

# **Ecology Action Centre - Preliminary Discussion Paper**

## **Administrative Models and Accountability for Energy Efficiency Investments in Nova Scotia**

*Prepared by Brendan Haley, EAC Energy Coordinator*

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### *Introduction*

This paper has been produced by the EAC to contribute to the preliminary discussion on administration and accountability for electric energy efficiency in Nova Scotia. This discussion paper addresses a number of the issues and questions posed in the initial materials circulated by the team from Dalhousie University chaired by Dr. David Wheeler.

In this paper, the EAC comments on the models presented in the “Overview of Administrative Models for Electricity DSM” paper provided by the Dalhousie team, we also propose additional models characterized as 1) “Energy Efficiency Utility” and 2) The “Sole-Purpose Independent Entity” Model. We suggest criteria for consideration of alternative models and discuss the Nova Scotian context. We also discuss selection and timeline considerations and emphasize the need to define an accountability framework for the model to be chosen as part of the current process.

EAC is providing these thoughts on administration and accountability in order to facilitate collaborative deliberation that can lead towards quick resolution and implementation.

### *Criteria and Considerations*

In considering which administrative model is most appropriate for Nova Scotia the EAC suggests the following as a starting list of criteria for consideration of alternative structures:

- 1) Compatibility of structure with very strong performance accountability mechanisms
- 2) Ability of structure to provide flexibility in details of implementation within the context of performance-accountability
- 3) Ability of structure to use multiple performance indicators to balance emphasis and resource allocation among multiple policy and resource acquisition goals
- 4) Compatibility of structure with implementation of a comprehensive, all-fuels approach to energy efficiency, with multiple funding sources
- 5) Probable cost relative to other structures
- 6) Ease of start-up and quick ramp-up
- 7) Alignment of entity mission with DSM resource acquisition goals
- 8) Promotes use of existing Nova Scotia expertise, institutional capabilities and human resources
- 9) Promotes development of new, local implementation infrastructure
- 10) Transparency and perception of trustworthiness by public
- 11) Likelihood of attracting appropriately high quality staff and management expertise

- 12) Ability to participate in energy resource planning and to expand scope of service if required
- 13) Ability to provide single, long-term, trusted point of contact for customers
- 14) Overall level of confidence vs. risk, with respect to assuring resource acquisition results

## ***Administrative Models***

In a forum on “administration and accountability” hosted by the Ecology Action Centre on October 31, 2007, we proposed grouping administrative models into four fundamental categories:

1. Utility administration
2. Government administration
3. Independent third-party administration
4. Energy efficiency utility

We also considered hybrid models (e.g., a crown corporation).

We provide further discussion regarding each of these generic models below, as well as a focus on some specific examples that we believe should be of specific focus in our upcoming deliberations.

## **Utility Administration**

In a letter dated in September 7<sup>th</sup>, 2007 a broad group of stakeholders stated “we feel there is no *a priori* reason for a utility such as Nova Scotia Power Inc. to administer electric energy efficiency programs” and that “a broad array of administrative models should be considered”.

On October 31<sup>st</sup>, 2007 the Ecology Action Centre sponsored a morning and afternoon meeting on “Administration and Accountability” with stakeholders organizations, including NSPI, government representatives and with an invitation to Board staff and consultants. Consideration of the utility administration model was conducted through the DSM process by the Board. EAC invited Michael Stoddard, from Environment Northeast, to discuss the “collaborative” and “stakeholder management board” models within utility administration at an NSPI sponsored stakeholder meeting. EAC and other stakeholders also suggested various programs and policies within a utility administration lens.

After consideration of NSPI’s draft DSM filing, a letter from a broad group of stakeholders, dated January 9<sup>th</sup>, 2008, stated that “NSPI is ill suited in the current circumstances and climate to carry out these activities, and we are disappointed at the failure of the Collaborative’s documents to truly address the legitimate and numerous concerns raised by each of us.” Stakeholders identified many of the “potential disadvantages” of utility administration that are mentioned in the Dalhousie discussion paper, including: concerns regarding performance, conflict of interest, contentious processes to resolve lost revenue issues, and the observation that NSPI has yet to build up significant DSM capability.

