



EB-2010-0331
EB-2010-0332

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

AND IN THE MATTER OF an Application by Hydro One
Brampton Networks Inc. for an Order or Orders granting
approval of initiatives and amounts related to the
Conservation and Demand Management Code;

AND IN THE MATTER OF an Application by Hydro One
Networks Inc. for an Order or Orders granting approval of
initiatives and amounts related to the Conservation and
Demand Management Code.

PROCEDURAL ORDER NO. 4

Hydro One Brampton Networks Inc. ("Hydro One Brampton", collectively "the Applicant") and Hydro One Networks Inc. ("Hydro One", collectively "the Applicant") have each filed an application with the Ontario Energy Board (the "Board"), dated November 1, 2010 seeking an order granting approval of funding for six individual conservation and demand management ("CDM") programs. The Board assigned file number EB-2010-0331 to the Hydro One Brampton application and file number EB-2010-0332 to the Hydro One application.

The applications have been filed pursuant to the Board's CDM Code that was issued on September 16, 2010. The CDM Code was developed by the Board in response to a Directive from the Minister of Energy dated March 31, 2010.

In its application Hydro One is seeking recovery of approximately \$32 million in costs associated with its slate of programs. Hydro One Brampton is seeking approximately \$8 million.

In its Notice of Application and Hearing, issued November 19, 2010, the Board combined the hearings on these applications. By Procedural Order No. 1, the Board ordered that an oral hearing for the applications would commence on February 3, 2011.

On February 1, 2011, the Board issued Procedural Order No. 2 revising the schedule for the hearing. This was done in response to a letter received from the School Energy Coalition.

On March 2, 2011, the Board sent a letter to all parties in the proceeding informing them that at the outset of the oral hearing scheduled for March 4, 2011, the Board was interested in hearing submissions from parties regarding four preliminary matters. Two of these preliminary matters had been raised by the Consumers Council of Canada ("CCC") in a letter dated March 1, 2011. The issues raised by CCC were: 1) the extent to which the applications are governed by the "just and reasonable" standard established in s. 78(2) of the Ontario Energy Board Act, 1998; and, 2) the extent to which the Board can consider in this application the costs of OPA-Contracted Province-Wide CDM Programs that are being acquired by Hydro One, and whether any "rates" resulting from these programs are just and reasonable. The Board also informed parties that in addition to the two issues raised by CCC, it wanted to hear submissions from parties on two other issues: 1) whether the OPA-Contracted Province-Wide CDM programs are "established" as contemplated in section 7 of the Minister's Directive dated March 31, 2010; and, 2) what implications, if any, should the lack of a complete evaluation plan being filed by the applicants have on the hearing process and the Board's consideration of the request for approval of the programs.

On March 4, 2011, the Board heard submissions from parties on the four issues noted above. On March 7, 2011, the Board reconvened and provided its Decision on the issues set out above orally. The oral decision of the Board is attached hereto as Appendix A.

With respect to the final question that was heard as part of the preliminary issues, the Board finds that it is useful to reiterate its determinations, as they relate directly to the matters set out in this Procedural Order.

In its findings, the Board noted that section 3.1.4(a) of the Board's CDM Code requires an applicant for Board-Approved CDM programs to file a program evaluation plan, based on the OPA's EM&V protocols. Although the Applicants have filed a draft

evaluation plan template for each program, they have not filed a complete evaluation plan.

Hydro One indicated in its evidence and at the technical conference that it was its intention to prepare a complete plan with the assistance of a third-party expert, after Board approval of any programs.

The Applicant indicated to the Panel in its submission on the preliminary matters on Friday, March 4, that in the course of selecting a third-party expert, the Applicant expected to obtain a wide variety of submissions as to how to deploy these programs that would result in materially different methods and means of evaluating those programs.

The Applicant also stated that although it is only the method of deployment that may change, changes in deployment may affect some of the results in the uptake and success and speed with which some of the programs result in CDM effects.

Moreover, the Applicant revised its position with respect to the evaluation plans set out in its evidence and at the technical conference, arguing that it is no longer planning to complete its plans after Board approval; that its evaluation plans are in fact complete; and that the Board should hear evidence from the applicants' witnesses that the evaluation plans, as filed, satisfy the requirements of the Code.

