INTRODUCTION

Background to the Proceedings

1. This proceeding arises out of a number of previous Board directions with respect to local distribution company ("LDC") expenditures on CDM, these are: the Board's May 11, 2005 Report on the 2006 Electricity Distribution Rate Handbook (RP-2004-0188) (the "Report"); the 2006 EDR Handbook (the "Handbook"); and the September 8, 2005 Total Resource Cost Guide (the "TRC Guide").

2. All of the above documents were prepared to provide guidance on the filing and evaluation of LDC rates for 2006 on a generic basis. None of them incorporate binding orders. As a result, as noted in the Handbook, compliance with the Handbook is not determinative of a particular rate order: "It is open to the Board to consider alternative rate making principles at the request of an applicant." The Report, the Handbook and the TRC Guide therefore provide generic non binding direction on the approval of 2006 electricity distribution rates.

3. With respect to Conservation and Demand Management in particular, the Report provided guidance on two issues that are relevant in this proceeding.

4. First, with respect to LDC expenditures on CDM, the Report stated that, "a specific target for 2006 is not appropriate. A distributor may apply for approval of additional spending (above the 3rd tranche) as part of its 2006 distribution rate applications, but this spending must meet the Total Resource Cost test established in the Board's Conservation Manual." (at

p. 105). The Total Resource Cost test has since been approved in the TRC Guide.

5. Second, the TRC Guide provided direction on "free-ridership" values and the attribution of benefits between delivery partners. The TRC Guide provided free ridership for each of 103 different energy efficient technologies. With respect to attribution, the Board stated: "The Board advises LDCs that they are allowed to claim 100% of the benefits associated with a CDM program in which they jointly market and deliver the program with a non-rate regulated third party" (at p. 16)

6. As indicated, these documents provide non binding guidance for 2006 rate applications; final binding approval of distribution rates can only be provided in a rate order. As a result, and as expected, LDCs filed applications in accordance with these documents and issues arose in individual cases. Specifically, with respect to CDM expenditures, in Hydro One's distribution rates application, Hydro One spent its 3rd tranche allocation, but did not apply for approval of additional spending on CDM. Some parties submitted that the Board should direct Hydro One to spend additional amounts on CDM. As a result, the issue in that specific proceeding was whether Hydro One should be directed to spend an amount on CDM that is different than that proposed in its application.

7. In addition, by Notice of Motion dated October 14, 2005 – Pollution Probe sought an order rescinding the TRC Guide's list of 103 *a priori* free-rider rates; and proposing that if a utility wishes to obtain approval for the free-rider rate(s) of one or more of its conservation programmes, prior to programme implementation, it must provide the OEB with evidence to support the reasonableness of its proposed free-rider rate(s). Alternatively, when a utility submits its SSM claim, after the end of its fiscal year, it must

provide evidence to support the reasonableness of its estimated free-rider rates.

8. Because a decision in the Hydro One case may have implications for other LDCs, the Board stated that it would hold a generic proceeding on this issue as well as the issues raised in the Pollution Probe Motion. In order to provide certainty, this proceeding will produce a binding order, not just a guideline.

9. This proceeding can therefore provide a decision on these issues for 2006 that is both binding (it will result in an order) and generic (it will apply to all LDC distribution rates).

Issues

10. The issues in this proceeding are:

a) The Board's Report on the 2006 EDR Handbook (RP-2004-0188) stated that the Board would not mandate a minimum expenditure target of LDC spending on CDM programs. The Board also stated that an LDC may apply for spending on CDM as part of its 2006 distribution rates applications, but that such spending must meet the TRC test established in the TRC Guidelines. The issue in this proceeding is whether the Board should order an LDC to spend money on CDM programs in an amount that is different from the amount proposed by an LDC in a test year and, if so, under what circumstances?

b) Section 2.1 of the TRC Guideline establishes a standard "free ridership" rate to apply, to be included in an LDC's calculation of costs and benefits of CDM programs. Section 2.2 of the TRC Guide provides that LDCs may claim 100% of the benefits associated with a CDM program in which they jointly market and deliver the program with a non-rate regulated third party. The issue in this proceeding with respect to s.2.1 is whether the Board should require LDCs to demonstrate free ridership levels for all CDM programs on a program by program basis; and, with respect to s.2.2, the issue is whether the Board should order than an LDC should only be entitled to claim incremental benefits associated with its participation in a CDM program with a non-rate regulated third party.

