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BARRISTERS & SOLICITORS

February 14, 2005

John Zych Board Secretary  
Ontario Energy Board  
26th Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

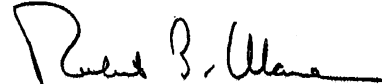
Dear Sir:

**Re: RP-2004-0188**

We are counsel to the Consumers Council of Canada. On behalf of our client we enclose herewith eight copies of its Final Submission in this matter, together with an electronic copy on a diskette.

Yours very truly,

**WeirFoulds LLP**



Robert B. Warren

RBW/dh

cc: Dr. Peter Dyne  
Joan Huzar  
Julie Girvan  
All Intervenors

**THE ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the Ontario Energy Board Act, 1998, C. 15, (Schedule B);

**AND IN THE MATTER OF** the preparation of a handbook for electricity distribution rate applications.

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**FINAL SUBMISSION OF THE CONSUMERS COUNCIL OF CANADA**

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## **2006 ELECTRICITY DISTRIBUTION RATE HANDBOOK**

### **FINAL SUBMISSION OF THE CONSUMERS COUNCIL OF CANADA**

On July 6, 2004 the Ontario Energy Board ("Board") began the process of developing a 2006 electricity distributor rate handbook ("Handbook") to assist the Ontario electric local distribution companies ("LDCs" or "Applicants") in preparing their 2006 rate applications. The development of the Handbook has been undertaken through a series of stakeholder meetings, working groups and an oral hearing process. The Board has requested submissions by parties on the unresolved issues related to the Draft Handbook and any other issues of concern.

These are the final submissions of the Consumers Council of Canada (the "Council") regarding the Draft Handbook. The Council has actively participated in most stages of the Handbook development process. Although all elements of the Handbook are relevant in setting just and reasonable rates the Council's submissions will not address all issues, but rather focus on the unresolved areas of most concern and relevance to the Council's interests.

The Council acknowledges that Board Staff and other stakeholders have contributed significantly in terms of time and effort to the development of the Handbook. The Board must be very clear, however, that the Handbook is only for the purposes of setting rates for 2006. The Council submits that, following a comprehensive cost allocation process in 2007, it will be necessary for the Ontario LDCs to file full cost of service studies for the purposes of setting rates in 2008. This is even more important if there is a policy decision in the future to implement a performance based regulation regime ("PBR") for the LDCs. Many parties, including the Council, have agreed to accept many of the approaches set out in the Handbook on the condition that a full cost of service review would be undertaken for 2008. The Board needs to be explicit that such a review will be undertaken.

The Draft Handbook states that, "Applicants should be aware that applications which are not consistent with the 2006 Handbook will require a significant length of time to process. Evidence over and above that required in the 2006 Handbook will be necessary to justify a departure from the 2006 Handbook methodology." The Council submits that there should be some reference to a section in the Handbook which sets out the level of detail that may be required to support a departure from the Handbook. Without some specification as to what might be required, there is a risk that LDCs will take unnecessary time and incur unnecessary expense before the type of evidence required is provided to the Board.

The Council believes that the Board must consider the extent to which the proposed filing date of July 4, 2005, date is realistic. Recognizing the need to get applications filed and reviewed by the Board prior to the May 1, 2006 implementation date, the Council is also cognizant of the need to ensure that the Applicants have sufficient time to adequately prepare the applications and the

supporting evidence. In light of all of the current obligations imposed on the LDCs it will be important for the Board to seek input from the LDCs as to the reasonableness of the July 4 date. Not allowing LDCs sufficient time to adequately prepare their applications may result in increased delays at later stages in the process.

## **DESCRIPTION OF THE APPLICATION – Chapter 2**

This section indicates that it is up to the Applicant to demonstrate, through the evidence it describes, that the rates sought are just and reasonable. It also indicates that the description of the application will be similar to what was included in the “Manager’s Summary” in previous rate applications. The section further requires an Applicant to “include in the description of the application any information that will assist the Board in understanding and assessing the application for rates”. The Council understands that, in the past, the level of detail provided in the manager’s summary varied considerably from utility to utility. The Council believes that it would be useful for the Board to provide an example of an application that includes the level of evidence detail that would be required under each of the filing alternatives (Tier 1, Tier 2 or a forward test year).

## **TEST YEAR AND ADJUSTMENTS – Chapter 3**

### **Test Year and Adjustments – Section 3.0**

Applicants have three options for filing their 2006 Rate Application – Historical based Tier 1, Historical based Tier 2 or a full forward test year application. One of the issues that is yet unresolved is the extent to which Applicants filing a Tier 1 or Tier 2 application must disclose “any material events expected to occur in 2006, which are identifiable, quantifiable and verifiable.”

The Council supports a requirement for disclosure of such material events. If a material event is expected to occur it will likely affect the LDC’s costs and/or revenues for 2006. To the extent this can be predicted with some level of certainty, the impact should be reflected in rates. If the obligation to disclose such information is optional the likelihood of events being disclosed that may reduce rates will be minimal. An obligation to disclose such an event will ensure that all impacts are accounted for (to the extent they are material) whether accounting for them will increase or reduce rates. It will be up to the Board to determine whether or not an adjustment is required to reflect the “event” in rates. This may require an adjustment on both the revenue and cost side.

### **Test Year Adjustments – Section 3.2**

#### **Tier 1:**

Another unresolved issue is the extent to which new transformer stations planned to be in service in 2006 should be considered in setting rates. As noted above, if a material event is expected to occur the LDC should have an obligation to report that to the Board. The Board will then determine the extent to which that event should be reflected in rates. This should hold true for all “material” events which could include placing a transformer station in service to the extent it meets the materiality threshold. The onus will be on the LDC to justify its proposed rate-making

treatment. It is important to recognize that those that choose a Tier 1 approach are forgoing the forward test year option. In doing so, adjustments to the 2004 base are limited. If the Board determines that rates for 2006 should be adjusted to reflect the addition of a new transformer station they should also consider an adjustment to reflect any increased revenue associated with the addition of the transformer.

One of the Tier 1 Adjustments is the "OEB Annual Dues and Other Regulatory Agency Costs". The Handbook should specify exactly what is specifically captured by the category "Other Regulatory Costs."