In the January 31<sup>st</sup>, 2008 cover letter regarding an application to approve NSPI’s DSM Plan – P-884 NSPI’s general manager of regulatory affairs states that “NSPI will be flexible in further discussing the identity of the DSM administrator with stakeholders. Of paramount importance is the prompt implementation of the DSM program and the achievement of the targeted conservation results – as opposed to who administers the programs. While the Evidence and Programming Plan contemplate NSPI administration, we believe that all parties working together can identify another administrator to implement these important programs and achieve the results”.

The background information above is indicative of what we perceive to be a fairly broad consensus among stakeholders in a preference for non-utility administration of DSM programs in Nova Scotia. NSPI has expressed their full support for demand side resource acquisition as the fundamental objective, and expressed an interest in considering alternative administrative models. NSPI's statements in this regard should be commended. We view this as an indication of NSPI's willingness to cooperate on how to best meet energy efficiency goals through an independent administrator.

In this context, the EAC suggests the focus of deliberation should be on non-utility administrative models. At this moment stakeholders and the province must decide what form of independent administration works best for Nova Scotia, how it can provide confidence and assurance of performance, and how it can be an effective instrument to both achieve utility resource acquisition goals and achieve the province's GHG reduction goals. These decisions must be made in short order.

## **Government Agency Administration**

A government agency dedicated to energy efficiency avoids many of the "conflict of interest" concerns stakeholders have expressed with regard to utility administration. Government agencies are also in good positions to complement energy efficiency programming with strategies related to the introduction of standards and training. Government agency administration can also fully integrate electric efficiency strategies with multi-fuel, renewable energy and even transportation strategies to provide a single point of contact for customers.

Stakeholders in Nova Scotia have emphasized both administrative issues and accountability for results. Accountability for results has been defined by a broad group of stakeholders as requiring "a detailed set of objectives for DSM savings, with financial consequences if these are not met."<sup>1</sup>

While performance objectives or indicators can be defined for a government agency, it is difficult, if not impossible to provide meaningful performance-based incentives or penalties to such an agency.

A government agency can also encounter policy, political, or structural barriers to achieving optimal staffing levels, pay scales and staff capability. This structure may also have more barriers to being nimble and flexible in its implementation and constrained in contracting. This is a fundamental issue for Nova Scotia given the large amount of efficiency savings that are cost-effectively available in NSPI's *Integrated Resource Plan* and the need for rapid and effective ramp-up. All stakeholders are keen to see the efficiency potential estimates in the *Integrated Resource Plan* tested through real-world experience. The major constraints in the short-term are the limits of *capability* and *time* to responsibly plan and ramp-up implementation. The faster and more easily the administrator can ramp-up, the faster we can achieve cost-effective savings and start to evaluate the impact demand side resource acquisition can have in Nova Scotia.

While a government agency model can alleviate "conflict of interest" concerns with regards to utility administration, it can create new concerns related to political influence and competing priorities. Short-term political objectives could compete with long-term demand side resource acquisition objectives. There is also the very real possibility that electric energy efficiency investments could be "raided" by the legislature to pay for general government expenditures, as has occurred in a number of other

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<sup>1</sup> Letter by a Group of Stakeholders to Board Consultant, John Stutz dated January 9<sup>th</sup>, 2008

jurisdictions<sup>2</sup>. These competing priorities can lead to non-performance to the detriment of demand side resource objectives that will be relied upon to meet larger objectives of Integrated Resource Plans produced for both supply side and demand side measures.

We should also be aware that the call for independent administration originated from a Utility and Review Board (UARB) process considering investing ratepayer funds to procure cost-effective demand side resources. To be accountable to the ratepayers of the province, the administrator must be accountable to the UARB.

For the above reasons, the EAC suggests that a government agency model is inappropriate in the Nova Scotian context. While the use of a crown corporation (like Efficiency New Brunswick) somewhat alleviates these disadvantages, the EAC does not currently view the benefits of government connection through a crown corporation or hybrid model as having more advantages and benefits than disadvantages and risks.

The EAC strongly supports a key role for government in establishing the proper framework to ensure the Board holds an administrator accountable to achieving societal objectives related to demand side resource acquisition; including securing the maximizing of all cost-effective and achievable demand side resources, ensuring broad participation – including from those with high barriers to participation, and reducing GHG emissions. The government also has a very important role in establishing standards, developing the labour market infrastructure for job creation and training for energy efficiency, and in funding (and operating in some areas) programs that relate to non-electric fuels, renewable and distributed energy.