Board Staff's Submissions on the Issues:

Issue One: Should the Board order an LDC to spend money on CDM programs in an amount that is different from the amount proposed by an LDC in a test year and, if so, under what circumstances?

11. Board Staff's Submissions contain two main propositions:

- First, that the lens through which to evaluate proposed LDC expenditures is prudence. In summary, this means that LDC expenditures should be presumed to be prudent unless they are demonstrated to be unreasonable;
- Second that the test for prudence relates to a comparison of alternative LDC expenditures. This means that a failure to invest in a CDM initiative is only imprudent when it can be demonstrated that the CDM investment is more cost effective than an alternative LDC investment in distribution assets such that failure to invest in the

CDM initiative resulted in higher distribution rates than the rates would have been if the CDM investment had been made.

Issue Two - Should the Board require LDCs to demonstrate free ridership levels for all CDM programs on a program by program basis; and, should the Board order than an LDC should only be entitled to claim incremental benefits associated with its participation in a CDM program with a non-rate regulated third party?

12. Staff's Submissions on the issue of attribution and free ridership contain the following proposition:

- First, there is no evidence to justify making changes to the TRC Guide on either of these issues, and
- second, the TRC Guide in its current form provides distributors with the required information such that distributors can focus their efforts on delivering CDM.

Each of these submissions will be addressed in turn.

Issue One Submissions

13. Before elaborating on Board's Staff's submission on issue one in this proceeding, it is important to emphasize that evaluating LDC expenditures on CDM should be considered in the context of the Board's mandate to implement CDM policy as expressed in legislation. The main components of this mandate are as follows:

- The Board's statutory objective with respect to CDM is to promote "economic efficiency and cost effectiveness".

- The Legislature has assigned the Board the responsibility of regulating two types of agencies in the funding of CDM initiatives: the Ontario Power Authority ("OPA") and LDCs. Each of these agencies has statutory authority respecting CDM and are regulated by the Board in different ways.
- The OPA pursues CDM through two mechanisms:
  - Directly – Through Pursuit of Statutory Objectives (forecast budget for 2006: $5.9 million).
  - Indirectly – Through Procurement Contracts (with LDCs and others) (proposed spending from 2005-2011: $6-11 billion).
- LDCs pursue CDM through three mechanisms:
  - Voluntary CDM initiatives under s. 29.1 of Electricity Act and 71(2) of OEB Act.
  - Authority to Contract with OPA under 25.2(1)(e) and (g) of Electricity Act.
  - Charge distribution rates that may include a CDM component.

13. As a result, the Board's review of LDC CDM expenditures in rates cases is only one of a number of different ways in which proposed CDM expenditures come before the Board. The Board's approach to evaluating these initiatives should therefore be considered in the context of all of these types of initiatives.

14. Considered in that context, and in light of the Board's objectives relating to promoting economic efficiency and cost effectiveness, Board Staff proposes that the Board take the following approach to reviewing LDC expenditures:

  - first, that the lens through which to evaluate proposed LDC expenditures is prudence. In summary, this means that LDC expenditures should be presumed to be prudent unless they are demonstrated to be unreasonable;

- second, that the test for prudence relates to a comparison of alternative LDC expenditures. This means that a failure to invest in a CDM initiative is only imprudent when it can be demonstrated that such an investment is more cost effective than an alternative LDC investment in distribution assets and that failure to invest in the CDM initiative resulted in higher distribution rates than the rates would have been if the CDM investment had been made.

Prudence Generally

15. As indicated, the Board's authority in respect of LDC expenditures is in the rate setting context. The Board's key power in this regard is to determine whether or not LDC expenditures should be recovered from rate payers, on the one hand, or borne by LDC shareholders, on the other. The basic rate making proposition in relation to this question is that LDCs may recover amounts prudently incurred in serving its customers.

16. The Board's "prudence test" has been stated as follows (in RP-2001-0032) at paragraph 3.12.2:

"The Board agrees that a review of prudence involves the following:

- Decisions made by the utility's management should generally be presumed to be prudent unless challenged on reasonable grounds.
- To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.
- Hindsight should not be used in determining prudence, although consideration of the outcome

of the decision may legitimately be used to overcome the presumption of prudence.

- Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time."

18. There are two main elements of the prudence test that are relevant to the issue of whether an LDC should be required to spend a different amount than that which is proposed.

19. First, there is the presumption of prudence. It is submitted that an LDC's proposed expenditure should be presumed to be prudent in the absence of evidence that a different amount should be spent. The evidence must be specific enough to overcome that presumption – it is not enough to speculate that a different amount would have been more appropriate.

20. Second, there is the element of reasonableness. Prudence relates to unreasonable expenditures. An LDC does not have to demonstrate that its proposed expenditure is the only conceivable amount that can be spent; only that it is a reasonable approach.

Application of Prudence in CDM Context

21. Three main options are available to determine how to apply the concept of prudence in the context of CDM funding:

- At one end of the spectrum, the Board may determine that an LDC's failure to invest in CDM is never imprudent (the "LDC Choice Option");

- At the other end of the spectrum, the Board may find that an LDC's failure to invest in any CDM initiatives that would otherwise meet the TRC Test is imprudent (the "Mandatory TRC Option"); and
- Between these two ends of the spectrum, the Board may find that an LDC's failure to invest in a CDM initiative is imprudent when it can be demonstrated that such an investment is more cost effective than an alternative LDC investment in distribution assets such that the consequence of failing to invest in the CDM initiative is that distribution rates are higher than they would have been had the CDM investment been made (the "Cost Effective Alternative Option").

22. Board Staff submits that the Cost Effective Alternative Option is the preferred approach. Under this option, the focus is on what the LDC invested in (i.e., the allegedly imprudent investment) as an alternative to investing in CDM. Where, for example, the LDC proposes to spend (or has spent) rate payer money on distribution assets or services when that money could have been more cost effectively spent on CDM initiatives, then it is arguable that the expenditure is imprudent. In other words, in keeping with the Board's prudence test, one must consider the decision of the LDC at the time it was made and consider whether it made the appropriate trade-offs in making that decision.

23. To elaborate on this point, LDCs have the opportunity to invest in a number of services and facilities that are targeted at specific areas of weakness in the distribution system to optimize systems operation. Examples of these investments may include: capacitor installation; voltage conversions; system configuration changes (e.g., changing open points); load balancing; line reconductoring; transformer upgrades, and customer load control. These type of investments leverage distribution

assets to the benefit of distribution customers and are therefore appropriately paid for by those customers.

24. An LDC should consider whether an investment in services or facilities to reduce load is more appropriate than an alternative investment in new services or facilities to serve load. Where the former is more cost effective than the latter and therefore, results in overall lower distribution rates, it is arguable that the less cost effective investment is imprudent.

25. It is submitted that the Cost Effective Alternative Option is preferable to the LDC Option because the latter approach effectively allows the LDC to be the final arbitrator of how much it will invest in CDM. This leaves too narrow a role for the Board to meet its regulatory responsibilities in this area.

26. It is submitted that the Cost Effective Alternative Option is preferable to the Mandatory TRC Option for a number of reasons.

27. First, like the LDC Option, the Mandatory TRC Option leaves too little room for the Board to exercise its judgment in any given case.

28. Second, the Mandatory TRC Option requires LDCs to invest distribution rate payers' funds in CDM whenever there is a net societal benefit; the measure of a net societal benefit includes benefits of reduced supply and capacity; these benefits are enjoyed by all electricity customers, not just the customers of a distributor. As a result, applying the Mandatory TRC Option requires distribution rate payers to pay for all societal benefits – even when the majority of those benefits are not enjoyed by distribution rate payers. Although the Board *allows* LDCs to make these investments through the TRC Guide, a mandatory *requirement* to make these

investments is a disproportionate burden on LDCs and their rate payers in light of the statutory assignments of responsibility in this area.

29. Specifically, the Board's statutory mandate of efficiency and cost effectiveness in CDM requires it to review the entire statutory scheme to identify where the primary responsibility should be for funding CDM initiatives leading to broad societal benefit. As will be addressed in greater detail below, that scheme assigns this responsibility to the OPA, not LDCs. In other words, imposing the Mandatory TRC Option on LDCs would put the LDCs, not the OPA, in the leadership role of CDM and require distribution customers, not all electricity customers, to pay the costs of the societal benefits resulting from CDM. This approach does not seem aligned with either (i) the leadership role given to the OPA in this area; or (ii) a cost/benefit perspective. Each of these will be discussed in turn.