With respect to Tier 1 adjustments the Council does not accept the proposition that LDCs should be allowed full or partial recovery of unusual 2004 bad debt. The point of Tier 1 adjustments is to adjust 2004 results to make it closer to a typical year. Accordingly, a bad debt write-off associated with bankruptcy or equivalent of a major customer in 2004 is an appropriate Tier 1 adjustment. The "unusual" 2004 bad debt expense should not be reflected in 2006 rates. To the extent LDCs are compensated for unusual bad debt expense in 2004, there should be a corresponding adjustment to the LDC's ROE to reflect a reduction in the LDC's business risk.

With respect to 2004 merger and acquisition costs, as a matter of principle the LDCs should not be allowed to recover those costs by leaving them in the 2004 base. To the extent the Board allows M&A costs to be recovered in this manner, there should be a corresponding adjustment to reflect increased efficiencies resulting in the merger or acquisition.

Board Staff has requested input regarding the appropriateness of allowing LDCs to base their 2006 rates on unadjusted 2004 data. The Council submits that allowing that option would not be appropriate. If such an option is allowed the likely outcome would be for LDCs to consider which approach would be most advantageous to its shareholders and file accordingly. All LDCs that choose Tier 1 should be required to make the mandatory adjustments.

Board Staff is also seeking input on how practical it will be to require LDCs to file all "readily known, identifiable, quantifiable and verifiable occurrences taking place in 2004 which exceed the materiality thresholds." Although there will be an incentive for the utility to only report adjustments that will be advantageous to the shareholder, it should not be difficult for them to identify all items that exceed the materiality threshold. During the working group process there was an expectation that this type of item would be the exception, not the norm. For many LDCs no such events occurred in 2004. Reporting on these types of unusual occurrences is a common approach used in most performance based regulation models. Within the context of those models the utility has an obligation to report all unusual items exceeding a threshold, whether advantageous to the shareholder or the ratepayer.

## **Tier 2:**

It is important for the Board to recognize that the Tier 2 adjustments were developed for a relatively small number of LDCs. They will require greater scrutiny and more evidence than Tier 1 adjustments, but the process should be less onerous for the utility than a full cost of service review.

The Alternatives set out at page 23 provide a choice between allowing an LDC to take corrective action to address material degradation of the distribution system or to simply allow them to adjust rate base and distribution expenses to achieve sustainable levels going forward. The Council supports Alternative 2 as it is imperative to allow the LDC to take corrective action as required to ensure the distribution system is sufficiently maintained. The Council is accepting Alternative 2, however, on the assumption that there are relatively few LDCs that would qualify for a corrective adjustment as described. In addition, there is an expectation that the evidence to support a request for corrective action would be comprehensive. In effect, the onus would be significant to demonstrate that material degradation of the system had occurred and an increase in rates is required to bring the system back up to an acceptable level.

## **RATE BASE – Chapter 4**

### **Definition of Rate Base – Section 4.1**

The Council supports the calculation of rate base as an average of the balances at the beginning and the end of 2004. This is consistent with the approach used for the Ontario natural gas utilities. In addition, there should be a specific comment in the Handbook that the Tier 1 adjustments allowed for in Chapter 3 should be for actual known costs.

### **Capital Investments – Section 4.3**

With respect to capital investments the intent of the guideline is to ensure that the Board has sufficient information to review “major” capital projects. Without some actual utility data that indicates the extent to which the thresholds are sufficient to capture “major” expenditures it is difficult to determine whether the thresholds are appropriate. The Council supports Alternative 1 setting out both a dollar value and a threshold based on a percentage of fixed assets. In the future there may prove to be a better way to highlight “major” projects.

### **Interest on Deferral Accounts and Construction Work in Progress – Section 4.4**

The Handbook has a number of alternatives regarding the appropriate interest rates for both deferral accounts and construction work in progress (“CWIP”). With respect to CWIP the Council supports the proposal advanced by Mr. Matwichuk, which is to use the rate of return on rate base for utilities whose capital structure includes an equity component and an interest during construction (“IDC”) approach for utilities entirely financed by debt.

With respect to the rate applied to deferral accounts the Council sees merit in including Mr. Matwichuk’s Table 1 found at page 22 of his Report in the Handbook. The table is relatively straightforward and allows for administrative simplicity, but also recognizes there are differences between the ability of large and small utilities to finance their operations. The Council sees a second best approach in the Board simply setting one specified rate for the 2006 deferral accounts which is consistent with Alternative 2 as set out in the Handbook. A generic approach may be easier to administer, but may also provide a windfall opportunity to some LDCs that have access to less expensive financing. The underlying principle adhered to in determining

what rate approach is applicable should be to set the rates at a level to ensure equity between the shareholders and ratepayers to the extent possible.

## **COST OF CAPITAL – Chapter 5**

### **Maximum Return on Equity – Section 5.1**

The Handbook sets out two alternatives to determine the applicable 2006 maximum return on equity. The Council supports Alternative 1 which proposes that the Board determine the maximum allowed return on equity using the most current data available at the time the Board issues its 2006 EDR Decision. Although Alternative 2 would provide a more current forecast, Alternative 1 would avoid the need for a variance account.

### **Debt Rate – Section 5.2**

The Handbook sets out alternatives for determining how to calculate debt rates for debt held with a third party or an affiliate. The Council supports Alternative 2

## **DISTRIBUTION EXPENSES – Chapter 6**

The Council recognizes there is a need for regulatory and administrative efficiency while at the same time ensuring that the Board and intervenors have sufficient information to assess an LDC's rate application. To the extent the LDCs file limited information, intervenors and Board Staff may be required to ask numerous interrogatories. To the extent the filing requirements are overly detailed the utilities may spend a considerable amount of time producing schedules that are so detailed, their use is limited.

The Distribution Expense working group did not agree on the precise level of detail that should be required to be filed in support of the LDC applications. From the Council's perspective this may be an issue that could be resolved through brief stakeholder consultation in conjunction with Board Staff. Recognizing that 2006 is an isolated filing year, and recognizing that some balance in terms of the level of detail needs to be established, such a consultation might be the most efficient approach available to determine the appropriate level of detail.

### **Bad Debt Expense – Section 6.2.2**

As noted above the Council supports 2004 "unusual" bad debt expenses as a Tier 1 adjustment. In effect, to the extent an unusual bad debt occurred in 2004, that expense should not be reflected in 2006 rates without some reduction in the allowed ROE to reflect the corresponding reduction in business risk. Given the framework for the establishment of 2006 rates the Council does not believe that unusual bad debt expenses incurred in 2004 should be reflected in 2006 rates.

