric target of 72.5 million. That was the target.

Then I think I explained this, as well, but that was roughly estimated at the time of about $130 million in TRC -- net TRC benefits, but it was recognized by, I believe, almost all parties that there were other assumptions agreed to and the company would go back and recalculate that.

So that recalculation was done at the end of the year.

MR. SHEPHERD: I understand. My question is a simpler one. During the year, during 2003, for example, when you're managing your DSM program, you didn't have a target of 130 million. You had a target of 72.5 million m^3;right?

MR. BROPHY: Our target was 72.5 million.

MR. SHEPHERD: And that doesn't directly translate into dollars, because, as we've seen, there is a whole bunch of other assumptions to get to dollars; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: So when you manage -- I guess I don't understand why you would manage to a volume figure that doesn't drive your profits. Your profits are driven by your TRC figure. Why didn't you manage to that?

MR. BROPHY: Historically, we've been dealing with the pivot-point mechanism, and I think I've indicated that one of the major problems with a pivot-point mechanism is that it drives short-term results, and it had so much controversy and time spent not just in, say, settlement conferences or consultatives, but, you know, on a regular basis, in discussions, that it really caused a lot of time to be spent around a volume target.

And I agree it probably makes more sense to have a percent of net TRC for an incentive, where, you know, we acknowledge that it's TRC benefits that are the benefits coming to society. We used a cubic metre target as a surrogate for that in the past and equated it, because it was -- with all of the complexity of the pivot point, it helped to at least partially simplify some of that debate that went on every single year.

MR. SHEPHERD: But the problem you're talking about is a problem with having a target; right? It's not a problem with having a dollar target. It's a problem with having any target; right?

MR. BROPHY: It would be a problem with any target, but it was particularly complex when you had to go and take assumptions and equate that into TRC dollars, and there was a possibility that those assumptions, somebody could come later and suggest that they should change after the fact.

So that went away with the 2003 rules, but I think, as you're aware, we've had problems before those rules were in place with what was intended to be done up front.

MR. SHEPHERD: Well, because there's a whole lot of different factors in this calculation, right, and each one of these components of the calculation, if it changes, could affect your dollar figure at the end; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: But then you're still proposing to this Board that TRC, with all of those components, be used for your SSM; right?

MR. BROPHY: We're proposing net TRC as the basis for our incentive mechanism, yes.

MR. SHEPHERD: So if that's the case, then don't you still have the same problem? All of those assumptions are still in play each time?

MR. BROPHY: I believe that those assumptions, given the prospective rules that have been in place now since 2003 - and I believe the same set of rules were used for electric LDCs - that a lot of those problems do go away, because you're setting those rules up front.

And I take comfort, actually, in -- when I reviewed the Board's TRC manual, that many of those assumptions that we've been working on and haven't changed year on year since 2003, were taken into account recently when that Board document was released.

So I believe it shows that some of those are still current and wouldn't change over short periods of time.

MR. SHEPHERD: So your new proposal doesn't get rid of the complexity of the TRC calculation, does it? That's still there?

MR. BROPHY: There's still math behind the TRC calculation that does take time to calculate, yes.

MR. SHEPHERD: So the only difference is, under your new proposal, you have only an actual figure. You don't have a target figure; right?

MR. BROPHY: The incentive proposal from the company does not have a target figure, that's correct.

MR. SHEPHERD: Well, and you don't need a target figure anymore, right, because the only reason you used the target was to calculate the incentive; right?

MR. BROPHY: There were two areas where having a volumetric savings estimate was still relevant.

MR. SHEPHERD: Sorry, let me just stop you. We're talking about the TRC target now. Forget the volume. We're just talking about the dollar figure. The only reason you needed the dollar figure was for SSM, right, the budget?

MR. BROPHY: The company never had a TRC -- never used the TRC figure as its target, so -- but I would agree with you that we wouldn't be using that as a target figure going forward, as well.

MR. SHEPHERD: All right. The reason is because your new SSM isn't an increment over a goal or over a pivot point. It's simply a straight percentage of all the TRC; right?

MR. BROPHY: I believe that's correct.

MR. SHEPHERD: So you still have to calculate the TRC, so you still have all of those complexities, but it's the 2003 rules that make that calculation simpler, right, because they fix a whole lot of the assumptions; true?

MR. BROPHY: 2003 rules don’t change the complexity around doing the math to calculate a TRC number.

What it does is it takes away a lot of the uncertainty and complexity around things like the auditing and the whole process after the year, where parties may come forward and say, you know, you're done the year and you have your results, but we don't think you should get credit for them the way you thought when you set out to get those results to go and change those rules.