The Board determined that it does not agree with this approach. The Board found that in the absence of a complete evaluation plan for each program, the application is incomplete and the proceedings should be adjourned until the evaluation plans are filed. The Board found that it has no latitude in this regard. The Code clearly states that an evaluation plan for each Board-Approved CDM Program must be filed with the application.

Upon delivering this determination, the Board sought to establish when a complete evaluation plan could be filed. The Applicant indicated that filing a complete evaluation plan is dependent on a competitive process to select an auditor or third-party EM&V expert. This position is clearly inconsistent with the position stated by the Applicant on Friday, March 4. Moreover, the Applicant is now of the view, again in contrast to its stated position on Friday, March 4, that program participation and uptake is no longer dependent on the selection of a third party vendor. The Applicant now asserts that

different third party vendors would provide different types of evaluation programs, depending on the different ways that they saw that the programs would be deployed.

The Applicant also now asserts that there are certain aspects of the deployment of the programs that cannot be determined until the vendor is chosen, and that it was not the Applicant's view that the vendors and the programs that they would come up with would determine how the programs would be implemented in the market. It was only certain of the aspects that would require determination after the vendor was chosen.

In view of the conflicting statements made by the Applicant, the Board believes that it is necessary to provide the following guidance with respect to the requirement to file a complete evaluation plan for each program.

The Board does not believe that it is necessary for the Applicant to engage in a competitive process and to contract with a third-party vendor prior to submitting its evaluation plans. The evaluation plan required by the Code is a straightforward document that provides guidance to a future auditor as to how the respective program should be assessed and evaluated. It should demonstrate, among other things, that the applicant has identified the potential risks of the program, and has identified the key data that needs to be collected in order to properly evaluate the program. It does not have to reflect a spectrum of possibilities respecting program deployment and implementation, or potential variations in program design.

To be sure, prior to the approval of any of the programs the Board will need to have a definitive idea as to specifically how the respective programs are to be implemented and deployed, their design, and their detailed characteristics and elements. This is part of the evidentiary burden facing the applicants in this process. No program could be approved by the Board which is not sufficiently well defined to allow the Board to make the determinations it must make pursuant to the Directive. Those determinations focus on the economic efficiency of the programs proposed, their cost effectiveness, and their unique or non-duplicative nature. This kind of evidence is not what the evaluation plan called for by the Code is designed to provide. It is the kind of evidence that the applicant must provide at the end of the day, if program approval is to be accomplished.

In its submissions respecting the four questions posed in the Board's letter of March 2, 2011, the applicant indicated that its witnesses had developed a good understanding of the changes being contemplated by the OPA in its revision of its EM&V protocols.

While the Board is not requiring the applicant to adopt those revised standards now, it is the Board's view that the applicant should give careful consideration to doing so. It would be most appropriate to use the most current OPA EM&V Protocols when assessing the applied for programs, and indications are that the new protocols will be ready for dissemination in the near future.

The Board is of the view that it is necessary to provide the following guidance for the next steps of the proceeding.

THE BOARD ORDERS THAT:

1. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete TRC models of all cost effectiveness calculations, as requested by the School Energy Coalition, to all of the parties who have executed the Board's Declaration and Undertaking with respect to confidential filings on or before **Friday, March 18, 2011**. Parties who act as 3rd party CDM program delivery agents are not eligible to receive the TRC model under any circumstances.
2. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file a full concordance or mapping of all its proposed Board-Approved CDM Programs to the OPA-Contracted Province-Wide CDM Programs, discussing the similarities and differences of each program in an easy-to-read table, and deliver the same to all parties, on or before **Friday, March 18, 2011**.
3. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete evaluation plans for each program, based on the OPA's EM&V protocols and the information noted above, and deliver to all parties, on or before **Friday, March 18, 2011**.
4. Hydro One Networks Inc. and Hydro One Brampton Networks Inc. shall file complete budgetary and staffing level information for its CDM department, in accordance with the request made by the School Energy Coalition, and deliver to all parties, on or before **Friday, March 18, 2011**.
5. The Board wishes to advise parties that the **oral hearing could reconvene as soon as April 1st, 2011 and parties are advised to be prepared to proceed on this date**. The Board anticipates that up to four (4) hearing days are likely to

be required to hear the applications in full. The Board will advise parties in due course as to the actual hearing dates and location in the Board's offices.