### **Advertising, Political Contributions, Employee Dues, Charitable Donations, Meals/travel and Business Entertainment, Research and Development – Section 6.2.4**

With respect to charitable contributions the Council supports Alternative 2. Charitable contributions should be an expense borne by the shareholder. This is consistent with the methodology employed in the regulation of the natural gas sector.

The Council supports the mandatory filing of all policies relevant to employee meals, travel and business entertainment.

With respect to the filing requirements regarding employee compensation, for those utilities with less than three the Council takes no position. The Council is sensitive to the concerns of many of the small LDCs, however, that disclosure of individual salaries may be sensitive in the context of small communities.

With respect to the additional filing requirements regarding salary disclosure, the Council supports the proposal to mandate each distributor to disclose individual salaries for employees earning more than \$100,000 per year. Provincial legislation may make the point moot, requiring such disclosure regardless of the size of the utility. The Board might consider putting a limit on the disclosure, only applying it to LDCs with more than 50 employees.

#### **Distribution Expenses Paid to Affiliates – Section 6.2.7**

The Council supports Alternative 1 as described on page 58 of the Draft Handbook.

#### **TAXES/PILS – Chapter 7**

The Council has no positions regarding the specific proposals regarding the regulatory treatment of taxes proposed in the Draft Handbook or those proposals dealt with through the oral hearing process. The Council, however, has a number of general observations regarding the treatment of taxes for 2006 rates and beyond.

It should be recognized that the Ontario municipally owned LDCs do not pay taxes, but continue to pay “payments in lieu of taxes” (“PILS”). There has been a concern that in recent years the LDCs have recovered in rates more tax related amounts than they have been required to submit to the Ontario Government. Clearly, there should not be any opportunity for Ontario LDCs to benefit from this disconnect.

Having reviewed the tax section of the Handbook, the Council believes that, in light of the fact that Ontario LDCs do not actually pay taxes, there must be a less complex way to calculate the amount of taxes recoverable through rates. Given the issues have generated considerable debate the Council sees merit in the Board retaining a consultant to develop the overall framework for the treatment of 2006 taxes for Ontario LDCs. One of the key objectives would be for the consultant to develop proposals that adequately balance the interests of shareholders and ratepayers.

#### **RATES AND CHARGES – Chapter 10**

##### **Unmetered Scattered Loads – Section 10.2**

The Council accepts the proposal as set out in the Handbook regarding unmetered scattered load as an interim solution, only applicable to 2006.



## **Update of Loss Adjustment Factor – Section 10.5**

With respect to the loss factor alternatives the Council supports Alternative 2 as it creates an incentive for the LDC to control losses.

## **MITIGATION – Chapter 13**

With respect to the set of rate mitigation issues the Council supports the detailed submissions made to the Board by the Vulnerable Energy Consumers Coalition (“VECC”). The Council has cooperated with VECC on a number of issues and on this particular issue both groups have a common position.

## **COMPARATORS AND COHORTS – Chapter 14**

Robert Camfield of Laurits R. Christensen Associates Inc. was asked by Board staff to assess the feasibility of developing Comparators and Cohorts (“C&C”) to assist in assessing 2006 rate applications. Mr. Camfield’s report is Exhibit B.4.

The purpose of the report was stated by Mr. Camfield to be the following:

1. To determine whether a C&C mechanism is feasible and can serve as a practical tool to assist in the processing of rate applications for rebased rates in 2006;
2. To determine a basis for the comparison of costs for Ontario’s electricity distributors;
3. To determine the data and information reporting requirements, with a focus on data not currently reported. (Exhibit B.4, p. 2)

It is clear from Mr. Camfield’s testimony that the C&C mechanism would be used as a “screening” tool only. Mr. Camfield described the screening tool as a way to “highlight” cost anomalies that may suggest further investigation of the subject LDC’s rate application in some way”. (Tr., Vol. 6, p 279). Mr. Camfield envisages that, once the screening tool has highlighted an anomaly, Board staff will undertake further examination of the data, including, if necessary, seeking further information and an explanation from the LDC itself.

Mr. Camfield produced, prior to his testimony, Exhibit 6.3, which is a form setting out the data which the LDCs would be required to provide. The form identified the data which the LDCs are already filing, as well as the data not yet filed. Mr. Camfield had noted in his report that there were inconsistencies and omissions in the data filed by the LDCs in their 2002 and 2003 PBR filings. (Exhibit B.4, p. 39).

In cross-examination, Mr. Camfield was asked about the difficulty, and the cost, of LDCs, and in particular the smaller and less sophisticated LDCs, in obtaining and filing the data listed in Exhibit 6.3. In all cases, Mr. Camfield said that the data was reasonably available, albeit with some additional work required for some categories of data. He summarized his view in the following exchange.

MR. WARREN: Now, let me try and summarize. I want to deal with the information that's in the Exhibit 6.3, only the X categories, that is the essential information. As we sit here today, sir, do you have any sense of the time required and the cost involved for the LDCs to assemble this data, any sense of that at all?

MR. CAMFIELD: Yes.

MR. WARREN: And what is your sense of the time required and the costs involved?

MR. CAMFIELD: I would describe it as minimal to modest.

MR. WARREN: Would that answer, sir, apply even to very small utilities, LDCs with limited staff and, perhaps, less sophistication with respect to the giants that surround me here at counsel table?

MR. CAMFIELD: I would describe this as non-burdensome to them as well.  
(Tr., Vol 6, pp 382-387)

Hydro One Networks ("HON") filed a report from Dr. Lowry of the Pacific Economics Group, LLC, which, on the surface, is critical of Mr. Camfield's report and, by necessary implication, of employing the C&C mechanism for 2006 rates. Dr. Lowry's report is Exhibit B.10. Notwithstanding the apparently critical content of Dr. Lowry's report, Mr. Rogers, counsel to HON, characterized the evidence in the following way, in his cross-examination of Mr. Camfield:

So I want you to understand that his [Dr. Lowry's] evidence is put forth in that spirit, that my client wishes to assist in developing this process as efficiently and as completely as possible. (Tr., Vol. 6, pp 541)

Mr. Camfield himself characterized Dr. Lowry's criticisms of his report as items which "largely relate to design specification, which is part of our task in this year, calendar year 2005, prior to implementing the C&C mechanism for practical advantage, should the Board proceed with it at all" (Tr, Vol. 6, pp 451). It would appear, thus, that Dr. Lowry's report should not be read as an impediment to the use of the C&C mechanisms for 2006 rates, but rather as a commentary on technical adjustments required in Mr. Camfield's proposed mechanism.