The OPA's CDM Leadership Role

30. The OPA's CDM authority is three fold. First, it has the corporate objectives and powers to promote CDM. Specifically, through the Conservation Bureau, the OPA's mandate is to "provide leadership in planning and co-ordination of measures for electricity conservation and load management in Ontario." (*Electricity Act,* s. 25.11(1). Simply put, the Legislature has assigned the OPA the leadership role in CDM.

31. Second, the OPA has the responsibility to develop an Integrated Power System Plan. The OPA can therefore make trade-offs that are not available to an LDC. As a practical matter, an LDC has control over its distribution expenditures. It can make trade-offs between distribution and CDM expenditures. But it has no control over the other types of trade offs

that are relevant in CDM, such as supply, capacity and transmission. The OPA has this role. In fact, making these trade-offs is the function of the system plan. According to s. 25.30 of the *Electricity Act*, "the OPA shall develop and submit to the Board an integrated power system plan … that is designed to assist, through effective management of electricity supply, transmission, capacity and demand, the achievement by the Government of Ontario of, (i) its goals relating to the adequacy and reliability of electricity supply, including electricity supply from alternative energy sources and renewable energy sources, and (ii) its goals relating to demand management."

32. Furthermore, following the Board's approval of an IPSP, the OPA may develop procurement processes to contract for demand reduction. After the procurement process has been approved by the Board, the OPA may enter into procurement contracts that are designed to meet the CDM targets of the IPSP. Specifically, in pursuit of its statutory objects, the OPA has the power:

"(d) to enter into contracts relating to the procurement of reductions in electricity demand and the management of electricity demand to assist the Government of Ontario in achieving goals in electricity conservation;

(e) to take such steps as it considers advisable to facilitate the provision of services relating to,

(i) electricity conservation and the efficient use of electricity,

(ii) electricity load management, or

(iii) the use of cleaner energy sources, including alternative energy sources and renewable energy sources;

(g) to enter into contracts with distributors to provide services referred to in clause (e)"(*Electricity Act* s. 25(5)).

33. In other words, the OPA not only develops the plan to meet CDM targets, it has the authority to implement the plan through procurement contracts. The counter-parties to these contracts include LDCs and other energy sector participants, including retailers. However, the OPA may, through contract design and price, drive the achievement of CDM targets. The OPA's recovery of the costs of CDM procurement contracts is also relevant. This will be addressed immediately below.

Alignment of Costs and Benefits of CDM

34. As indicated, LDC expenditures are reviewed by the Board in the context of rates cases. This means that the Board's key question is whether the expenditures are prudent – if so, they may be recovered from distribution rate payers. OPA expenditures are recovered from all electricity customers through rates and charges. Where the benefits of a CDM expenditure will be enjoyed by all those customers, it would seem inappropriate to punish an LDC for failing to pay for it through a finding of imprudence. Rather, where the benefits of CDM initiatives are found in reduced electricity supply and capacity, all electricity customers benefit. As a result, the Board should not assign the responsibility of achieving those benefits to LDCs at the expense of their rate payers. Instead, the Board should encourage the OPA to take responsibility for achieving those benefits.

Practice of Centralized CDM Spending in Other Jurisdictions

35. Many parties in this proceeding referred to practices in other jurisdictions. In many of those jurisdictions, as reflected in the examples provided below, efforts have been made to designate a coordinating entity to

oversee CDM programming to ensure that, for core programs where the benefits are spread across all ratepayers, the costs of such programs are borne by all ratepayers, to encourage competition in CDM markets, take advantage of other state-run programs where synergies exist, avoid duplication of cost and effort and prevent customer confusion.