All filings to the Board must quote the file number, EB-2010-0331 / EB-2010-0332, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guidelines found at www.oeb.gov.on.ca. If the web portal is not available you may e-mail your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

DATED at Toronto, March 8, 2011
ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Appendix A

Procedural Order No. 4

**Hydro One Brampton Networks Inc. and Hydro One Networks Inc.
Board-Approved CDM Program Application**

EB-2010-0331

EB-2010-0332

Oral Hearing Transcript, Monday, March 7, 2011



ONTARIO ENERGY BOARD

FILE NO.: EB-2010-0331
EB-2010-0332

VOLUME: 2

DATE: March 7, 2011

BEFORE:	Marika Hare	Presiding Member
	Paul Sommerville	Member
	Karen Taylor	Member

EB-2010-0331

EB-2010-0332

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the Ontario Energy Board Act,
1998, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an Application by Hydro
One Brampton Networks Inc. for an Order or
Orders granting approval of initiatives and
amounts related to the Conservation and Demand
Management Code.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario,
on Monday, March 7, 2011,
commencing at 9:34 a.m.

VOLUME 2

BEFORE:

MARIKA HARE	Presiding Member
PAUL SOMMERVILLE	Member
KAREN TAYLOR	Member

A P P E A R A N C E S

MICHAEL MILLAR
JENNIFER LEA

Board Counsel

JOSH WASYLYK

Board Staff

MICHAEL ENGELBERG

Hydro One Brampton Networks Inc.
and Hydro One Networks Inc.

BASIL ALEXANDER

Pollution Probe

JACK HUGHES

Canadian Manufacturers & Exporters
(CME)

JAY SHEPHERD
MARK RUBENSTEIN

School Energy Coalition (SEC)

SHELLEY GRICE

Association of Major Power
Consumers of Ontario (AMPCO)

JULI ABOUCHAR
JUDY SIMON

Low Income Energy Network (LIEN)

CHRISTINE DADE

PowerStream

ALSO PRESENT:

IAN MALPASS

Hydro One Networks Inc.

I N D E X O F P R O C E E D I N G S

<u>Description</u>	<u>Page No.</u>
--- Upon commencing at 9:34 a.m.	1
DECISION:	1
--- Whereupon the hearing adjourned at 9:58 a.m.	16

E X H I B I T S

<u>Description</u>	<u>Page No.</u>
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NO EXHIBITS WERE FILED IN THIS PROCEEDING

U N D E R T A K I N G S

Description

Page No.

NO UNDERTAKINGS WERE FILED IN THIS PROCEEDING

1 Monday, March 7, 2011

2 --- Upon commencing at 9:34 a.m.

3 **DECISION:**

4 MS. HARE: Please be seated.

5 Good morning. We are reconvening today in the case of
6 Hydro One Brampton, EB-2010-0331, and Hydro One Networks,
7 EB-2010-0332, with respect to six CDM programs.

8 On Friday, March 4th, we heard submissions on four
9 preliminary questions. The Board has considered the
10 submissions and has the following comments.

11 With respect to the decision framework, as a
12 preliminary matter, the Board has been asked to provide
13 parties with guidance as to what the decision framework
14 will be applied to evidence in this case.

15 We heard submissions which ranged from adoption of the
16 "just and reasonable" approach appearing in section 78.3,
17 which governs the Board's determination of rate cases and
18 rate orders, to "as far as appropriate and reasonable",
19 which is language which appears in the Minister's directive
20 of March 2010.

21 All parties are agreed that in performing its review,
22 the Board should be guided by the objectives appearing in
23 section 1, section 1 of the OEB Act, which, among other
24 things, requires us to have regard for economic efficiency.

25 The directive in paragraph 8 also requires the Board
26 to explicitly have regard to the interests of consumers
27 with respect to prices in its decisions respecting proposed
28 Board-approved CDM programs.

1 It is clear from submissions that there is no
2 unequivocal or clear-cut path to a determination of what
3 the appropriate decision framework ought to be.

4 While our decisions in this case will end up as a
5 burden to ratepayers, the method by which that occurs is
6 very different than is the case in a normal rate case.
7 And, therefore, the "just and reasonable" approach may not
8 be perfectly applicable.

9 The "as far as appropriate and reasonable" approach is
10 really not a decision framework at all. It has no history
11 of interpretation which would help us in applying it.

12 The Board is also of the view that if the Minister had
13 wanted the Board to use a novel decision framework, he
14 would have been far more explicit in his directive.