The Council's approach to Mr. Camfield's suggested C&C mechanism is influenced, in the first instance, by its concern for the enormous administrative burden which assessing the applications of 90 LDCs will impose on the Board. That administrative burden requires that there be some mechanism which allows the Board to identify obvious cost anomalies which, if not addressed, might give rise to rates which are unfair to ratepayers. Against that background, the Council believes that the C&C mechanism represents a tool that will assist the Board in at least a threshold screening of the applications.

In considering whether the proposed C&C mechanism should be used by the Board, the Council applies the following tests:

1. Is the mechanism fair to LDCs, in the sense that they are all treated in the same way and in the sense that they can obtain the data at reasonable cost?. With respect to this latter

point, the Council needs to be assured that employing the C&C mechanism will not impose an undue burden, particularly on smaller and less sophisticated LDCs;

2. Is the mechanism reasonably accurate, that is, does it reflect the actual circumstances of the LDCs?
3. Will the mechanism be used as a screening tool only, that is, not as a tool which is determinative of their rates? As a corollary, will the LDCs have a full opportunity to explain any anomalies which the mechanism identifies in their applications?

The Council is satisfied from Mr. Camfield's cross-examination that the C&C mechanism meets all of its tests and should, therefore, be employed.

The Council's penultimate point on this issue is that the operation of the C&C mechanism should be transparent. Data required by the mechanism should be publicly filed, so that ratepayers and stakeholders are able, by themselves, to undertake their own analysis.

Much of Dr. Lowry's concern with the C&C mechanism is with the possibility that the information required for its operations will be misinterpreted, perhaps to the detriment of the LDCs, in the capital markets. The Council believes that this concern is misplaced. The Council believes that sophisticated lenders are going to be doing their own analysis of the costs of the operations of the LDCs to whom they have loaned money, and that that analysis will likely involve a comparison with the costs of similarly-situated LDCs. Any risk that the information might be misinterpreted by anyone, whether the Board or the capital markets or stakeholders, is addressed by, first, making it clear that the C&C mechanism is a screening tool only and, second, by providing LDCs with a full opportunity to explain the data. The Council believes that full transparency increases the accountability of LDCs to their ratepayers, and that this accountability is as important, in the public interest, as the attitudes of capital markets.

Finally, the Council believes that the C&C mechanism should be further developed, with a view to employing a full benchmarking system in the future.

## **CONSERVATION AND DEMAND MANAGEMENT**

With respect to 2006 the Board must determine the appropriate regulatory framework for Conservation and Demand Management (CDM) programs carried out by Ontario LDCs. The Board must also address whether there is a need to include a CDM section in the Handbook or prescribe a different process with which to deal with the 2006 CDM initiatives.

The Council supports the pursuit of cost-effective CDM in Ontario, and has supported a role for LDCs in the delivery of CDM programs. There is a critical need to address the current electricity demand/supply imbalance in Ontario and CDM initiatives represent an important element in overcoming that imbalance. The Council believes, however, that the credibility of CDM initiatives will largely depend upon their success. Simply throwing money at programs in the name of "conservation" is not enough. Ontario electricity consumers, those that pay for the programs through rates, will expect results. Ultimately, if energy consumers in Ontario are funding these initiatives, they must be confident that tangible and sustainable benefits will be

delivered to those customers. There must also be mechanisms in place to accurately assess results. Having an effective framework in place to ensure that CDM initiatives are pursued in the most cost-effective way possible is the best way to ensure their success. CDM funding should not be seen to be unlimited and accordingly, the Board and the Ontario Government must ensure that the ratepayer funds used to support CDM are spent wisely. In that context it is important to take the time to get the framework right.

In its submission to the Board dated, February 9, 2004, regarding the Board's review of demand side management and demand response framework for Ontario, the Council advocated a centralized approach to CDM. In its view, a centralized approach represents the most cost-effective way to ensure the conservation and demand management initiatives are pursued both efficiently and effectively. The Council continues to advocate such an approach and sees an essential role for the new Ontario Power Authority ("OPA") in this area. The Council recognizes, however, the need for the Board to establish a regulatory framework for 2006 in light of the fact that the Ontario LDCs are currently involved in the delivery of CDM programs and that the costs of those programs are recovered through distribution rates.

The Council does not believe that the interests of the LDCs or electricity consumers in Ontario would be well-served by imposing obligations on the part of the LDCs to "aggressively" expand the programs currently proposed with concomitant increases in CDM spending. For the reasons set out below, the Council believes that 2006 should be considered by the Board as a transitional year for CDM, an opportunity for LDCs to gain experience with their current plans and evaluate that experience. Rather than developing a new comprehensive set of rules for 2006 around screening, incentives, revenue protection, monitoring, evaluation, and audit protocols, the Board and the OPA should focus on developing such a framework for 2007 and beyond. The Council notes that such an approach is consistent with the Board's Draft Business Plan for 2005-2008.

The Council submits that there are a number of circumstances which provide context within which the Board should consider the CDM framework for 2006. Those circumstances dictate the need for the Board to encourage LDCs to focus on their current initiatives rather than attempting to design entirely new programs or materially augment the plans initiated in 2005. Those circumstances also dictate, in the Council's view, that the Board should attempt to minimize its own regulatory burden associated with oversight of the CDM initiatives. The circumstances which set the context for the 2006 regulatory framework are the following:

**i) The 2005-2007 CDM Plans**

The Government of Ontario announced in May 2004 that the Ontario LDCs would be permitted to earn their full market based rate of return effective March 1, 2005, on the condition that they spend an amount equal to their third tranche instalment of the return on CDM programs over the three year period 2005-2007. The overall figure for Ontario was estimated to be approximately \$225 million. To date almost all Ontario LDCs have applied for their full return and have proposed ways in which they plan to implement their CDM spending. The Board has given its approval for many of the LDCs' CDM plans.

Given that the plans for 2005-2007 have not yet been implemented, and for some LDCs have not yet been approved, it would be premature to require the LDCs, in a matter of months, to propose additional CDM plans under an entirely new set of rules. In addition, it would be premature to require LDCs to bring forward proposals for 2006 in light of the fact they will have no real experience to draw on or no actual results to assess. In fact, the LDCs themselves have acknowledged that they currently lack the data required to undertake any cost/effectiveness tests. By the time any cost/benefit evaluation process can occur for 2005, we will be well into 2006. The Council believes it would be unreasonable to expect material changes for 2006 before some assessment of an LDC's experience to date was undertaken.