So it doesn't change the math that would have to be done for TRC, but it removes a lot of the uncertainties in the assumptions after the year is complete.

MR. SHEPHERD: And it does that by fixing many of those variances, many of those factors in the calculation. It fixes them in advance so that when you calculate your actuals, you don't actually look for what actuals you're producing. You only look for what assumed actuals you're producing; right?

So, for example, in free riders, the 2003 rules say that in calculating your actuals, you use your originally assumed free-rider rate regardless of whether it's true; right?

MR. BROPHY: That's generally the case, yes.

MR. SHEPHERD: So if you assumed 10 percent going in, then even if subsequent evidence shows that your free ridership was 50 percent, in calculating your actuals you use 10 percent; right?

MR. BROPHY: I believe that those rules are in place to provide some certainty to the company.

MR. SHEPHERD: Okay, sorry, sorry, Mr. Brophy. First answer the question. Then go on to the explanation, please.

MR. BROPHY: I know of a recent example -- and I believe you were on the audit committee. I didn't sit on that audit committee, but I understand you were a member of that -- where we have the 2002 results, which the Board has now accepted and cleared the LRAM and SSM to. And heading into that year, the free-ridership rate for custom projects was 10 percent.

That amount was recently cleared and it was a recommendation from the audit sub-committee to the company that, because in 2003 we changed it to 30 percent instead of 10 percent, and that research was being done in 2002 but wasn't available until the 2003 rule, they made a recommendation to the company that we apply the 30 percent free-ridership rate to the company, and we subsequently accepted that.

So although the intention is to lock those rules in and that's very helpful and provides clarity, the company has been willing, if there's information that comes available in the year that clearly indicates that it should be changing something, then it already has shown that it's willing to endorse those values.

MR. SHEPHERD: Well, okay, Mr. Brophy. Look, that's 2002. The 2003 rules applied in 2003 and thereafter; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: And in 2003 and thereafter, the rule is simple: If you assumed a particular free-ridership rate, that's the rate for actuals; right?

MR. BROPHY: That's the intention, yes.

MR. SHEPHERD: And are you telling us, telling this Board now that if it turns out that one of your free-rider assumptions is not correct, that you will use the correct number for actuals in the future despite the 2003 rules?

MR. BROPHY: Our intention is not every year, but from time to time to do a free-ridership study. And if, for example, we were to do that this year - which I don't believe we need to this year - and it came out with a different number within this year, then I would look at that information and determine whether or not it was relevant for coming back to the Board once the year was done to say whether or not we should be applying that. The rules right now --

MR. SHEPHERD: Sorry. Applying that prospectively?

MR. BROPHY: Well, generally --

MR. SHEPHERD: Only.

MR. BROPHY: -- it’s applied prospectively. But the company would talk to the consultative and stakeholders to get opinions on if it became available in that year, whether or not we should look at that gray area and decide to apply it to this year or not.

MR. SHEPHERD: Let's use a specific example. Right now, you're in the middle of your 2004 audit; right?

MR. BROPHY: It has begun, yes.

MR. SHEPHERD: Sorry?

MR. BROPHY: The '04 audit has begun, yes.

MR. SHEPHERD: Has been done?

MR. BROPHY: It has begun.

MR. SHEPHERD: That audit applies the 2003 rules that you're proposing to continue; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: And if you find, with information today, that in 2004, your widgets didn't save as much gas as you thought or had - let's use free riders - had more free riders than you expected, you expected that they would be 20 percent, it turned out they were 50 percent, are you telling the Board today that you will go back and you will fix 2004 so that your actuals are really actual? Even though the 2003 rules say you use the original assumption?

MR. BROPHY: I would have to take a look at what the audit committee and the audit -- auditor's report recommended and the reasons for that. But generally speaking, I don't believe that we should be going back retrospectively and making those changes unless there is a really good reason to do so.

MR. SHEPHERD: So for things like free riders, you should calculate the actuals based on the original assumptions, regardless of whether those are really the actuals, even if you have better information.

MR. RYCKMAN: This was a topic of much discussion in the 2003 rate case where we spent many days in the hearing room and this issue on whether changes such as free ridership should be on a prospective basis or retroactive basis. And the Board ruled at that time that it wasn't appropriate to apply them on a retroactive basis.

One of the things that you get into, we heard from Mr. Poch yesterday about free-ridership rate of 8 versus 90 percent or whatever that number was, and he agreed that that was just one person's opinion on what that should be.

