COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

RE: ONTARIO ENERGY BOARD'S DRAFT GUIDELINES FOR NATURAL GAS DISTRIBUTORS

INTRODUCTION:

On January 26, 2009, the Ontario Energy Board ("Board") issued, for comment, its Draft Demand Side Management Guidelines for Natural Gas Distributors (the "Guidelines"). The Guidelines were accompanied by a Board Staff Discussion Paper ("Discussion Paper"). These are the submissions of the Consumers Council of Canada regarding the Guidelines and the Discussion Paper.

OVERVIEW/DSM FRAMEWORK:

The Council continues to support the development and implementation of Demand Side Management ("DSM") programs by the Ontario natural gas local distribution companies ("LDCs"). DSM should be cost-effective and pursued in a way that best serves the interests of the LDC's ratepayers. Although the Ontario LDCs have expanded their involvement in DSM since the programs were first initiated, it is important to recognize that the environment in which these programs are delivered has changed significantly. These changes may have implications for how the Board intends to proceed with DSM policies and regulatory requirements in the future. Some of the more significant developments include:

- The Ontario electric LDCs began delivering conservation and demand management programs in 2005. Most of those LDCs continue to deliver programs through contractual arrangements with the Ontario Power Authority ("OPA");

- The Ontario Government, through the Ministry of Energy and the OPA, has been attempting to promote and create a conservation culture in Ontario. Many of their initiatives have impacts on both electricity and natural gas use (eg; home retrofits).

- The Federal Government has taken on a increased role in promoting conservation and energy efficiency;

- The Ontario Municipalities have taken on an increased role in promoting conservation and energy efficiency;

- Globally, there is an increased awareness of climate change and the importance of addressing it.

In addition, there is an expectation that the Ontario Government will be introducing, imminently, a new bill entitled, the Green Energy Act. Although the components of the bill are not known at this time the Council expects that there will be significant impacts arising from the bill that will ultimately impact the delivery of conservation and DSM programs in the electricity sector. This may also impact the natural gas sector. From the Council's perspective, the Board should, before finalizing the Guidelines, assess how the Green Energy Act may impact natural gas DSM.

The Council agrees with the comments in the Discussion Paper that the current DSM Framework may need to be reconsidered. The time, effort and complexity involved in setting the DSM parameters and measuring results have been significant. The very fact that the LDCs have lost revenue adjustment mechanisms ("LRAMs") and shared savings mechanisms ("SSMs") has made the evaluation of results extremely important, but also extremely contentious. A simpler framework, and one that can better adapt to changes in the DSM landscape, should be considered. In addition, given the increased attention to DSM and conservation in both the natural gas and electricity sectors the Council does not support locking in the current framework for another three-year term. At most, the LDCs should be required to come forward with two year plans, pending the development of a new regulatory approach.

DEVELOPMENT OF INPUTS AND ASSUMPTIONS:

The Board has retained the services of Navigant Consulting Inc. ("Navigant") to produce a report updating the DSM technologies and input assumptions. The Council is supporting a review of the Navigant work by Vermont Energy.

With respect to the input assumptions used in the screening and evaluation of DSM programs it is important that those assumptions be updated on a regular basis. As noted above, the DSM landscape is changing and accordingly, assumptions can also change when new information becomes available. Technologies change as do inputs such as free-ridership rates. The Council encourages the LDCs to review the inputs on a regular basis and keep them as current as possible. To the extent the assumptions are current, the ability to assess "actual" results is enhanced.

ADJUSTMENT FACTORS IN THE TOTAL RESOURCE COST TEST

The Council continues to support the use of the total resource cost test ("TRC") for the screening and evaluation of DSM program results.

Spillover Effects:

fers to a situation where a customer does not actually participate in a program, but adopts an efficiency measure because they are influenced by the LDC's program-related information and marketing efforts. The question for the Board is whether or not spillover impacts should be incorporated into the calculation of DSM savings. The Council is of the view that spillover effects are extremely difficult to measure. To date the LDCs have not incorporated spill-over effects when calculating DSM savings, nor have they proposed a defensible way to measure the effects. In the absence of a precise way to calculate spillover the Council does not support its inclusion in the calculation of TRC savings or for the purposes of determining lost revenue.

