BACKGROUND

The Federation of Rental-housing Providers of Ontario (FRPO) appreciates the opportunity to be involved in the Board's consultation and to comment on the Board staff discussion paper. The record of this proceeding and the Board's Consultation on Energy Issues Relating to Low Income Consumers (EB-2008- 0150) are a matter of public record so we will not provide an exhaustive account of the multiple steps in the respective processes.

FRPO was involved in and provided submissions in EB-2008-0150 and commend the Board on establishing the Low-income Energy Assistance Program (LEAP). FRPO increased its involvement in this proceeding in the spring in the hopes of supporting a more effective means of measuring Demand Side Management programs in reviewing the Pacific Economics Group (PEG) report entitled "Top Down Estimation of DSM Program Impacts on Natural Gas Usage". We concur with other stakeholders that the desired correlations were not evident thus reducing the efficacy of that approach as a means of increasing the effectiveness of DSM measurement and the program in general. In a continued desire to contribute to a more effective DSM framework, we have reviewed the Board staff report and the record of the proceeding and offer the following submissions for the Board's consideration.

OVERALL SUMMARY

The Board is well aware of the opportunities and challenges in creating the appropriate balance required for an effective DSM program. FRPO commends Board Staff (Staff) on its work to provide a discussion document that is well considered and informative. We appreciate that Staff has taken into the account the views of its retained experts and the experienced stakeholders in presenting a well-articulated discussion paper to enable further comment and consideration by all.

FRPO is generally supportive of most elements of the discussion paper. In an effort to provide focus, we will only provide submissions below on a one very important aspect that we believe can be enhanced and on areas where Staff has specifically requested feedback. Further, we offer support to the comments of our colleague, Mr. Randy Aiken, in his considered opinions on behalf of his clients, the Building Owners and Managers Association of the Greater Toronto Area (BOMA) and the London Property Management Association (LPMA).

ELIGIBILITY FOR LOW INCOME

An important facet of the discussion paper is the use of guiding principles in providing a framework that can flexible, yet based upon the public interest goals of the DSM program. The proposed guiding principles, taken largely from the work of the Conservation Working Group (CWG) provide an important touchstone for the definition of other elements of the framework and resulting programs that will be developed. The first of those principles is[1]:

1) Be accessible to low-income natural gas consumers:
   a) Be accessible province-wide in the long term
   b) Require no upfront cost to the low-income energy consumer and result in an improvement in energy efficiency within the consumer's residence
   c) Address non-financial barriers (e.g., communication, cultural and linguistic).

In our view, the accessibility of the program to all low-income consumers is a matter of equity and the ethical approach to establishing a just, socially-conscious program. The challenge comes in striving to achieve this principle through eligibility criteria. We respect that Staff is also striving for consistency between the approaches of the natural gas and electricity sectors. In doing so, the proposition is the use of the Low-income Eligibility Criteria of the Ontario Power Authority (OPA)[2]. However, as the Board is aware, the infrastructure requirements and the development of systems has resulted in individual meters for multiple story, multi-unit buildings being very rare for natural gas customers. In applying their criteria in a natural gas context, it is clear that it would almost impossible for a private multi-family building with one meter would be eligible for this funding. That limitation would remain even if the vast majority of tenants of that building were deemed to be low-income using the first proposed criteria of:

1. Household Income at or below 135% of the Statistics Canada per-tax Low-Income Cut-Offs (LICO) FOR communities of 500,000 or more, as updated from time to time.

The preclusion of access of a building with the majority of tenants meeting this criteria would seem to be inequitable given the fourth criteria in the proposed eligibility requirements:

4. Any household that resides in a community that is targeted for the neighbourhood blitz treatment (for example, neighbourhoods in which greater than or equal to 40% of households qualify according to the LICO thresholds established for the program) will be eligible for basic low-income natural gas DSM measures; these homes must meet at least one of the other income criteria described above to qualify for deep DSM measures.

   The natural gas utilities through their agent responsible for low-income program eligibility screening must ensure that all participants (with the exception of social and assisted housing residents) provide proof of income in the form of a copy of their last income tax assessment or social benefit statement. The agent responsible for low-income

[1] Staff Discussion Paper On Revised Draft Demand Side Management Guidelines for Natural Gas Utilities, January 21, 2011, page 12.
[2] Ibid, pages 14-16.