36. The clearest public record in the development of this model is in Vermont, where energy efficiency measures were originally ordered by the Public Service Board and developed and implemented by Vermont's regulated electric and gas utilities. A review of those programs initiated by the Public Service Board in 1990 in the context of a transition to a more competitive regulatory structure and following on a report issued by the Vermont Department of Public Service entitled "The Power to Save: A Plan to Transform Vermont's Energy-Efficiency Markets" (the "DPS Report") led the Public Service Board to make significant changes to the implementation and funding of energy efficiency programs in the state. Of significance was the creation of an independent "Energy Efficiency Utility" or "EEU", an agency with state-wide oversight of the energy efficiency program. In addition to addressing what was seen as a constant erosion of DSM programs offered by individual utilities, the rationale for the creation of this entity was explained in the DPS Report as follows:

> "Some of Vermont's 22 electric utilities offer a variety of DSM programs serving markets targeted by the core programs presented in this filing; others do not. Of those utilities that deliver programs, with some exceptions there is still significant inconsistency among program designs and delivery strategies."[1]

38. The Public Service Board approved of this approach on the grounds that "the DPS's Plan, is likely to be the most cost-effective mechanism for

[1] at page 97.

developing and delivering comprehensive, cost-effective, energy efficiency programs in a manner that will maximize societal net benefits."[2]

39. In its Phase II decision issued June 29, 1999 regarding an "Investigation into the Department of Public Service's proposed Energy Efficiency Plan", the Public Service Board discussed as follows:

> "The settlement, if approved, sets into motion a series of processes that will end in the creation of a new organization, an energy efficiency utility, whose mission will be to deliver cost-effective energy efficiency services to electricity consumers throughout the state. Historically, each of the state's 22 individual distribution utilities ("DUs") bore (and, in fact, still bears) that responsibility. Although there are obvious advantages associated with DU delivery of efficiency services (also referred to as "demand-side management" or "DSM") – e.g., direct knowledge of, and contact with, its customer base – the program and delivery inefficiencies that arise from the multitude of service territories have proven, in certain instances, to be costly barriers to the acquisition of customer and electric system savings. The parties agree that the time for a new approach is at hand.[3]

40. New York's Energy Smart program is administered by the New York State Energy Research and Development Authority ("NYSERDA"). NYSERDA operates cooperatively with the NYS Public Service Commission and derives its revenues from a System Benefits Charge, an assessment on the intrastate sales of New York State's investor-owed electric and gas utilities, and voluntary contributions by the New York Power Authority and the Long Island Power Authority. NYSERDA's goals are to promote competitive markets for energy efficiency services and to provide direct

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[2] State of Vermont Public Service Board,, Investigation into the Department of Public Service's proposed Energy Efficiency Plan (Docket 5980), January 19, 1999, p. 39.

[3] at pages 10-11.

benefits to electricity ratepayers or be of clear economic or environmental benefit to the people of New York.

41. In California, although individual utilities are responsible for implementing their energy efficiency portfolios, the Public Utilities Commission for the state specifically considers whether there is adequate statewide coordination of similar program offerings such as outreach, upstream marketing, codes and standards advocacy and other activities that can take advantage of statewide leverage. More specifically, the Commission requires, among other utility coordination requirements, that all utilities develop a statewide strategy for the integration of demand-side programs to end users in a manner that is cost-effective and avoids confusion to customers.

Issue Two Submissions – Free ridership

42. For reasons of regulatory certainty, regulatory and economic efficiency and precedent, Board staff does not support the adoption setting free riders on a program by program basis.

43. Free riders are defined as those participants in a conservation program who would have installed the energy conservation measure even if there had been no program.

44. There is no consistent approach to determine free ridership rates. Free ridership rates have been attached to specific technologies, programs,

sectors or particular customers.[4] A significant amount of uncertainty exists in assessing which approach is most appropriate.

Regulatory Certainty:

45. At this early stage in CDM for the electricity sector, utilities require regulatory certainty. Hydro One's evidence at Paragraph 25 states that:

> "These rules provide LDCs with some certainty regarding cost recovery, lost revenue recovery and potential shareholder incentives associated with their CDM activities. Without the level of certainty provided through the Board's CDM framework and rules, I expect that LDCs would likely have very different CDM plans."

46. Further, in approving the applications of the Coalition of Large Distributors (CLD) on December 10, 2004, the Board agreed that regulatory certainty was important, it stated on paragraph 39

> "The reason the applicant, as they have stated in this proceeding, chose to apply for a Final Order was that they wanted regulatory certainty. The Board accepts that proposition. It's understandable that they don't want to incur expenditures of this order without some certainty that they can be recovered."

47. The current system provides the LDCs with a reasonable degree of regulatory certainty. Utilities can concentrate their efforts on delivering programs without fear that the cost effectiveness value of their program is in jeopardy.