In the NS context, *Conserve Nova Scotia* is currently an Independent Operating Agency within the Department of Energy. For the reasons mentioned above, the EAC does not support *Conserve NS*, in its present form, becoming the administrator of electric energy efficiency in Nova Scotia. However the existing staff capability within *Conserve* could prove very useful in helping to create a qualified team for the entity that will administer electric energy efficiency.

### **Third-Party Model**

Variations of the third-party, independent models exist in Oregon, Vermont, Wisconsin, New Jersey and Delaware. They are also under consideration in a number of other jurisdictions. This model, where implemented, has demonstrated the ability to address implementation issues and has proven to be successful.

The third-party can be chosen through a competitive *Request for Proposals* process or other selection process. Private companies, non-profit corporations, both local and out-of-province, and perhaps a crown corporation can bid for a delivery contract.

Third-party, independent administrators come in two different forms:

- **A Sole-Purpose Entity.** Such an entity is created expressly to perform the desired functions. The best example of this model is the Energy Trust of Oregon, which was created by government and is accountable to government, but is an independent

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<sup>2</sup> Indeed, this exposure to raids and the overall political exposure of budgets has been a driver in other jurisdictions of moving from government to alternate administrative structures.

organization with its own Board of Directors with a high degree of flexibility and autonomy.

- **A Contracted Private Business or Team.** A private business or team of businesses that typically are competitively selected and engaged by contract to act as the DSM program administrator. The best examples of this, and those with the greatest experience to date, are in the statewide program delivery structures currently in place in Wisconsin and Vermont. A similar structure has been in place in New Jersey for the past year and is being considered in a number of other jurisdictions.

These third-party models have benefits similar to a government agency model with respect to its ability to act as an entity devoted to procuring energy efficiency. These third-party models have largely avoided competing (political) priorities of government agency administrative models.

In contrast to a government agency, this model allows for the establishment of performance based incentives and penalties. The ability to provide accountability for results through performance awards and/or penalties meet the criteria for accountability mentioned in previous stakeholder letters. This is a fundamentally important attribute to the third-party model.

In contrast to a government agency, third-party entities can also be highly flexible in their ability to ramp up or down, staff and subcontract.

The potential for a contract award through a competitive bidding process through a third-party model meets recommendations 12 & 10 of The Electricity Market Governance Committee (EMGC) in Nova Scotia, which state that “The EMGC recommends that there be an open solicitation process to acquire or contract for new generation or DSM” and “The EMGC recommends that the UARB oversee any competitive process for NSPI to acquire new resources of demand management or generation facilities”.

A third-party model also provides the ability to integrate with other electric efficiency related initiatives and to expand the scope of service, if required. For example, a third-party program administrator could fund electric efficiency measures through ratepayer investments and fund non-electric efficiency investments through another financing mechanism (e.g. government budget, fuel oil efficiency charge, carbon tax, auction of pollution permits). A third-party program administrator could more easily allow funding to come from multiple locations with a single point of contact from a customer perspective. Having not only electric, but non-electric and perhaps renewable energy programs, provided by a third-party would have the added benefit of ensuring accountability for the non-electric efficiency programs by linking performance incentive mechanisms to these programs as well.

One potential risk with the implementation of a third-party model is the start-up costs involved. In this area, we would note that stakeholders have opted against a utility-based delivery model and that NSPI has yet to develop significant infrastructure in demand side resource delivery.

Implementation of a third-party model in Nova Scotia would require the UARB or perhaps another entity such as NSPI or the government in the interim, to oversee the selection process, contract award, and contract implementation. This would likely require the Board itself to hire or contract staff to oversee Board/independent third-party/generation utility interactions.

If the third-party is to operate under a “contract” rules will also need to determine renewal of the contract. For example, the contract could automatically come up for bid over a certain time period (e.g. 3 years) or the contract could automatically be extended based on the achievement of performance indicators. The potential for the program administrator to lose the contract as a result of non-

performance is a powerful motivator. However, it also creates some uncertainty regarding long-term projects, relationships and resource planning.

Creation of a non-governmental, sole-purpose entity (similar to the Energy Trust of Oregon) could provide the benefit of being able to get the administrator up and running in quick order by avoiding a time-consuming solicitation and selection process. If the entity is to be sole-purpose it can be more difficult to create performance awards that will provide significant motivation, but the potential for loss of franchise can still be available as a performance motivator.