Another consideration for the Board is the extent to which the third tranche amounts will be spent over the three-year period. Given the sheer magnitude of the amounts, it is reasonable to expect that most LDCs will not be spending the full amount in 2005. Given that, it would seem unlikely that there would be any need to spend additional amounts in 2006.

Mr. Goulding made suggestions about what might be appropriate levels of spending for 2006, but conceded that his view of the magnitude of spending was "based on a particular year in isolation, without any particular view of what has come before, as was consistent with my mandate." (Tr., Vol. 8, pp 340) His analysis did not consider the fact that the third tranche amounts can be applied over a three-year period. He also acknowledged that his overall recommendations "were produced completely in isolation of any of those submissions." (Tr., Vol. 8., pp. 279)

The Board, in assessing what is appropriate for 2006, must have regard to the fact that the LDCs are in the process of launching CDM programs, most for the first time. Without any indication as to their ability to achieve results the Council sees little value in allowing or mandating them to expand their initiatives.

## **ii) The 2006 Rate Setting Process**

The 2006 EDR Rate Handbook process will produce a comprehensive set of filing guidelines for LDCs to be using in formulating their 2006 rate applications. Given the fact the guidelines will be new, and given the fact that the timeline for filing the applications will be tight, preparation of the rate applications will require a substantial amount of time and effort. To also require the LDCs to submit CDM plans under a different framework than the one applicable to the third tranche spending may not be feasible. Before developing a comprehensive framework for 2006 the Board should consider whether or not, in light of the burdens imposed on LDCs for the 2006 rate-making process, further CDM spending should either be required or allowed.

## **iii) The Role of the Ontario Power Authority**

Bill 100 has established the Ontario Power Authority (the "OPA") and within the OPA, the Conservation Bureau. One of the roles of the Conservation Bureau is to bring central planning to demand reduction in the electricity sector. The OPA must also consider how best to coordinate demand and supply-side initiatives in the most cost-effective manner possible. As noted above, the Council, in its February 9, 2004, submission to the Board advocated a centralized approach to

CDM in the Province. The Council advocated a number of roles for a centralized agency, including the following:

1. To develop priorities in the context of where to get the best results to fulfill its planned objectives, including the sectors to target and the types of activities best suited to those sectors;
2. To develop an in-house research capability;
3. To develop protocols for screening the effectiveness of opportunities, programs and measures;
4. To develop its own initiatives where it is most practical (eg. A mass market information program) and seek public or private sector bidders for the development and delivery of programs;
5. Assess both demand and supply side options;
6. To develop protocols for measurement and evaluation of programs and establish a well-defined audit/verification process to assess results.

In that submission the Council expressed its concerns about the lack of a centralized approach including the following:

1. Ontario needs to focus on determining the most cost-effective approaches to deal with its demand/supply imbalance. Ontario consumers should not be expected to foot the bill while electric LDCs explore new ways to pursue DSM.
2. The LDCs are not currently staffed or structured to design and deliver DSM and DR initiatives. It would be costly for each to set up the infrastructure required;
3. The regulatory infrastructure required to oversee LDC-driven DSM would be both costly and complex.
4. Coordination with the Federal Government initiatives would be difficult, if not impossible to achieve, as the LDC positions would be fragmented;
5. Under an LDC model there is the potential to lose the benefits arising from economies of scale and scope in programs, research and data collection, and in maintaining a core body of knowledge
6. There will be issues around the lack of universal access to programs if their development is fragmented across the province.

Now that the Conservation Bureau has been established, there is an expectation that it will, in its consideration of demand side initiatives in Ontario, determine how best to achieve the

Government's demand reduction targets and conservation goals. That will necessarily require the Conservation Bureau to determine the role of the Ontario LDCs in pursuit of its objectives and what level of CDM spending may be required on an annual basis. The Council also expects that the Conservation Bureau would be in the best position to develop potential CDM programs applicable to the Ontario context and develop the protocols to screen and evaluate programs. In addition, it should be the role of the OPA, in conjunction with the Ontario Government, to determine whether ratepayer funds should be used to provide shareholder incentives for municipally owned LDCs.

The Council acknowledges that the relative roles of the OPA, the Board and the LDCs in the pursuit of CDM have yet to be defined. It is for that very reason that it would be premature for the Board to embark on developing a complex regulatory framework for 2006 CDM without a consideration of the OPA's role.

Mr. Goulding, in his report, made the following observation about the uncertain role of the OPA:

Until the role of the Conservation Bureau is better defined, there is the risk that any electricity distributor C&DM initiative may either be contrary to the government's long-term vision for the Bureau, or if successful could make the Bureau irrelevant. Conversely, failure to coordinate C&DM initiatives with Bureau activities could result in duplication of efforts. (Exhibit C1, p. 40)

The Council submits that Mr. Goulding's caution should be heeded.

The Council submits that requiring LDCs to embark upon further CDM initiatives for 2006 will almost certainly limit the ability of the OPA and its Conservation Bureau to fulfill its role in providing centralized planning for demand management in the electricity sector.

**iv) Lack of Avoided Cost Data:**

As noted in several sections below, CDM program screening and evaluation requires the identification of avoided cost data. The Total Resource Cost test can not be undertaken without the identification of all avoided costs. That data is essential for both screening and the evaluation of program results. To date that data has not been made available. Hydro One, in its 2005 CDM evidence, has noted that it is unable to undertake the screening of its programs because of the lack of data.

Mr. Chernick set out a proposed plan in which LDCs would first identify avoided costs and other data necessary for screening, screen potential programs and present them to stakeholders prior to submitting 2006 plans to the Board. Without a process in place to determine the relevant avoided costs, the LDCs would not be in a position to screen programs.