There's nothing to substantiate that. If the company knew, for instance, that that free ridership of 90 percent was going to be applied for that program year, it likely wouldn't have done that program. So you would actually change the behaviours of the company if you know that in advance. So it's not appropriate to go back and penalize the company for that with a pivot point situation, also, that can be used to make the difference between an incentive or no incentive. So that's a critical point.

On the proposed incentive mechanism, I think there is much more flexibility for that, because it's not the difference of zero versus something. It's an adjustment to whatever that appropriate proportion of sharing is.

MR. SHEPHERD: What you're currently asking for is that the 2003 rules be approved for 2006; correct? That's one of the approvals you're asking for.

MR. BROPHY: Yes. The ones -- we went down the list, so the ones that were appropriate or are applicable, we're asking that they be --

MR. SHEPHERD: Let's just ask for these variables, free riders fixed set your budget amount even if you have better information later. That's one of the 2003 rules; right?

MR. BROPHY: I believe that I already answered that question in stating that that's the intention of the rules.

However, if, through the auditor report and the audit process there is good reasons to the company to suggest that we should be looking at something different, then we would consider that.

MR. SHEPHERD: Prospectively. Prospectively.

MR. BROPHY: Prospectively.

MR. SHEPHERD: Yes, thank you.

MR. BROPHY: For clearing that year.

MR. SHEPHERD: When you calculate the actuals after the year, after the year is out, for a year that's already finished, free riders are fixed at the original budget amount; right? That's what the 2003 rules currently say; yes?

MR. BROPHY: That's generally the case.

MR. SHEPHERD: Okay. Attribution is fixed at the original amount. Yes?

MR. BROPHY: That's the case, yes.

MR. SHEPHERD: Annual unit savings is fixed at the original amount? For prescriptive programs.

MR. BROPHY: For prescriptive programs, you would generally use those amounts locked-in up front, but there are -- there is a possibility that the auditor -- and I can give you again examples where the company has looked at things from –- oh, I guess Steam Saver is a business market.

MR. SHEPHERD: It's not a prescriptive program; right? In fact, what I'm asking you is what the 2003 rules say. What they say is, that's fixed; right? Annual units savings, fixed; right?

MR. BROPHY: That's the intention, yes.

MR. SHEPHERD: Measure life, fixed; right?

MR. BROPHY: The measure life's are generally fixed, yes.

MR. SHEPHERD: Avoided gas costs, fixed.

MR. BROPHY: Avoided gas costs are always fixed.

MR. SHEPHERD: Customer costs; fixed?

MR. BROPHY: In a prescriptive program --

MR. SHEPHERD: Yes.

MR. BROPHY: -- generally those are fixed as well.

MR. SHEPHERD: All right. So the only two variables that you have, the ones that -- when you calculate your actuals, the only things that are not the same as your budget are the number of participants and your program costs; right? Is there anything else that is a variable that has changed from budget to actual?

MR. BROPHY: I believe that we indicated earlier -- and it was around some of the prescriptive programs we discussed with Mr. Poch and Mr. Neme's appendix B -- that there's potential for electricity savings in some of those prescriptive programs, that the company intends to pursue in its programs, because they're saved through those types of programs, but that those benefits may be attributed to electric LDCs. So there is some flexibility there.

It's clearly the intention of the company to claim the benefits from its programs, but in cases where electric LDCs come in, as the example I gave for Ottawa Hydro, we're not intending to double-count those. So there is some flexibility in the way the company claims those.

MR. SHEPHERD: Mr. Brophy, how does that have anything to do with my question? I asked you a simple question. The 2003 rules, what variables are in the 2003 rules that change for budget to actual?

MR. BROPHY: Your question was looking at the prescriptive savings that we put forward in advance, and I believe what you were asking is: Are those the exact numbers that we would use in '06 to ‘08 in calculating actuals?

MR. SHEPHERD: I'm asking you a simple question. You have a number of variables in calculating TRC.

We understand that some of them are fixed before the year starts. There are only two, isn't this correct, there is only two, number of participants and program costs, that you actually take the actual numbers for the year in calculating in your TRC; isn't that correct?

MR. BROPHY: I believe your statement that participants and savings being the only variables that we use after the fact that reflect actual amounts, I don't believe that is correct.

All of the assumptions that the company uses in its filings are reflective of research and the latest available information that it has on actuals.

So what those are meant to do is reflect actuals. So basically all of those variables are meant to reflect actuals.