> program eligibility screening must verify that this proof meets the income criteria outlined above. The natural gas utilities (or its delegate) will be responsible for obtaining a landlord waiver form in which the landlord will acknowledge and consent to the implementation of program measures and treatments in participating homes where applicable.

In our respectful submission, how could any household in a community qualify under criteria 4, yet tenants in a privately-owned multi-unit building be precluded from the benefits of the low-income DSM allocations even if 100% of the tenants were deemed low-income under criteria 1. The practical effect of this distributional inequity would be that the low-income tenants of a private building with bulk metering would bear the cost of these low-income DSM programs in their rents while being precluded access to the benefits that could be realized. In our view, this is an income transfer in the wrong direction. We submit that there are regulatory precedents that have ruled on the appropriateness of such a design.

The jurisdiction of Massachusetts has been a leader in developing energy management initiatives targeting low-income consumers. The initiation of their programs date back more than 20 years. However, some of their original designs had unintended cross-subsidizations that were challenged successfully by the disenfranchised customer groups. This situation is captured in a document for the National Consumer Law Center, Inc. of Boston by the firm of Fisher, Sheehan & Colton, Public Finance & General Economics[3]:

> ***The seminal case is Re. Western Massachusetts Electric Company[4]. In that case, the Hampshire Community Action Commission (HCAC), a local community action agency, challenged both the overall conservation planning of Western Mass Electric Company (WMECO) and the design of specific conservation programs. Both the planning and design components, HCAC argued, were marred by assumptions which, though perhaps unwittingly, nevertheless resulted in the effect of excluding low-income households from conservation programs[5]. This exclusion, HCAC said, not only denied the opportunity for the poor to reduce their bills by reducing their consumption[6], but also resulted in the poor paying the costs of the conservation measures while receiving none of the benefits[7].***

[3] Energy Efficiency and the Low-Income Consumer: Planning, Designing and Financing, Fisher, Sheehan & Colton, Public Finance & General Economics, 1994, http://www.fsconline.com/downloads/Papers/1994%2010%20LI-ENEFF.pdf

[4] Re. Western Massachusetts Electric Company 87 P.U.R.4th 306 (Mass. DPU 1987); see also, Re. Cambridge Electric Light Co., DPU-87-221-A, at 173 (Mass. DPU 1988).

[5] "Although WMECO asserts that its programs are designed to be income neutral, HCAC contends that the effect of WMECO's programs, intended or unintended, is to exclude low-income customers." Ibid., at 404.

[6] Ibid., at 417.

[7] Ibid., at 405. "It is HCAC's position that the exclusivity of the Company's programs has two undesirable results. First, it excludes low-income customers from the direct benefits of energy savings."

This unintended discriminatory practice has additional commercial implications. In a hypothetical situation with two identical, energy inefficient apartment buildings occupied by 100 percent low-income tenants with bulk metering that are situated on the same street and the only distinction would be the ownership of the units. The energy costs are paid by the ownership and contribute to the establishment of monthly rent. One, with social housing ownership, could have access to all of the benefits of the targeted low-income programs. The other, owned privately, would not. Not only would the consumer effects described above materialize but over time, the private building may be at a chronic, competitive disadvantage to attracting tenants.

FRPO acknowledges that it may appear difficult for a utility to satisfy itself that a privately-owned apartment building houses tenants of whom greater 40% would qualify for the low-income thresholds set. However, we respectfully submit that the programs are funded sufficiently to target neighbourhoods that contain apartments that can be determined to meet this criteria.

We would like to draw the Board's attention to a study commissioned by the United Way Toronto called *Vertical Poverty: In Poverty by Postal Code 2*[8]. By using Statistics Canada Census data over a 25-year period, the study was able to track the proliferation of low-income families and their migration to high rise apartment buildings and the neighbourhoods that they were residing. Some of the high level determinations made in the report that are pertinent to this study are:

- 43% of Toronto's low-income families live in high-rise apartment buildings.[9]
- 75% of the stock of Toronto apartment buildings is privately-owned.[10]
- 80% of Toronto's high rise apartment buildings (more than 5 stories) are 30 years old or more[11]