With respect to spillover Board Staff has proposed, in the Guidelines, that the distributor "provide comprehensive and convincing empirical evidence, which clearly quantify the effect that the spillover or a specific program has had on program savings and the distributor's revenue" (Discussion Paper, p. 7). The Council supports this approach, but acknowledges that the evidentiary hurdle to establish spillover effects could be significant.

Locking In Input Assumptions:

It has been the practice of the LDCs to lock in assumptions for the purposes of calculating SSM savings. As a result, although there may be more relevant information available regarding an input assumption, this new information has not been used when final SSM savings are determined. The effect of this has been, in certain circumstances to overstate savings and reward the utility for savings calculations that are not truly reflective of what actually happened. If, for example, the LDC undertakes a study which changes the savings associated with a given measure during a given year, the practice has been to wait until the following year to change the data.

The Council supports the proposal set out in the Guidelines that SSM savings should be based on the best available information. This is how the LRAM amounts have been consistently determined. This will ensure that the LDCs are awarded for savings that are, to the extent possible, reflective of what was <u>actually</u> achieved. To maintain the current approach would be unfair to the LDC ratepayers by rewarding the shareholders for savings that did not occur.

Attribution of Savings:

Attribution of savings becomes important when assessing the results of programs delivered jointly between LDCs and other partners. The Board's Guidelines indicate that the attribution of benefits between an LDC and a non-rate regulated third party will be determined on a case-by-case basis. In effect, if one of the LDCs partners with a government entity there must be an assessment of the level of savings that result from a joint program that should be "attributed" to the LDC. Given the fact that so many more entities are involved in the development and delivery of DSM, attribution may become a more significant issue in the future. Because joint programs may take very different forms, determining savings attributed to an LDC on a case-by-case basis remains, from the Council's perspective, an appropriate approach.

The Guidelines, however, also indicate that in order for an LDC to claim 100% attribution of benefits the distributor should demonstrate that its role was central to the program. The Guidelines further state:

> The centrality principle as expressed by the Board in proceeding EB-2005-00001 dictates that the distributor plays a central role if the distributor initiated the program, funded the program, or implemented the program. Centrality is established by the distributor if its financial contribution is greater than 50% of program funding or, where the distributor's

> financial contribution is less than 50% of program funding, the distributor initiated the partnership, initiated the program or initiated the implementation of the program. Where the distributor's financial contribution is less than 50% it is expected that the distributor will provide supporting documentation outlining its role in the program. (Guidelines, p. 16)

The Council agrees that the attribution of savings resulting from joint programs should be determined on a case-by-case basis. The Council does not support the centrality rule as currently drafted in the Guidelines. Simply because an LDC contributes more than 50% of the program funding should not necessarily mean that they should be allocated all of the savings resulting from that program for the purposes of calculating a SSM pay-out. They alone did not generate the savings. In addition, simply because an LDC "initiated the partnership" or "initiated the implementation of the program" it should not necessarily be attributed 100% of the savings.

In the past, Enbridge Gas Distribution ("EGD") has sought 100% savings for a program where its contribution to a customer incentive was significantly smaller than the contribution provided by the Federal Government ($70 vs. $1000). From the Council's perspective this approach is not appropriate. Each joint program is unique and the savings attributed to the rate regulated LDC should be determined when the program is filed with the Board for approval.

DEVELOPMENT OF DSM BUDGETS AND TARGETS:

Resource Acquisition Targets:

The development of DSM targets has been one of the most contentious issues for ratepayer groups and the LDCs. Clearly, the LDCs have an advantage in terms of assessing what might be an achievable DSM target. They possess key information about their customers and markets, and they have established relationships with builders, retailers and other partners in their franchise areas. They also have a better sense at to what budget level is required to meet an established target. In the past ratepayer groups have only been able to assess the reasonableness of a target based on historical results. Although targets proposed by the LDCs have been characterized as "stretch" targets, the LDCs, year after year, continue to exceed those targets. If the Board continues to support a SSM that is driven off of targets this will remain a highly contentious issue for all stakeholders.