Mr. Goulding, in his report, makes the following observations about the importance of knowing avoided costs:

Generally speaking, the near term benefits of C&DM initiatives are largely due to avoided generation costs... These uncertainties make it difficult to assess wholesale generation costs in Ontario; indeed it becomes less clear whether the HOEP will continue to be the appropriate benchmark for such costs. Because this makes it more difficult to assess the potential benefits for C&DM, it also makes it more difficult to appropriately perform a TRC, or calculate an SSM which requires a TRC. (Exhibit C1, p. 39)

He also acknowledged during cross-examination the difficulties associated with not having avoided cost data. (Tr., Vol. 8, pp 410-411)

The importance of having avoided cost data should not be underestimated. Without such data programs cannot be properly screened nor can they be adequately evaluated. From the Council's perspective, the Conservation Bureau would be best suited to undertake this role. Having each and every LDC pursue an independent assessment of avoided cost data would not be feasible. The lack of the avoided cost data is, from the Council's perspective, an important reason to defer further LDC CDM spending for 2006 beyond the third tranche amounts, until a detailed framework can be developed by the OPA in conjunction with the Board.

The Council has set out above the issues it believes determine the context for the Board in its consideration of CDM. The Council believes that 2006 should be seen as an interim period for LDC spending. The LDCs should be encouraged to gain experience with their third tranche spending and work towards evaluating the results. At the same time the Council encourages the Board and the OPA to work together establishing a CDM framework for 2007 and beyond.

The Council submissions below set out the issues it believes are relevant in developing a CDM framework. These issues are relevant whether the Board establishes that framework now, as a part of the 2006 Handbook, or if the Board chooses to work collectively with the OPA.

## **1. Annual Budget Setting Process**

There are a number of ways to establish annual CDM spending. Mr. Goulding discussed the theoretical approach which would allow an LDC to undertake an unlimited number of programs as long as they passed the TRC. Another approach discussed at the hearing by the various experts is to set the amount based on either a percentage of gross revenue or dollar per MWh. The Council does not support either approach for the purposes of 2006 spending.

Mr. Goulding's suggested setting a threshold amount of spending base on a 1 % of gross revenue. That figure does not reflect any analysis by Mr. Goulding of the Ontario context and is largely based on what are viewed as acceptable spending levels in the U.S.

Allowing unlimited spending is clearly not a practical approach for LDCs that are embarking on these initiatives for the first time in 2005. Without the data required for screening based on the TRC available LDCs could not demonstrate that their programs, as proposed would be cost-effective. In addition, such an approach does not consider the overall impact on rates which maybe significant given a high level of spending.



CDM budgets are ultimately paid for by ratepayers. The Council believes that annual CDM spending should be determined by the Government in conjunction with the OPA. The Government needs to be very clear about the potential trade-offs between current demand and supply side options. The Government also needs to be very clear about the level of money it believes is appropriate to be extracted from ratepayers to support CDM initiatives. The Council does not believe an arbitrary level of spending should be mandated by the Board, based on U.S experience, without a clear understanding of what benefits would be derived from that level of spending.

## **2. Program Screening**

Traditionally, CDM programs have been screened using a variety of tests. The most common tests are the Rate Impact Measure Test ("RIM") and the Total Resource Cost Test ("TRCT").

In using the TRC the benefits accruing from a program are compared against the costs associated with the program. A benefit/cost ratio of greater than 1 passes the test. Program costs normally include the costs that are directly attributable to the program including direct incentives and participant costs. Program costs can also include an allocation of administrative costs and/or evaluation and audit costs. Program benefits have traditionally included the direct costs that can be avoided through the implementation of the program. These include the avoided commodity cost of electricity, avoidable transmission costs and avoidable distribution costs. The benefits can also include less direct savings such as water savings. The TRC also involves assumptions about the free-ridership and the expected life of each of the program measures.

The RIM test measures the degree to which non-participants subsidize CDM program participants. It measures the direction and magnitude of expected changes in rates for all customers when a utility implements a CDM program.

Typically utilities screen programs using both tests. It is up to the regulator to approve program portfolios on the basis of the screening results.

The Council supports the use of the TRC to screen CDM programs. However, the Board must recognize the complexity involved in carrying out this type of screening. As noted above, the test requires the identification of all avoided costs. In addition, it requires detailed assumptions about things like the life of a measure or the estimated savings for a particular technology. These assumptions are often based on comprehensive engineering studies.

Free-ridership rates are also often difficult to determine and contentious. Without an appropriate estimate of free riders program benefits may be overstated.

Clearly, program screening is a complex exercise. Hydro One, the largest LDC in the Province, has acknowledged the difficulty in identifying the data relevant to screening and evaluation. The Council believes the most efficient approach to screening is to have the OPA develop the infrastructure to screen and evaluate program results. To effectively require each LDC to hire consultants to set up screening protocols and develop all of the required assumptions like

measure life, savings per measure, free-ridership rates etc. for each potential program, while a boon to the consulting industry, is not in the public interest.

The alternative approach would be for the Board to establish the infrastructure required and have it develop a menu of program designs that could be implemented by the LDCs. This is consistent with the decision by the Board regarding its approval of the 2005 plans. Given the timing of the 2006 rate applications these alternatives would be relevant to the framework for 2007 and beyond.

### **3. Treatment of Expenditures**

There are a number of relevant issues that need to be address regarding CDM expenditures. These include; the issue of whether expenses should be capitalized or expensed; how expenses are allocated among customer classes and; whether a variance account should be established to allow for actual recovery of the CDM costs.

With respect to the issue of whether to capitalize or expense CDM expenditures it should be recognized that ratepayers pay the full amount under either scenario. As a matter of principle costs should be recovered over the period in which the relevant benefits are delivered. If CDM benefits are delivered over several years the most appropriate approach would be to capitalize the costs. Choosing the approach based upon the period in which benefits are delivered would require an assessment of each program and how its expected benefits are delivered. This may be too onerous an exercise for each LDC to undertake.

The Council believes that as an interim approach, to the extent new expenditures are undertaken in 2006 the amounts should be capitalized over five years. Going forward the Board and/or the OPA might develop an approach that would better match the recovery of costs to the delivery of benefits.

With respect to the allocation among customer classes, the natural gas utilities allocate program costs, LRAM adjustments, and SSM pay-outs to the extent possible to the relevant rate classes. There is some mis-match to the extent single rate classes may be applicable to various customer groups (eg; schools, commercial, and residential customers may be within one rate class.) To the extent possible, however, cross-subsidization is minimized. The Council advocates an approach for the electricity sector that is based on the same principle. In effect, costs tied to a particular customer group should be recovered from that group.

The allocation of the costs in the electricity sector is complicated by the fact that CDM programs directed at one sector may in fact benefit all customers through lower commodity rates. This is a highly complex impact to measure and to date the Council is not aware of any mechanisms in place that could measure the impact of particular CDM program on the hourly cost of electricity. Unless the impacts can be measured with some degree of accuracy the Council supports matching the cost recovery and potential SSM pay-outs to the relevant customer classes.