15 A number of parties also indicated that they were
16 unable to see any material difference between the decision
17 frameworks being proposed.

18 In the end, the Board has determined that it will use
19 its usual analytical approach with respect to costs to the
20 proposals being made in this case, as it does in all other
21 cases that come before it.

22 We will balance the need for economic efficiency and
23 the protection of consumers, with respect to prices, with
24 the rest of the legislative scheme and the terms of the
25 directive.

26 In our view, this is the kind of review the public and
27 the Minister expect us to conduct with respect to these
28 proposals.

1 The second question was with respect to OPA programs
2 and approvals. All parties were in agreement that the
3 Board does not have the legislative mandate and the
4 jurisdiction to consider the nature, adequacy and cost of
5 the OPA province-wide CDM programs. Parties argued,
6 however, that the OPA programs were relevant from the point
7 of view of determining relative cost-effectiveness of
8 applied-for utility programs, the size and scope of the gap
9 between the capacity and energy reductions that can be
10 achieved by using the OPA programs, and the overall
11 utility-specific energy and capacity targets and whether,
12 of course, utility programs are duplicative.

13 The Board agrees that it does not have jurisdiction
14 over the OPA programs, and agrees with parties that the
15 information relating to OPA programs provide important
16 context for the applied-for utility-specific programs that
17 will assist the Board in applying its usual analytical
18 framework with respect to costs, and, in particular,
19 whether the applied-for programs are duplicative as per the
20 Minister's directive.

21 The third question was whether the OPA programs are
22 sufficiently established for the Board to review new CDM
23 programs to be approved by the Board.

24 The Board is of the view that it remains an open
25 question as to whether the OPA programs have been
26 established and that this question will be determined as
27 the evidence unfolds.

28 The Board is of the view that the programs were not

1 established in July or November 2010. From the Board's
2 perspective, the OPA programs must be established,
3 described and taken up in such a way that the Board can
4 make a confident determination that the Board-approved CDM
5 programs are not duplicative as per the Minister's
6 directive.

7 The last question was with respect to the EM&V
8 protocols. Section 3.1.4(a) of the Board's CDM Code
9 requires an applicant for Board-approved CDM programs to
10 file a program evaluation plan based on the OPA's EM&V
11 protocols.

12 Although Hydro One Networks and Hydro One Brampton
13 have filed a draft evaluation plan template for each
14 program, they have not filed a complete evaluation plan.

15 Hydro One indicated in its evidence and at the
16 technical conference that it will prepare a complete plan,
17 with the assistance of a third-party expert, after Board
18 approval of any programs.

19 The applicants indicated to the Panel, in its
20 submission on the preliminary matters on Friday, that in
21 the course of selecting a third-party expert, the applicant
22 expected to obtain a wide variety of submissions as to how
23 to deploy these programs that would result in totally
24 different methods and means of evaluating those programs.

25 The applicants also stated that although it is only
26 the method of deployment that may change, changes in
27 deployment may affect some of the results in the uptake and
28 success and speed with which some of the programs result in

1 savings as opposed to some of the other programs.

2 Moreover, the applicants revised their position with
3 respect to the EM&V protocols set out in their evidence and
4 at the technical conference, arguing that it is no longer
5 planning to complete the protocols after approval, Board
6 approval; that its EM&V protocol is in fact complete; and
7 that the Board should hear evidence from the applicants'
8 witnesses that the EM&V plan, as filed, satisfies the
9 requirements of the Board.

10 The Board does not agree with this approach. The
11 Board is of the view that in the absence of a complete
12 evaluation plan for each program, the application is
13 incomplete and the proceedings should be adjourned until
14 the evaluation plan is filed.

15 Mr. Engelberg indicated that the Panel can elaborate
16 on its plan during the hearing. The Board believes it has
17 no latitude in this regard. The code clearly states that
18 an evaluation plan must be filed with the application.

19 The Board, therefore, adjourns this hearing until the
20 evaluation plan is filed.

21 Are there any questions?

22 MR. SHEPHERD: Madam Chair, I advised Mr. Millar that
23 I did have one matter to raise in light of the expectation
24 of an adjournment; and, that is, on Friday, the applicants
25 advised that they would provide us with certain documents
26 that had been refused at the technical conference.

27 My understanding was that that agreement to provide
28 them was conditional on this hearing proceeding today. I

1 am now advised by my friend that because it is not
2 proceeding today, they're not willing to provide them right
3 now. And I would like an order from the Panel, if the
4 Panel agrees, that those documents be provided.