Regulatory and Economic Efficiency

48. The electricity distribution sector has not been involved with CDM for some time. As a result they do not have the resources to develop the free ridership rates in house. The Board's current approach is a practical solution. There is no evidence that a problem exists or that one is being

[4] California Public Utilities Commission (CPUC), (2003) Energy Efficiency Policy Manual Version 2. Provides free ridership values based on the end use technology, consumer sector and program type.

created. Should evidence point to a problem, the Board can review its approach to the issue. This review can be done in a rates case or in a generic proceeding. Further, at any time, parties can propose specific changes to the TRC Guide.

49. Alternative methods to determine free rider rates are not feasible given the number of parties delivering CDM in the electricity distribution sector. The importance of this fact is emphasized when considering Pollution Probe's proposal. Pollution Probe's evidence states at paragraph 33 proposes:

> "if the utility wishes to obtain approval for the free-rider rate(s) of one or more of its conservation programmes, prior to programme implementation, it must provide the OEB with evidence to support the reasonableness of its proposed free-rider rate(s); and alternatively, when a utility submits its SSM claim, after the end of its fiscal year, it must provide evidence to support the reasonableness of its estimated free-rider rates."

50. It is important to consider that conducting program by program approvals of free ridership rates for all 87 utilities would be very time consuming. Approvals in this fashion would create a significant burden on the Board's resources and delay in approvals for the utilities.

51. A variation on Pollution Probe's proposal is put forward in Green Energy Coalition ("GEC") (paragraph 2 of page 14). They indicate that certain LDCs should be required to develop free ridership rates. GEC stated:

> "Indeed, in forming the Coalition for Large Distributors, the largest LDCs in the province have already created a mechanism for collaboration that could ensure a common set of free rider assumptions is put forward for programs for their service territories. It is highly likely that other LDCs will simply adopt the Coalition's assumptions if they are approved by the OEB. For different programs promoted by other LDCs, there may be some additional regulatory review required."

52. It would take a significant amount of time for distributors, even those with large research budgets, to develop program specific free ridership rates. Hydro One stated in its in paragraph 30 if its evidence that:

"…it would take at least six months to estimate and secure Board approval for free ridership levels for all of its CDM programs"

53. The Board has developed the TRC Guide based on the best available information. The technology specific free ridership rates are reasonable values. There is no evidence to suggest that the proposal put forward by Pollution Probe or GEC will improve the reasonableness of the values in the TRC Guide.

54. The parties suggesting a change to the current practice have not proposed a specific alternative for the Board to consider. The proposal would be of greater assistance if it provided alternative values for the Board to consider in place of the existing values.

55. The current TRC Guide is a practical guide to TRC analysis and does not deal with several complicating factors of the TRC test. The TRC test can be reasonably complex, if all of its components are included. These components include the concepts of free-drivers (people who undertook the measure due to the utility's intervention but did not identify themselves as a program participants), snap-back (increased energy consumption due to cost savings), persistence (a quantum of how many measures remain installed as a result of lower quality of consumption) and environmental externalities (the value of reduced pollution). The Board has omitted or made assumptions respecting these complicating variables which have simplified the model for the electricity sector. Therefore, it appears that the Board was attempting to develop a reasonable representation of the overall effectiveness of measures. Attempting to achieve 100% accuracy

of measurement is desirable but additional efforts suffer diminishing returns.

56. In cross examination by Jay Sheppard of School Energy Coalition, Todd Williams, the witness for Hydro One Networks Inc. (paragraphs 136 – 138) and David Heeney, the witness for Low income Energy Network (paragraph 33) indicated that the fixed values for free ridership rates may be higher or lower than actual free ridership rates. The impact of this unclear as both ratepayers and the distributors may benefit or be harmed by the difference. However, when multiple programs are delivered, it is likely that benefits to either party due to an incorrect assumption in one program is offset by similar but opposite assumption in another.

Precedent

57. The Board has previously considered and communicated its position on this issue. Pollution Probe made submissions to the Board on July 13, 2005 and adopted by GEC on July 15, 2005 which addressed their position respecting set free ridership rates in the TRC Guide. In addressing whether the Board should consider free ridership rates on a program by program basis, the Board stated:

> "With respect to Pollution Probe's submission, the Board does not have the resources to complete its own evaluation of each custom project."