MR. SHEPHERD: That's not what the 2003 rules say, does it?

MR. BROPHY: I don't believe the 2003 rules say that the prescriptive program assumptions are not meant to reflect actuals. I think, in fact, they do reflect actuals.

All the 2003 rules say is, don't come after the fact and change the rules so that penalizing the company after the fact if it does what it was asked to do based on the prospective setting of those rules.

MR. SHEPHERD: So I'm looking at page 69 of Exhibit K31.2. Can you look at that, please?

MR. BROPHY: I have that.

MR. SHEPHERD: I'm looking at the fifth bullet where it says:

> "For prescriptive programs actual TRC benefits will be calculated using the budget of values for annual unit savings for measures, measured life times, customer incremental costs and free rider

rates."

MR. BROPHY: That's what that says, yes.

MR. SHEPHERD: So the 2003 rules say that if you have information that shows that those budget figures are wrong, you ignore that in calculating your actuals; isn't that correct?

MR. BROPHY: Can you repeat the question?

MR. SHEPHERD: If you have information that shows that the budget values for any of those variables are wrong, under the 2003 rules, you ignore that in calculating your actuals; isn't that right?

MR. BROPHY: The company uses the values that are in the plan, and if there's research that happens after that suggests that we should update some of those assumptions, then that's done prospectively, although we have made some exceptions based on recommendations from the audit committee to do that in the year that it occurs.

MR. SHEPHERD: Okay.

MS. NOWINA: Mr. Shepherd, I hope you don't mind if I ask a question. I just know that by the time we get to Board Panel questions, it will be another day, and I --

MR. SHEPHERD: I can use all the help I can get.

MS. NOWINA: You might not see it as help, but I just want to clarify this item.

The paragraph on page 69 that Mr. Shepherd just took you to, Mr. Brophy, doesn't mention attribution.

You -- when Mr. Shepherd was asking you the question, I think it was specifically using the 2003 rules, the only variables in actual are number of customers and EGD's costs.

You gave the example of when you were doing a program with an LDC, that the attribution may be partly for the electric LDC and partly for EGD.

So are you saying, if that becomes clarified during the year, that your assumptions going in are 50/50 attribution, but later you and the LDC in question decide it's a 60/40 attribution? I don't care which way it goes. Will you correct that at the end of the year for the actuals? Will it show the attribution that was later decided on?

MR. BROPHY: If we have a program where the benefits are split between us and an electric LDC, it makes sense for us to take the portion of incremental costs related to the savings we're claiming and for the other party to take the percent of the incremental costs related to the energy that they're claiming.

So we intend to use that ratio when we come forward with the actuals. So I'm happy that you asked the question, because when Mr. Shepherd was asking me about locking in the costs, it slipped my mind, and even though I mentioned it yesterday and possibly Thursday, that that's our intention, we've already stated that we're going to use the portion related to the benefits that we're claiming.

MS. NOWINA: So the attribution of the costs will be dependent on that ratio, and the benefits, as well?

MR. BROPHY: That's correct.

MS. NOWINA: And that may change during the year, even though you budgeted for certain attribution?

MR. BROPHY: I'm sure it will, yes.

MS. NOWINA: Thank you.

MR. SHEPHERD: Okay. Let me just follow up with that. So if you have a program that you're planning right now and you're assuming it's going to be 50/50 attribution between you and an electric utility partner, let's say, that's built into your plan right now. It's built into your budget and everything. But it turns out, as the year goes on, that really they're doing more work on it than you are and really the fair attribution would be 70/30. Are you telling us that when you calculate the actuals at the end of the year, you will calculate it 70/30 for the electric?

MR. BROPHY: When we -- again, this is what we're planning to do subject to what the Board's direction is, but the company is hopeful that we can go and negotiate agreements with electric LDCs to partner with them on delivering programs and they will get some benefits from those programs. Enbridge will get benefits from those programs.

The pivot-point mechanism, at least historically, assumes that you've locked-in certain benefits for Enbridge. So we have, for instance, electrical benefits from the DC variable speed motor program that links with the high efficiency gas furnace program. And if you were to look at the TRC estimate right now, it includes those savings.

It's very likely -- and we have already been approached by electric LDCs that see that as a great program and want to partner with us and try to enhance that program. It is likely that Enbridge will not be claiming all of those benefits, 100 percent of the electricity benefits, from all of the DC variable speed motors if it is successful in growing those partnerships.