The Guidelines require that LDCs bring forward DSM targets and budgets to the Board for approval. The Council supports this approach, but as noted above does not support a term for approval beyond two years. Pending a change in the regulatory framework and given the pace at which the DSM/conservation landscape is changing, it would be inappropriate to fix budgets and targets for longer than a two year period.

Market Transformation:

The Council supports the development of market transformation programs by the Ontario LDCs. To the extent the LDCs continue to seek incentives tied to these programs, they should apply for approval of such incentives when they file their plans. From the Council's perspective the metrics developed for these programs should be quantitative and clearly defined. The whole idea is to transform the market, so measurements like "units installed", for example, should be the focus. Going forward the LDCs should not be rewarded for simply appearing at home shows to promote a particular technology. That is not evidence of market transformation.

With respect to incentives, they should clearly be "incentives". The LDC should be rewarded for actually transforming a market and not on the basis of meeting a series of qualitative targets. Inventive pay-outs should not be guaranteed, but paid out when meaningful market transformation actually happens.

Low Income Customer Programs:

The Council has been supportive of the LDCs pursuing cost-effective DSM programs for low-income customers. Programs are in place today. Several months ago the Board undertook a stakeholder consultation process to address a broad set of issues related to low-income energy consumers in Ontario. The Board has yet to report on that process and make recommendations. When the Board does issue its report the Guidelines may have to be revisited.

In the Discussion Paper Board Staff stated, "The low-income programs and the associated metrics and targets will be the subject of a rate proceeding allowing for stakeholder review." From the Council's perspective it is not clear as to whether or not a separate proceeding is anticipated, or if the low income program budgets, metrics, targets and shareholder incentives related to those programs will be considered when each LDC files its plans. The Council supports reviewing low-income programs within the context of a review of the LDC's overall DSM plan. The low-income programs should be subject to the same screening and evaluation protocols as other DSM programs.

SHARED SAVINGS MECHANISM:

As noted above, the Council supports the proposal set out in the Guidelines to calculate SSM rewards on the basis of the best available information at the time of the calculation. This is consistent with the way in which the LRAM amounts are calculated and ensures to the extent possible that rewards are reflective of savings actually achieved.

With respect the concept of the SSM more generally, the Council has taken the view in the past that SSM rewards are not required. Facilitating DSM should be a service that the LDCs provide for their customers. They have DSM variance accounts that allow them to recover exactly what they spend, and if justified, to spend more than the approved budget. In addition, they are kept whole through the use of the LRAM. The Council acknowledges, however, that the Board has consistently approved the use of a SSM for both EGD and Union.

Going forward the Council believes there should be a better alignment between the achievements of the LDCs and the SSM rewards. SSM rewards have been significant in recent years. "Returns" for the achievement of DSM by an LDC should not significantly exceed the returns related to other aspects of their business, especially in light of the fact the LDCs have both DSM variance accounts and LRAMs. The process of setting targets in the past has not been balanced given the asymmetry of information between the LDCs and the ratepayer representatives. The fact that the LDCs have consistently exceeded the targets and reaped significant rewards demonstrates that imbalance and the need to reconsider SSM designs.

The Council acknowledges that there is a direct relationship between the setting of targets, the establishment of an annual budget and the design of the SSM. The LDCs should be required to bring each element forward when seeking approval of their plans.

PROGRAM EVALUATION AND AUDIT:

Given the fact that each LDC has a LRAM and a SSM, the need for comprehensive and effective DSM evaluation and audit processes is essential. The current processes are cumbersome and time consuming. The Council sees merit in the Board selecting and hiring a third party for evaluation and audit for both distributors. If the Board maintains the existing model, the Council suggests that the Board develop detailed common reporting protocols for both LDCs.