5 MS. HARE: Mr. Engelberg, I think it was made clear on
6 Friday that we thought that the material was relevant. Is
7 there a problem with filing those materials as soon as
8 possible?

9 MR. ENGELBERG: My understanding was that when the
10 agreement was made by the applicants to file the material
11 and that it was conditional on the hearing proceeding, that
12 my friend, Mr. Shepherd, said that what Hydro One said that
13 it was willing to file on behalf of both applicants was
14 not, in fact, what he was asking for.

15 My recollection is that I said at that time that I
16 would have to go away and consult with my clients, which I
17 have not yet had an opportunity to do, of course, over the
18 weekend, to find out whether in fact this material can be
19 obtained, can be filed, and so forth.

20 So my suggestion would be and my submission would be
21 that at such time, a reasonable time before Hydro One makes
22 a determination regarding your decision today and the
23 filing of the EM&V plan such that the matter can go ahead,
24 that Hydro One give a response to Mr. Shepherd and to the
25 Board a reasonable amount of time before that date.

26 MR. SOMMERVILLE: What is the information that you are
27 having doubts about? What is it that you seem to be unable
28 to provide? It seems to me there were two categories of

1 things. One had to do with a model run with respect to the
2 TRC outcomes. Is that still in doubt as to whether you are
3 going to provide that?

4 MR. ENGELBERG: I don't actually know, Mr.
5 Sommerville. I would need to speak to a couple of my
6 clients before I can respond to that question.

7 MR. SOMMERVILLE: Do you have a transcript reference
8 that indicates that that was conditional upon this
9 proceeding, this hearing proceeding today?

10 MR. ENGELBERG: I don't have the transcript with me.
11 I do know -- I do recall only that I said on Friday
12 afternoon that something was conditional on what would
13 happen.

14 I thought I said that, but then when the undertaking,
15 the offer was rejected, Mr. Sommerville, in my submission
16 that reopened the matter.

17 Mr. Shepherd said that is not what I am looking for.

18 MS. TAYLOR: So at page 151, line 18, Mr. -- or,
19 sorry, line five, Mr. Shepherd says:

20 "The first one was a breakdown of the FTEs in the
21 entire department, broken down by Board-approved
22 programs, OPA programs and other, and broken down
23 into areas so that we can see what they're doing.
24 That was the first thing.

25 "The second thing is with respect to the budget,
26 we are not looking at the budget that was in the
27 2011 distribution rate case, because that has
28 been superseded already. We are looking at the

1 current budget that they're expecting for the
2 current period, which is -- will of course be
3 new, because they have now got new programs and
4 substantial new targets. That is what we asked
5 for and what was refused."

6 And Mr. Engelberg, you said:

7 "I'm sorry, Members of the Panel. I wasn't aware
8 that those were the questions. I don't think the
9 other people here from the applicants were, as
10 well. Instead of taking the time of the Board
11 now, could you grant us until early next week to
12 answer that, both of them?"

13 MR. ENGELBERG: That is my recollection, yes.

14 MS. TAYLOR: But that wasn't a conditional statement
15 on whether we proceed or not. It was simply an issue of
16 getting an answer that that was your understanding.

17 MR. ENGELBERG: Now that you have read those words, I
18 understand that it wasn't conditional. But given that we
19 are not proceeding now, given that Hydro One will have to
20 look into the matter of the EM&V plan to see whether that
21 can be done and that will be some time in the future, what
22 I am asking the Board is to grant us one indulgence, and
23 that is that when the EM&V plan is filed, if it is filed,
24 that we have to provide that information a reasonable time
25 before the matter proceeds so that everybody will have it,
26 including the Board; a reasonable time.

27 I see no benefit and I would suggest that there is no
28 benefit in giving it to -- producing that material now,

1 when the hearing is, in effect, being adjourned sine die.

2 MS. TAYLOR: Which means? I'm sorry, I don't
3 understand the "sine die."

4 MR. ENGELBERG: It is being adjourned without a date
5 being set for resumption.

6 MR. SOMMERVILLE: We can cure that.

7 With respect to the TRC model, Mr. Engelberg, the
8 record is even clearer.

9 This is on page 150. And there is no hesitation or
10 qualification with respect to your undertaking to provide
11 that information.