So that's another reason why the pivot-point mechanism is very misleading where you're setting something upfront, where the percent of TRC -- net TRC, sorry, allows you to develop those relationships and agreements through the year, and we'll come forward with what our share of those benefits are when we report our actuals.

MS. NOWINA: Mr. Brophy, with respect, I'm not -- that may have -- I thought I had a clear answer to my question and that may have confused me a little.

Can I use a hypothetical case -- or maybe it isn't hypothetical. Maybe you can give me a real case.

Do your projections now -- your estimates that you have in this case, do they include some of these LDCs' programs and some projection of what the allocation will be, what the split will be between Enbridge and the utility -- and the LDC?

MR. BROPHY: The information used to calculate the estimated TRC benefits in the plan do not include what those attributions would be, because we don't -- we haven't negotiated those agreements. We don't know what those numbers are going to be until we're in the year.

But the company has stated that we will use -- in our actuals, we will apply -- if the Board approves us going forward and partnering in the manner we're proposing, we will include the agreed-upon split between us and the LDCs we're partnering with.

MR. RYCKMAN: I think one of the things to consider, as well, as we move forward with this type of initiative, if we're to look at the DC variable motor as an example, if we've got an understanding of what those benefits are and we're entering discussions with an electric LDC, one of the things that Mr. Brophy said over the last couple of days was that we would enter into a partnership agreement with them, and those issues of attribution would be fleshed out and agreed upon by the parties entering into that.

If after we've gone out and actually delivered that type of activity, then intervenors or other people come forward and say, No, we disagree with the savings that are associated with that, that could put the LDC and Enbridge at risk.

So that's why it's important to lock some of these assumptions in. The other thing is that the energy savings associated with a DC variable motor aren't necessarily changing dramatically year over year, in a material manner. So it doesn't make sense to necessarily go back and create that risky environment in an area where those changes may not be significant to begin with and, again, the parties have agreed to the attribution up front.

MR. SHEPHERD: Are there any --

MR. SOMMERVILLE: Can I ask a clarifying question?

MR. SHEPHERD: Sure.

MR. SOMMERVILLE: If I understand that answer, Mr. Ryckman, it's to the effect that once you have agreed with the electricity LDC on an allocation split --

MR. RYCKMAN: Yes.

MR. SOMMERVILLE: -- that's the end of it.

MR. RYCKMAN: Yes.

MR. SOMMERVILLE: That’s what you're going to go with. No matter what the experience during the course of the year going forward might be, whether you contribute more or they contribute more, you seek certainty in that contractual arrangement and the allocation that occurs within it; is that right?

MR. RYCKMAN: Yes. And so what I'm referring to is retroactive changes. That's not to say we would ignore new information going into the future necessarily. I think we have demonstrated that, we've been reasonable on that front, even with the table that's in Mr. Neme's evidence we've gone through and we've agreed that certain changes are reasonable to take place.

So I think we've demonstrated that, you know, we do consider new information on a go-forward basis. It's not appropriate to go back and apply that retroactively.

MR. SHEPHERD: I just have two final questions on this.

MS. NOWINA: I'm sorry, Mr. Shepherd. Go ahead.

MR. SHEPHERD: I have just one clarifying question.

The $158 million TRC estimate, does it include any programs that are attributed less than 100 percent to EGD?

MR. BROPHY: No, it doesn't.

MR. SHEPHERD: So attribution isn't a problem this year, because everything is attributed 100 percent. The only attribution you're going to have is in electricity going forward; right?

MR. BROPHY: I don't believe it will be a problem with electrical -- electricity, as I think we have proposed a mechanism that is clear and transparent to work that out.

MR. SHEPHERD: Okay. Then my last question on this area, on the 2003 rules is: Is it correct, then, for this Board to assume that the actual TRC benefits that you calculate for any given year are not really the actual TRC benefits that you generated during the year. They're an approximation using assumptions that may or may not be correct, with the best available current information. Is that true?

MR. BROPHY: We did an exercise in one of the recent audits, where we took the TRC benefits for SSM purposes and then there were a few minor adjustments done -- as I think you know -- to apply some things for some LRAM purposes. And there wasn't a big difference between those amounts. There were still significant benefits in both cases for ratepayers.

MR. SHEPHERD: Well, okay, so let's actually turn to that. I wasn't going to turn to it, but since you mentioned it, why not. Can you look at K27.1, please. Do you have that, Mr. Brophy?

MR. BROPHY: Yes, I have that.

MR. SHEPHERD: That's the document you're referring to, isn't it?

MR. BROPHY: Yes. That's one exercise that demonstrates that, yes.