The Council is generally supportive of the use of a CDM variance account. Both EGD and Union Gas have such mechanisms in place for their DSM initiatives. To the extent a utility

spends less than their CDM budget, the funds are returned to ratepayers. To the extent a utility spends more they must demonstrate the funds were used to create additional savings based on dollar per cubic meter saved target. The Council would only support a symmetric deferral account unless the mechanisms were in place to accurately measure the extent to which additional expenditures resulted in additional savings. The Council, as set out above, does not believe those mechanisms are in place. If the Board proposes deferral accounts for 2006, it should only be for the purpose of refunding unspent amounts to ratepayers.

#### **4. Lost Revenue Adjustment**

The Council is generally supportive of the use of lost revenue adjustment mechanisms ("LRAM"s). An LDC which pursues CDM initiatives should not be financially penalized for undertaking those activities. In effect, LRAMs remove the financial disincentive to pursue CDM.

The use of a LRAM for 2006, however, may be premature. Mr. Chernick and Mr. Goulding indicated that, in order to calculate lost revenue associated with CDM programs, load forecasts are required. It is the Council's understanding that very few LDCs have the capability to undertake load forecasts. In addition, very few utilities will actually be undertaking a load forecast for 2006. In the absence of a load forecast, the ability to calculate the impacts of CDM become more difficult. In addition, as noted below the issue of how to calculate the attribution of savings for joint programs and overlapping programs must be resolved.

The Council believes that utilities should not be financially harmed by their pursuit of CDM. The Council can only support the use of a LRAM in 2006, if the mechanism ensures that there is an appropriate balance between the interests of ratepayers and shareholders. Striking that balance may be difficult in the absence of load forecasts and other data relevant to the calculation of net savings. Given the underdeveloped state of the CDM programs in Ontario it is unclear, whether or to what extent revenue will be eroded in 2006 as a result of those programs. Until impacts can be accurately verified a LRAM may be premature.

Mr. Goulding set out two alternatives for an LRAM prospective and retrospective. To the extent the Board approves an LRAM for 2006 the Council would support the retrospective approach given the lack of data available to project potential revenue impacts.

#### **5. Incentives**

The issue of whether incentives for publicly owned LDCs are appropriate and required is an important public policy issue. The Council believes this issue should be determined by the government or the new OPA prior to any implementation of incentives for 2006. The government needs to consider the extent to which public utilities require incentives such as shared savings mechanisms ("SSMs") in order to pursue cost-effective CDM.

The Ontario municipalities are entirely creatures of provincial statute and it is the Council's view that they have an over-riding obligation to act in the interests of their ratepayers. If the provincial government directs the municipalities to pursue CDM, as a matter of public policy,

because it is in the interests of those ratepayers, that should be sufficient. As long as LDCs are not financially harmed by these activities providing an important service to their ratepayers through CDM programs should be considered an important incentive.

The fact that LDCs are entities established under the Ontario Business Corporations Act ("OBCA") and therefore have a fiduciary responsibility to maximize their profits for their shareholder is irrelevant. The courts have recognized that regulated utilities have an obligation to balance the interests of their ratepayers and their shareholders. The Council does not accept Mr. Goulding's position that the LDCs notional fiduciary duty to their shareholders is determinative of the need for incentives.

Neither Mr. Goulding nor Mr. Chernick could provide evidence that incentives for public utilities are required in order to ensure these entities pursue cost-effective CDM.

In the absence of a public policy direction advocating SSMs for public utilities the Council believes the implementation of an SSM for 2006 would be premature.

The SSM proposals advanced by the various experts necessarily require the use of the TRC to evaluate results. As noted above, it is clear that the data required in order to perform the TRC is not yet available. In order to calculate the level of a shareholder reward the Board must develop a methodology that is fair to both ratepayers and shareholders. To date that methodology has not been developed. From the Council's perspective the lack of meaningful data could result in payouts to shareholders for savings that were not actually achieved.

The Council recognizes that the Board has approved SSMs for 2005. The Board can gain important experience by assessing the impacts of those incentive mechanisms. The Council believes that before SSMs become part of an ongoing CDM framework an evaluation of those mechanisms be undertaken. In addition, the Council believes that there must be an explicit direction from the government that electricity ratepayers should fund shareholder incentives for the pursuit of CDM through their rates. If that direction is given, the Board with the OPA can develop mechanism best suited for Ontario.

The Council notes that by necessary implication shareholder rewards funded through electricity rates result in electricity customers potentially funding other unrelated municipal activities. If this is the intent of the government its support for such mechanisms must be explicit.

## **6. Reporting/Monitoring/Evaluation/Audit**

As noted above, the data required to screen CDM programs is extensive and currently unavailable. That same data is essential at the monitoring and evaluation stage of the process. The gas utilities have systems in place that screen programs, track program results, and calculate impacts. Despite the fact those systems have been in place for a number of years the process for ultimately determining results is not without controversy. The process is both quantitative and qualitative. With both an LRAM and an SSM the process is more complex and the need to accurately measure savings more important.

The evaluation process is typically followed by an audit process which ultimately results in adjustments to the results as calculated by the utility. In the case of the natural gas utilities, the audit process is typically followed by a negotiated settlement process with any unresolved issues going before the Board through a hearing.

The Council recommends that the Board review the evaluation reports and the independent audit reports prepared by the Ontario gas utilities for a given year. This will demonstrate what is entailed and the complexity involved. The Board should also be aware that the 2002 audit report for EGD's DSM results has not yet been finalized. Although Union Gas does not currently have an SSM its 2003 audit process has not been completed, not because of stakeholder debate, but simply because the research required in order to evaluate the results has only recently been completed. The EGD 2002 results and the Union Gas 2003 results are still required to go through stakeholder and Board review. The Council does not want the Board to underestimate the complexity involved in assessing CDM impacts.

The Council does not believe it is possible to have all of the evaluation processes and audit protocols in place for 2006 for each LDC. The Council sees value in the Board working collectively with the OPA to establish one set of rules that can be used by the LDCs in evaluating, auditing and reporting on program results. The OPA can also oversee any auditing process. As noted above avoided cost data and program assumptions must first be developed. To undertake the development of all of the guidelines centrally would be the most cost-effective approach.