58. Other regulators including the California Public Utility Regulator have adopted the practice of setting free ridership rates (net to gross ratios or "NTGR") at the technology level and program level in advance of program planning by the utilities. Where there were no values, the CPUC adopted a set free ridership rate. The following is an excerpt from the CPUC standard practice manual

> “Program proposals should use the applicable NTGRs listed below. If a program is not listed below, or if a proposed program design deviates substantially from past design of related programs, program proposals may utilize a default NTGR of 0.8 until such time as a new, more appropriate, value is determined in the course of program evaluation”.

59. Should the Board decide that free ridership rates be set on a program by program basis, it would not be efficient practical to do this for each utility and each iteration of a program. Efficiencies could be gained by centralized program design. The Board should consider who is in the best position to design consistent program for delivery across the province. In doing so, the Board should consider whether this is the mandate of the OPA, particularly since the OPA has been established with a Conservation Bureau.

Issue Two Submission - Attribution

60. For reasons of regulatory and economic efficiency and precedent, staff supports the current practice of attributing 100% of the benefits from CDM programs to the regulated utility when the other delivery partners are not regulated by the Board. This approach encourages partnerships between LDCs and non regulated organizations.

61. In order to discuss the issue of attribution, the concept needs to be clearly defined. Attribution is the allocation of the benefits of an energy efficiency program between two or more parties that implement the program. In the TRC Guide, attribution is assigned under three different circumstances. The first is when two or more electric LDCs split the benefits along distribution service area boundaries. The second scenario has an electric LDC working with a gas LDC and the benefits are split along fuel type.

The final scenario is when an LDC works with a non regulated third party and the benefits are allocated 100% to the LDC.

62. Attribution is not, as GEC defines it, "really a question about one kind of free rider" (GEC evidence p. 15 paragraph 2). Attribution deals with the allocation of benefits, whereas free ridership is a measure of the number of parties that would have undertaken a measure without a third party intervention. GECs argument is analogous to a utility delivering a program in competition to the program delivered by the third party. In fact, these programs are delivered in partnership.

63. The circumstance where attribution is at issue in this proceeding relates to the third scenario where the benefits of a program with an unregulated organization are credited to the electric LDC. Attribution is only an issue when an incentive is to be recovered from ratepayers. This would occur when an LDC files an application for clearance of a shared savings mechanism or lost revenue protection.

Regulatory and Economic Efficiency

64. Assessing which portion of benefits resulted from a specific programs with several partners is difficult and time consuming especially given the complex nature of marketing and consumer behavior. Without detailed study it is difficult to estimate the incremental value that each delivery partner contributes to a successful program. It would not be an efficient use of ratepayer funds to attempt to assess individual impacts.

65. One shortcut to this type of analysis is to attribute benefits on the basis of financial contribution. However, this approach is not representative because it fails to account for other contributions such as a utility's brand

value, contacts, expertise and market knowledge. These contributions can considerably improve the effectiveness of a CDM program regardless of the level of financial contribution.

66. Treating attribution on the basis of financial contribution would create a deterrent to partnerships in delivery of programs. This may create significant overlap and inefficiency in program delivery and potentially increase distribution rates without an associated benefit

Precedent:

67. The Board has previously considered and communicated its position on this issue. Pollution Probe made submissions to the Board on July 13, 2005 and adopted by GEC on July 15, 2005 which addressed their position respecting attribution in the TRC Guide. In addressing whether the Board should consider attribution on an incremental basis, the Board stated:

> "With respect to the submission by Pollution Probe and VECC, the Board recognizes there is a potential for LDCs to claim the benefits of a program in which their involvement was minimal. However, this situation would be the exception and the Board supports the development of partnerships with third parties to create efficiencies in the delivery of CDM programs. Further, the Board has the jurisdiction to make adjustments to the incentive awards to the LDCs through its rate cases."

68. To date, the Board has encouraged partnerships between utilities and third parties since it created efficiencies in the delivery of programs. In the Board's decision on Union's rates for 2004, the Board stated on paragraph 6.7.14 page 61, that:

> "The Board is not concerned about the Company partnering with others to accomplish TRC savings, based upon the goal of achieving the greatest possible DSM benefits at the lowest cost, and in the simplest way possible."