12 MR. ENGELBERG: And Hydro One is willing to provide
13 the TRC model.

14 MR. SOMMERVILLE: Okay. So a populated model,
15 according to the transcript, according to your undertaking
16 in the -- okay.

17 MR. ENGELBERG: Yes.

18 MR. SOMMERVILLE: So do you have any idea when that is
19 going to happen?

20 MR. ENGELBERG: Can I consult with Mr. Malpass?

21 MR. SOMMERVILLE: Please.

22 MR. ENGELBERG: I am advised that we can provide the
23 populated TRC model by Friday of this week.

24 MS. HARE: Thank you.

25 Do you have any comments, Mr. Shepherd?

26 MR. SHEPHERD: Yes, Madam Chair.

27 The thing we were asking for in terms of budget and
28 FTEs is what has presumably internally been approved by the

1 board of directors or management or whatever.

2 So this is an existing document. We are not asking
3 them this to make something up. We are asking them to give
4 us what they have already decided internally.

5 So I am not sure I understand why my friend had some
6 doubt about whether it is available. It is available.
7 They presumably don't run a conservation department without
8 having somebody approved its budget.

9 MR. ENGELBERG: The request by Hydro One for that --
10 regarding that material, that this be put off until a
11 reasonable amount of time before the hearing resumes, if
12 that is the case, is not based on lack of availability.

13 MR. SOMMERVILLE: What is it based on?

14 MR. ENGELBERG: It is based on the fact that there is
15 no benefit, in our submission, to providing that until a
16 reasonable amount of time before it is determined -- before
17 a date is determined as to when this matter will proceed.

18 There appears to be no benefit now. It could be --

19 MS. HARE: I'm sorry? Why wouldn't it be of benefit
20 to provide it as soon as possible so people have an
21 opportunity to review it?

22 MR. ENGELBERG: Because they should have an
23 opportunity to review it, and that is why I am asking that
24 we be granted the indulgence of providing it a reasonable
25 amount of time before this matter proceeds so that people
26 will have an opportunity to review it. I am not asking
27 that we provide it 48 hours or 72 hours before the hearing
28 resumes.

1 MS. HARE: Do you have any idea as to when you might
2 be filing the EM&V protocol?

3 MR. ENGELBERG: I have no idea whatever. We have not
4 caucused on this at all since we got the e-mail yesterday
5 afternoon at 3:35.

6 MS. HARE: Okay. So I assume you will be in touch
7 with Board counsel.

8 You understand the Board has a very busy agenda. So
9 as soon as we have an idea as to when we can reconvene, we
10 can slot the time in.

11 MR. ENGELBERG: I understand that. My understanding
12 is it certainly won't be very soon, because according to
13 what my understanding was leading up to this hearing and
14 during the hearing, we have to do an RFP. We have to find
15 vendors. That is not a short process.

16 MR. SOMMERVILLE: So it is your position that the
17 filing of the evaluation plan is dependent on a competitive
18 process for an audit?

19 MR. ENGELBERG: Yes, that is my understanding.

20 MR. SOMMERVILLE: That is how your company interprets
21 that requirement?

22 MR. ENGELBERG: Yes, it is.

23 MR. SOMMERVILLE: And that is how you perceive
24 compliance with the code to -- where compliance with the
25 code to lie?

26 MR. ENGELBERG: Yes, it is.

27 MR. SOMMERVILLE: Okay.

28 MS. TAYLOR: And if I just may clarify, is that

1 because, as you indicated on Friday, that the uptake and
2 participation numbers are directly dependent upon what the
3 third party consultant/auditor will tell you?

4 MR. ENGELBERG: No. In fact, I am advised that that
5 was incorrect. It is not because of the uptake. It is
6 because of a number of choices that vendors will have,
7 determining deployment matters that don't relate to uptake.
8 But a whole number of matters that -- I'm sorry, Ms.
9 Taylor. I can provide more details if you want. I can get
10 them from the clients, but the idea was that different
11 vendors would provide different types of evaluation
12 programs, depending on the different ways that they saw
13 that the programs would be deployed.

14 And that has been the applicants' understanding in the
15 months leading up to the submission of this application on
16 November 1, and the applicants never heard anything to the
17 contrary.

18 MR. SOMMERVILLE: So what you are indicating to the
19 Board is that the method of deployment is something that
20 you have not determined? That your programs have not been
21 designed or devised to the point of deployment, and that
22 that is still an open question? Is that what you are
23 telling the Board?