## **Efficiency Utility Model**

In this model a long-term “franchise” is awarded to a program administrator instead of a fixed-term “contract”. The franchise could originally be awarded through a competitive process or through a method that allows for a thorough evaluation and provides confidence and assured performance. The franchise model attempts to create a structure for demand side resource acquisition that is analogous to existing regulated energy supply utilities. Thus, a true “energy efficiency utility” is created.

The benefits of awarding a long-term franchise is that the energy efficiency utility will be able to engage in long-term financial and resource supply commitments and partnerships. This will allow it to create longer-term relationships, agreements, partnerships and financing arrangements with customers. It will also allow the “energy efficiency utility” to participate in a more robust fashion in *Integrated Resource Planning* and other electricity sector planning processes.

The EAC believes these longer-term benefits can be achieved without sacrificing the high degree of accountability for performance that is desired. The same accountability mechanisms can be applied through performance indicators and a performance award. In addition, award of a “franchise” would not preclude the Board from taking this franchise away in the event of non-performance. It will be important to allow for regular review of performance and the administrative model to ensure accountability if a “franchise” is awarded.

Like the “third-party” model a “franchise” would also provide the “energy efficiency utility” with the option to also deliver non-electric efficiency programs.

While this “energy efficiency utility” model has yet to be implemented in North America, it has been the subject of considerable development, including enabling legislation, in Vermont. After seven years of experience under a third-party contractual model, regulators, utilities and stakeholders in Vermont have all developed a fairly high level of consensus regarding the merits of moving to this “next level” administrative model and may move to this structure in the coming year.

## ***Accountability and Performance***

We would note that the “third-party” and “energy efficiency utility” models have as a benefit the ability to reward the administrator based on their performance. Thus, if these models are selected with this benefit in mind, stakeholders will also need to articulate a series of well-designed performance indicators to clarify objectives. These indicators can then be utilized to provide rewards and/or penalties to motivate the program administrator and provide accountability for stakeholders. See “accountability” section below.

## ***Selection Considerations***

The process of selecting a new program administrator must be transparent and fair. It must inspire confidence in the public and provide assurances that the new administrator will meet demand side resource objectives.

At a January 11<sup>th</sup> Stakeholder meeting sponsored by NSPI, the EAC presented a number of criteria to ensure confidence and assurance of performance by an administrator. We suggested that the level of confidence and assurance of performance should be “as great as the Province would expect from any entity where as much as \$50 million/yr is being paid to deliver specified results” We present the list of what one would look for from an proposing to be the energy efficiency administrator:

- Staff skills and qualifications
- Organizational capability and experience
- Adequate commitment of resources
- Strength of Quality Assurance Systems
- Well-developed and effective evaluation plan to assure timely feedback
- Strength of tracking system
- Adequate staffing levels
- Strength and credibility of program plan
- Commitment to ongoing transparency
- Mission Alignment

Finally, the EAC highlighted having “significant consequences linked to results” through financial consequences and potential loss of administrative role as a characteristic of fundamental importance. The final and most important point is a function of the administrative model chosen. The bullet point list provided are qualities that could provide an initial list to select a program administrator.

Another quality that could be considered is the desire for the administrator to be “home-grown”. We believe having a “Made in Nova Scotia” administrator does provide benefits, and suggest it be added as a selection criteria<sup>3</sup>, but not be utilized to exclude qualified candidates from outside of Nova Scotia.

Another consideration is whether the entity should be non-profit or for profit, recognizing that entities fall on various points of this spectrum. Parties might feel that a non-profit corporation will have higher mission alignment with energy efficiency goals. The EAC believes community-based, non-profit delivery of energy efficiency can facilitate better program delivery by creating trust and ensuring high mission alignment. This should be considered as a selection criteria, but not be utilized to exclude qualified, trusted for profit entities with good track records that might have equally high mission alignment with demand side resource acquisition objectives.

Ultimately, the selection of an administrative entity will likely need to be made by the UARB. To assist in this process, and make a recommendation to the UARB, the EAC proposes that a selection committee that is transparent and representative be created that can fully consider and weight the multiple criteria that should be considered. The selection committee could also be given some discretion regarding the process to be followed, with clear oversight and accountability. The selection committee could be comprised of broadly respected individuals and stakeholders, government representatives and NSPI.