Given the above statistics, it is clear that there is significant potential DSM savings in Toronto apartment buildings due to their age. However, most of the potential target buildings that use natural gas for heating or water heating would not qualify for low-income programs due to the ownership of the building and the predominance of bulk metering . Further, we respectfully submit that, if the United Way has the resources to put forth this type of analysis using Statistics Canada census date, the DSM programs should be sufficiently resourced to be able to target low-income neighbourhoods **that reside in privately-owned apartment buildings.**

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[8] Vertical Poverty: In Poverty by Postal Code 2, http://unitedwaytoronto.com/verticalpoverty/downloads/Report-PovertybyPostalCode2-VerticalPoverty-Final.pdf
[9] Ibid, page 26
[10] Ibid, page 28
[11] Ibid, page 30

From the previously referenced document regarding Energy Efficiency and the Low-Income Customer, we believe the following summary of another Massachusetts utility hearing in front of their Department of Utilities has application to this issue:

> ***Eastern Edison Company,[12] too, was found to have a potential "bias in the selection process" for its conservation programs.[13] The Department noted "the particularly limited scope of programs" in finding that Eastern Edison was, through its planning and implementation, effectively excluding "hard-to-reach residential customers such as low-income customers and tenants."[14] In Eastern Edison, the Department found the lack of information to be a source of discrimination unto itself.[15] According to the DPU, "a company must have an adequate information base to determine the potential for [conservation] within each customer class."[16] To meet the directive that each utility must "take into account and compensate for market barriers that affect any customer group's participation in Company [conservation] programs,"[17] each utility in Massachusetts must now engage in a "systematic analysis" and must "document consideration of program design to provide direct benefits to all customers including low-income and other residential customers."[18]***

Therefore, FRPO urges the Board to recognize the potential for systemic, albeit, unintended discrimination with the use of the proposed eligibility criteria. We respectfully submit that the Board ensures that the proposed criteria is expanded to include privately-owned multi-unit buildings with bulk gas metering. We propose that the criteria allow for the inclusion of privately-owned buildings upon meeting a threshold of 40% low-income tenants as per the standard for a neighbourhood. We further submit that the Board encourage utilities can use their respective stakeholder engagement processes to refine the mechanisms to overcome the market barriers perceived with private ownership.

[12] Re. Eastern Edison Company, 100 P.U.R.4th 379 (Mass.DPU 1988)

[13] Ibid., at 418

[14] Ibid. The DPU found that, other than a hot water insulation program, "the remaining programs target a very exclusive group of customers."

[15] Ibid., at 419. "Lack of information regarding the technical potential of [conservation] in the territory could be an additional source of bias in the process. Finally, the Company did not make any specific effort to consider the barriers to participating in [conservation] programs by certain residential and low-income customers."

[16] Ibid., at 419

[17] Ibid., quoting, Western Mass, supra.

[18] Ibid

BUDGET

We appreciate the summary of budget options presented by Staff in the Discussion Paper. While there are compelling arguments for increasing investments in conservation, FRPO submits that an approximate doubling of expenditures by the utilities over a year period, as a result of the Staff proposal is not in the public interest for the following reasons:

Accelerating Spending on an Arbitrary Metric

Concentric Energy Advisors (CEA) recommended that a Board-recommended range of between 4 and 6 percent of distribution revenues should be established.[19] It is noted that the recommendation was based upon " its understanding of Ontario's regulatory and public policy environment, and informed by its review of Canadian jurisdictions and "jurisdictions in the U.S. [that] were chosen because they were determined to be states which had the highest per capita spending on natural gas DSM programs." However, it is also noted that these same "highest per capita spending" jurisdictions averaged 3.9%, the removal one of those jurisdictions from the equation resulted in a reduction of the average of the remaining jurisdictions to " 3.04%, which is not inconsistent with the Ontario natural gas utilities current spending level".[20] In our respectful submission, this exclusion of an outlier demonstrates the risks of establishing budgets based upon a tie to distribution revenues. Therefore we strongly agree with the stakeholders that commented that "tying DSM budgets to distribution revenues would be arbitrary".[21] We submit the budgets should be established on the proven ability of the utility to invest the money prudently in proven and developing programs.

Ability to Spend Prudently

While Staff notes that utilities have "commented that their respective budgets could escalate to that range", we submit the efficacy of their potential investments and the prudency of the means have not been considered nor tested.