MR. SHEPHERD: If I can simplify this, if you look at the second page of that document, you see that there's -- right at the bottom, there's a TRC NPV in millions of dollars under the column “SSM case.” That's the actual number you used in calculating your SSM; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: Then the next column over to the right is a figure 119.7 million, and what's happened is, Mr. Millyard, working for the company, on retainer to the company, has calculated, if you use the LRAM numbers for volumes and converted it into TRC, the TRC would actually only be 119.7 million; right?

MR. BROPHY: That was intended to represent -- there were some discussions on adjustments within the audit committee, as I understand, where some members of the audit committee thought that some further adjustments should be made after the SSM TRC should be applied.

So when you apply those adjustments, Mr. Millyard took two sets he took an A scenario and B scenario, went away and crunched the numbers and that's what's represented here.

MR. SHEPHERD: The LRAM case, whether you use the A or

B, they're not that much different, but whether you use A or B, the LRAM case represents -- it's closer to the actual savings, isn't it? Because it incorporates a bunch of updated information that you didn't have at the time you did your planning for 2003; right?

MR. BROPHY: I believe it's in the range of what the actual savings are, yes.

MR. SHEPHERD: Okay. Will you accept, subject to check, that the result was that your SSM for 2003 was $1.1 million higher, because of the 2003 rules?

MR. BROPHY: I'm sorry, I don't have my calculator, but I don't --

MR. SHEPHERD: It's in the range, isn't it? The difference is about 6 million TRC, and some of that was at 18 percent and some of that was at 15 percent; right?

MR. BROPHY: So that, because of the declining step, the incremental TRC is always at the lower, the last tier, because it is declining the way the 2003 SSM was. The more you do, the less you get of each increment. So it would be what that last increment is times that amount.

MR. SHEPHERD: Well, no. It wouldn't actually, would it? Because this takes you down so that you're all within the first increment; isn't that correct?

MR. BROPHY: Yes. So the company would have received its SSM within the first increment, which is the highest percent. But then once you move out of that into the next increment, it's the lower percentage that you're applying.

MR. SHEPHERD: Why don't we simplify this. Will you undertake to calculate the SSM based on 119.7 million TRC in 2003 under the rules in place at that time?

MR. BROPHY: I can do that, yes.

MR. SHEPHERD: Thanks a lot.

MS. NOWINA: Mr. Battista.

MR. BATTISTA: That will be Undertaking J32.1.

UNDERTAKING NO. J32.1: CALCULATE SSM BASED ON 119.7 MILLION TRC IN 2003 UNDER THE RULES IN PLACE AT THAT TIME

MR. SHEPHERD: Now, you proposed to apply the 2003 rules to the test year, but you wouldn't apply the budget portion of them, because there is no pivot point any more; right? You would only be applying them to the calculation of the actuals in the 2006 year; right?

MR. BROPHY: We would use the 2003 rules and apply them to the actuals, that's correct.

MR. SHEPHERD: So you have a set of assumptions already in place for these variables, that would be used in 2007 when you come to do the audit for 2006. In 2007, you would use those figures for these variables that are fixed in the 2006 rules; right?

MR. BROPHY: We come forward with those lists of assumptions as we have done in this rate case, and where there's suggestions that they should change, as Mr. Neme has done, we've made a few adjustments.

MR. SHEPHERD: That's not my question. Sorry.

When you're doing your audit, you're calculating your SSM for 2006, under your proposal you're going to take the

TRC amount you're going to multiply it by 5 percent and you're going to say to the Board in 2007 or 2008 whenever you get to it: Can we please have this money?

To calculate the TRC number, you're going to use the figures you filed now for all of these variables; right?

MR. BROPHY: With the exception of what we talked with Madam Chair about. Yes.

MR. SHEPHERD: But other than that, all these other ones, you're going to use the numbers you have now it doesn't matter what new information you have; right?

MR. BROPHY: That's the intention.

MR. SHEPHERD: Okay, thank you. I want to turn to the LRAM. Remember we went through your approvals you're asking for. One of them is a continuation of the existing LRAM rules; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: We already heard, when we were talking about the volume target, we agreed that you bake into rates a certain volume of DSM adjustment, reduction; right?

MR. BROPHY: That's correct.

MR. SHEPHERD: And the way you do that is you take the -- you take what is called the fully-effective number which is the annual savings from the programs you anticipate implementing, and then you calculate how much of that you will get during the test year when each of those programs is incremental. You're feeding them in month by month so you're not getting a full year's saving for all of them; right?