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<sup>3</sup> Perhaps through a formal and transparent “weighting” in the selection criteria.

We would encourage the selection committee to explore opportunities for cooperation and linkage building between entities and individuals that respond to the call for an independent administrator. This could allow for the existing staff capability in Nova Scotia to be pooled into an effective initial team.

### ***Timeline Considerations***

We encourage the current process to develop a schedule that will lead to selection of a model and an administrator as soon as possible. It would be highly desirable to have the new administrator selected by the end of this year so that 2009 could be used as a “transition year” and the new administrator would be responsible for operating a full portfolio of programs in 2010. This will require the award of a contract, franchise or agreement by February 2009 at the latest.

The EAC is supportive of NSPI administration for programs in 2008 and 2009, with a transition occurring throughout 2009.

We present the following, illustrative timeline, to show how things can progress from the selection of the administrative model to full operation of an independent administrator by 2010.

<b>Action</b>	<b>Milestone/Date</b>
Commence Legal Research on Administrative Models	February 2008
Government Accountability and Administration Process	February 2008 to April 2008
Choice of Administrative Model	Feb/March 2008
Choose performance indicators & risk/reward mechanism	March 2008
Scheduled UARB Hearing	April 2008
Expression of Interest for Independent Administration	April 2008
Government Legislation, As Necessary	April/May 2008
Create Selection Committee	May 2008
Begin Development of RFP (if competitive solicitation to be used)	May 2008
Notice of Intent	June 2008
Potential bidders meeting	August 2008
Issue of RFP (if competitive solicitation to be used)	September 2008
Time to Respond to RFP	Deadline – November 2008
Evaluation of Initial Bids	1 <sup>st</sup> week of December 2009
1 <sup>st</sup> round of interviews	2 <sup>nd</sup> week of December

2 <sup>nd</sup> round of interviews	3 <sup>rd</sup> week of December
Selection of Entity	By Dec 31, 2009
Contract/Franchise Negotiation (probably different path for franchise)	January 2009
Commence Ramp-Up and Transition	February 2009
New Administrator Ready to Commence Initial Operations	May 2009
Transfer/Development of Tracking System	May 2009
Fully Operational (End of Transition Period)	Fall 2009

We present this timeline in the hopes that things might progress on a quicker pace than illustrated in the above timeline. We would suggest an initial “Expressions of Interest” as soon as possible to send the word out to individuals and organizations in Nova Scotia. Other important milestones include:

- If government legislation is required, it should be implemented in the spring session to avoid delay
- Performance Indicators and Performance Assurance mechanisms will be required to be developed this spring and approved by the Board before the issuing of an RFP.

To allow for a more efficient and timely outcome the selection committee could be relied upon to develop details of the process to most efficiently, effectively yet fairly and transparently select an administrative entity. We suggest that the Board will have final oversight over the award of the administrator role to ensure an honest and fair outcome.

## ***Accountability***

If administrative models such as third-party delivery or the “energy efficiency utility” are selected due to their ability to provide accountability for results, the next, very important, step is to clearly define the energy efficiency utility’s objectives and to provide the right motivation for the utility to achieve these objectives through rewards and/or penalties.

Through clear performance indicators and performance assurance mechanisms, stakeholders can ensure that a program administrator is held accountable for achieving results. This accountability framework can then provide a high degree of flexibility for the program administrator to meet the goals outlined. The level of flexibility allowed to a program administrator should be a function of the level of accountability of the administrator for achieving results.

For the administrator to be provided with a high level of flexibility, the performance indicators selected should relate to the full spectrum of objectives sought through demand side resource acquisition. These objectives relate to:

- 1) Resource Acquisition – Shorter-term energy savings
- 2) Market Transformation – Longer-term energy savings
- 3) Equity Consideration to ensure a wide variety of customers will have the opportunity to participate in energy efficiency programs – especially populations and types of customers with high barriers to participation.

The indicators chosen are then the primary basis for providing incentives and issuing penalties to the program administrator. The ideal incentive/penalty level will encourage exemplary performance from the program administrator, while ensuring that the vast majority of benefits accrue to the ratepayers of Nova Scotia.

We respectfully suggest that the present stakeholder process provide time for discussion on the accountability framework that will be implemented within the administrative model chosen. In many of the administrative models discussed, this would include clear performance indicators and penalty/incentive mechanism to incent performance.