Cross-subsidization

The Board has long held principle of minimizing to the extent possible cross-subsidization by establishing cost causality. Staff noted the Board's E.B.O. 169-III Report that strived for this principle and is summarized by the last sentence "... the public interest will be best served when the direct beneficiaries of a DSM program bear, to the greatest extent possible, the direct financial burden of the program." Further Staff noted the report to contain " In the interests of fairness and competition, the Board believes that intra-class subsidization should be held to a

[19] Staff Discussion Paper On Revised Draft Demand Side Management Guidelines for Natural Gas Utilities, January 21, 2011, page 35.
[20] Ibid, page 36.
[21] Ibid, page 36.

minimum."[22] Staff expressed its concern that at the current DSM budget levels, there may already be "undue levels" of cross-subsidization and suggests that an assessment of "what may constitute undue levels of cross-subsidization... to ensure that current and future natural gas DSM budgets are in line with these principles." [23]

As noted by FRPO above in its submissions under the Eligibility for Low-Income section, we submit that using the criteria proposed to establish low-income and, in its practical effect, precluding access to low income tenants in privately-owned apartments will only serve to exacerbate cross-subsidization. Further, we adopt the submissions of Mr. Aiken in his concerns regarding cross-subsidization as additional considerations in this matter. Until, there is some understanding of what the "acceptable level" of cross-subsidization and it is known what programs would be implemented to achieve new targets, we respectfully submit that the Board ought to consider understanding the impacts before approving the level of expenditures.

Budget Summary and Recommendation

For the above reason, FRPO has a fundamental disagreement with substantial increases in budgets when the utilities have not, in our view, established a plan to spend it prudently, equitably and in the public interest. Further, we do not believe that it is in the public interest to financially incent the utilities to dramatically increase expenditures when the impacts are not understood.

While our reasoning would point to support of Option 1 in the alternatives provided by Staff, we understand that there is a consensus that some growth in expenditure would be warranted. We concur with Staff's recommendation to allow for a 15% over-spending by utilities and captured in the DSM Variance Account (DSMVA)[24]. We believe this presents an opportunity for growth.

FRPO's recommendation would be to allow the Budgets to grow to the extent that the utilities demonstrate need through the yearly review of their DSMVA allowing the total actual approved expenditures to form the next year's target amount. In other words, if the utility overspends by 10% and its additional expenditures meet the required evaluation criteria as accepted by the Board, their subsequent budget target increases by 10%. FRPO appreciates that the timing of the review of DSMVA may not provide the utilities the desired time to forecast, plan and implement effectively. If that is the case, we would encourage the Board to consider a one year lag in increasing the increment or, alternatively, a prorata increase in budget for the next year based upon the percentage of DSMVA over target budget for the last reviewed period. In our respectful submission, our proposed mechanism would allow for a greater level of "regulation" of budget increases over establishing an "arbitrary" metric while allowing some considered assessment of "cross-subsidization" including effects of increased investment in low-income initiatives.

[22] Ibid, page 40.
[23] Ibid, page 40.
[24] Ibid, page 51.

OTHER ITEMS THAT STAFF REQUESTED FEEDBACK

FRPO appreciates Board staff in directly asking for on specific areas of the discussion paper. Staff requested feedback on the Costs of Carbon Dioxide Equivalent ("CO_2e") Emissions and the Discount Rate. We have had opportunity to preview the submissions of Mr. Aiken of BOMA/LPMA and support his positions and his considered reasoning behind those positions.

CONCLUSION

FRPO has focused its comments the areas that we believe we can provide the Board the most benefit in its deliberations in these matters. We respectfully submit that with the adoption of less restrictive criteria for Low-Income Eligibility, more low-income tenants will have access to DSM programs and utilities will have a greater opportunity to access suitable targets for investment without undue discrimination or cross-subsidization. Further, we believe considered, tested, incremental approach to Budgeting to be superior to the approach of establishing three year targets for untested investments. This approach extends to the inclusion of Carbon Dioxide Emissions. We also respect the social benefit associated with lowering the Discount Rate in a principled fashion.

FRPO thanks the Board for design of the consultative process affording us the opportunity for input into these important initiatives. We trust our submissions are helpful to the Board and remain available to the Board, the utilities and other stakeholders to assist in developing our ability to steward the opportunities and overcome the challenges on the road ahead.

All of which is respectfully submitted on behalf of FRPO,

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