Mr. Gibbons implied in his cross-examination that the issues relevant to the EGD DSM process that have been contentious have been resolved. (Tr. Vol. 11, pp. 754) The Council disagrees. Some of the fractious behaviour may have been curtailed, but the underlying difficulty of getting stakeholders with fundamentally different viewpoints to agree remains.

The Council cautions the Board that it not directly, or by necessary implication, create, or allow the creation of, an evaluation and auditing process that burdens the LDCs, and their ratepayers, with the costs of stakeholders, their consultants and their lawyers. CDM programs should be responsive to central directions from the OPA and the Board, and should be operated in the interests of ratepayers. The programs should not be micro-managed by a small army of self-serving interest groups.

## **7. Attribution of Savings**

The issue of attribution is really a sub-set of the evaluation issue, but from the Council's perspective needs to be highlighted on its own. As noted above, if ratepayers are funding LRAMs and SSMs it is essential that there be mechanisms in place to ensure that savings are measured with as much accuracy as possible.

With many entities undertaking CDM initiatives it is important that those entities that actually generated the savings are credited appropriately. By the same token, it is equally important that entities are not credited for savings that occurred as a result of another entity's efforts or that would have occurred anyway (free riders). For example, it would not be appropriate to credit

Toronto Hydro for savings achieved that were, in fact, generated by a federal government program.

If the issue of attribution is not resolved adequately energy consumers in Toronto, for example, may pay for rewards twice for TRC savings generated by a joint program undertaken by EGD and Toronto Hydro.

The Council submits that the Board in conjunction with the OPA must resolve this issue as soon as possible, preferably before the next generation of CDM plans are implemented.

## **8. Regulatory Framework/Approval Process**

The Board must set out the process by which CDM plans for 2006 are considered. The Council believes that the LDCs should focus on their third tranche programs with no additional expenditures allowed until the Board and the OPA can develop a longer term framework.

The Council is taking this position on the basis that programs are in place across Ontario, experience is being gained and there is considerable value in establishing a sound longer term framework before embarking upon further initiatives. The Board and the Government have established the first generation of CDM initiatives for the three year period 2005-2007. To piggyback yet another framework on top of that before assessing the results is clearly premature.

Mr. Goulding described what he believes the process would have to be to facilitate a 2006 framework. The Council believes it would be useful for the Board to consider the complexity of his proposed process:

1. The first step would be to develop a load forecast something that most LDCs will not be doing for 2006. (Tr. Vol. 8, pp. 443)
2. The second step would be to develop a demand inventory, something which Mr. Goulding suggests involves getting, "an understanding of what causes demand in your service territory and having a strong understanding of that, and then moving to a second step which is that, given that I have a diversity of ways that people use electricity in my service territory, what are some ways to reduce their consumption." (Tr. Vol. 8, pp. 443)
3. The next step is for each of the utilities to apply the TRC test to the various measures they plan to implement.
4. In the course of developing the portfolio he advocated some level of stakeholder participation. (Tr. Vol. 8, pp. 459)
5. The nature and extent of the Board's role in approving each of the LDC's portfolio of proposed programs would depend upon the extent to which the Board had been "clear in laying out the process utility management

should go through in order to make all of the appropriate calculations.”  
(Tr. Vol. 8, pp. 481)

6. At the end of the year all of the results must be evaluated and audited in order to measure savings.

Mr. Chernick also proposed a process which would begin with the identification of avoided costs, followed by program screening. His model entails a level of stakeholder review prior to an application being made to the Board. He acknowledged that the 2006 rate setting process could compromise the ability of the LDCs to go through such a process. The Council believes Mr. Chernick's approach would be effectively impossible to implement for 2006. In addition, and for the reasons set out above, the Board should not set up a review process which will burden LDCs with a small army of external micro-managers.

The Council has advocated a process that allows the 2005-2007 CDM plans to move ahead. With no further spending in 2006 the Board with the OPA can focus on developing a longer term strategy. Therefore, there will be no need for the Board to set out a CDM chapter in the 2006 Handbook. The focus can be to develop the regulatory infrastructure for the period 2007 and beyond.

#### **9. Utility Side of the Meter/Customer Side of the Meter Issues**

The Board has allowed the Ontario LDCs to undertake both utility side of the meter programs and customer side programs in the context of their 2005-2007 plans. That decision has been made and the LDCs are undertaking both types of programs. The Council supports the utility side programs as they potentially reduce the overall costs of distribution. The Council believes that LDCs should be continually looking at ways to make their distribution systems more efficient.

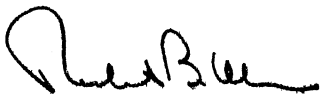
The Council supports the inclusion of utility side programs for the 2005-2007 trial period. With respect to the development of a longer term framework, the Council believes these programs should be considered core utility activities and considered by the Board in that context. The Council does not support the application of SSMs for these programs to the extent SSMs are allowed.

In summary, the Council makes the following recommendations on the treatment of CDM for the 2006 Rate Handbook:

1. The Board should treat 2006 as a transitional year in which the LDCs will carry on with the programs they initiated in 2005. The Board, in conjunction with the OPA, would then have the time to develop the appropriate framework for future plans. The Board might allow some adjustment to the 2005 plans for 2006 where the LDCs could demonstrate that the programs passed the TRC. Such adjustments would be the exception, not the rule;

2. The Board should not, directly or by necessary implication, require any new spending for 2006. Requests for further spending would be considered by the Board on a case-by-case basis;
3. The Government should explicitly indicate the process by which annual spending amounts would be determined and the extent to which financial incentives would be required;
4. The Board should explicitly indicate that 2006 was a transitional year in part to allow the OPA time to fulfill its mandate to undertake central planning and direction. Among the critical functions of the OPA will be the coordination of CDM initiatives among the electric utilities, the gas utilities, and the federal government. The OPA may also initiate its own programs. In addition, the OPA would develop screening methodologies, program design and evaluation and audit processes;
5. The Board would work with the OPA to sort out the relative responsibilities related to CDM including any rate-making implications;
6. Stakeholder involvement would take place at the OPA in terms of developing the framework, but would not be required for each individual LDC application;
7. Given the lack of avoided cost data, the inability of LDCs to screen programs and the lack of load forecasting for 2006 the Board should be reluctant to approve both LRAMs and SSMs for 2006.

**Dated at Toronto, this 14<sup>th</sup> day of February, 2005.**



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