24 MR. ENGELBERG: No. I'm sorry, I have to respectfully
25 disagree with that.

26 I believe I got into that discussion with Ms. Taylor
27 on Friday afternoon.

28 I think we are using the word "deployment", the

1 applicants are using the word "deployment" in a much, much
2 narrower way than you have just used it.

3 MR. SOMMERVILLE: The perhaps you could help --

4 MR. ENGELBERG: There are certain aspects of the
5 deployment of the programs that cannot be determined until
6 the vendor is chosen.

7 MR. SOMMERVILLE: Have you developed options for them,
8 Mr. Engelberg?

9 It seems to me the strangest possible proposition that
10 you -- that you have these series of programs, that you
11 have -- you are asking the Board to approve, and that
12 presumably you have determined and devised and designed
13 with great particularity.

14 You mentioned how many pages in the record define
15 these programs.

16 So it is a mystery to me as to why it is necessary to
17 go through a rather convoluted and lengthy process at this
18 stage --

19 MR. ENGELBERG: And a costly process.

20 MR. SOMMERVILLE: -- and a costly process, to come up
21 with an evaluation plan, when presumably the four corners
22 of these programs have been determined by you.

23 What did you expect the Board to approve? Is the
24 Board expected to approve something that is then going to
25 change down the road, depending on what your consultant
26 tells you to do?

27 MR. ENGELBERG: It wasn't the applicants' expectation
28 that that would happen, but it was the applicants'

1 expectation that the method and the different possibilities
2 of evaluation would change, not the programs.

3 MR. SOMMERVILLE: Okay. So that returns me to the
4 point that: How was it not possible to handle that in the
5 context -- why hasn't that been managed to date?

6 That doesn't seem to be so open to so many different
7 possibilities that that couldn't have been done before now.
8 It raises the question as to how material this whole
9 business is.

10 I mean, there are two ways of looking at the
11 evaluation program. The first way is that it is a general
12 protocol that defines how -- roughly, how these programs
13 are going to be evaluated.

14 The other thing has to do with something -- this is
15 the issue that you raised on Friday, that it has to do with
16 a very detailed aspect or some detailed aspects about how
17 the programs are actually going to be implemented in the
18 market.

19 Those are matters of great concern to the Board, and
20 the Board would not be in a position to approve programs
21 which these critical features are still outstanding.

22 MR. ENGELBERG: I understand your concern. It was not
23 the applicants' view that the vendors and the programs that
24 they would come up with would determine how the programs
25 would be implemented in the market. It was only certain of
26 the aspects that would. And, to me, what this discussion
27 is showing and what the discussion on Friday afternoon is
28 showing is that the applicants must have had, and must

1 still have -- they will have to review your decision and
2 comments, of course, but must have had a different
3 understanding of the kind of EM&V plan that the Board says
4 it requires in order for an application to proceed, because
5 based on the applicants' understanding of it, it would have
6 been an impossibility for the applicants to provide what
7 the Board says it is looking for.

8 So obviously there is some sort of disconnect there
9 between the applicants' understanding and the Board's.

10 MS. HARE: I think the deployment strategy really goes
11 to the heart of the programs, and you are asking for
12 \$32 million and \$8 million. It is a lot of money not to
13 have details in terms of what the deployment strategy would
14 be.

15 I don't think the Board is going to approve any
16 programs without those details.

17 MR. ENGELBERG: I understand.

18 MS. HARE: Mr. Shepherd.

19 MR. SHEPHERD: Madam Chair, I am listening to this
20 back and forth, and it occurs to me that both of the gas
21 utilities have evaluation plans that they use each year.
22 They amend them from time to time, but they have quite
23 detailed plan for how they evaluate and audit their
24 programs.

25 And they do their RFP at the end of the process. They
26 have the plan in place already. It has already been
27 approved by the Board, and then they do an RFP to select
28 somebody and tell them, Here is our plan. This is how you

1 do it. This is how we want it done.

2 So perhaps Hydro One has a different thought about how
3 this is done, but they can just look to the gas utilities,
4 which is a way -- the Board has already approved how the
5 gas utilities are doing it. I hope that is helpful.

6 MS. HARE: Are there any other questions?

7 Thank you. We are adjourned then.

8 --- Whereupon the hearing adjourned at 9:58 a.m.

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