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BY ELECTRONIC DELIVERY

May 7, 2018

OEB Modernization Panel
c/o Strategic, Network and Agency Policy Division
Ministry of Energy
6th floor, 77 Grenville Street,
Toronto, Ontario
M7A 2C1

Attn: Manager, Regulatory and Agency Policy Section

Dear Sir/Madam:

Re: School Energy Coalition Submissions

Ontario Education Services Corporation, through its energy regulation division, the School Energy Coalition, hereby provides through the attached Submissions its input into the work of the OEB Modernization Panel, on behalf of Ontario's school boards.

Ontario's 72 publicly funded school boards spend more than half a billion dollars a year on energy, and about sixty percent of that is regulated. School boards are thus vitally interested in the strength of the regulatory process, and to that end have for twenty years participated actively to protect their interests, the last fourteen jointly through the School Energy Coalition. More information on the School Energy Coalition can be found in Appendix A of the attached Submissions.

We thank you for the opportunity to provide input on these important issues, and we would be pleased to participate in further steps in your consultation and analysis.

Yours very truly,

Ted Doherty
Executive Director

cc: Jay Shepherd and Mark Rubenstein, Shepherd Rubenstein (email)
Wayne McNally, SEC Co-ordinator (email)

SUBMISSIONS TO THE

OEB MODERNIZATION PANEL

FROM THE

SCHOOL ENERGY COALITION

May 7, 2018

INTRODUCTION

These are the submissions of the School Energy Coalition to the OEB Modernization Panel. Background on the School Energy Coalition, and the authors of this document, can be found at Appendix A.

The first section of this document summarizes the specific recommendations contained in these submissions. Each of the remaining sections provides a brief analysis of one of the issues flagged by the Panel for discussion.

The School Energy Coalition welcomes the opportunity to provide input relating to the future of the Ontario Energy Board. We would be pleased to meet with the Panel at any time to discuss these issues further.

Ted Doherty
Jay Shepherd
Mark Rubenstein

RECOMMENDATIONS

General

The Ontario Energy Board has for much of its history compared favourably with other energy regulators on key issues such as independence, quality of decisions, and customer involvement in the regulatory process.

More recently, the OEB has been moving in the wrong direction on these and other measures. A key goal of the Panel should be to propose adjustments that set the OEB back on track.

Issue #1: OEB Mandate and Activities

The core mandate of the OEB is to be the independent economic regulator in the area of monopoly electricity and natural gas prices. It does so guided by the objectives in section 1(2) and 2 under the *OEB Act*. While it does many other things (licensing, enforcement, etc,), primarily it is about setting rates.

The overall mandate is still appropriate. Three things could improve the OEB's role:

1. ***Expansion:*** The OEB's mandate should be expanded to include independent public review of supply side options, including electricity conservation and renewable energy procurement. Final review of these is currently in the hands of the Ministry, on the advice of the IESO. IESO appropriately manages those functions, but the role of independent review would be improved if shifted from the Ministry to the OEB.

2. ***Generic Hearings:*** The OEB should be encouraged to expand its use of generic hearings to get out in front of key issues affecting the sector, such as distributed energy resources (and grid defection), and the impact of lower carbon policies on gas distribution. The recent Community Expansion process (EB-2016-0004) is a good example.

3. ***Quasi-Judicial Model:*** The government should reaffirm that decision-making by the OEB is supposed to use the quasi-judicial model commonly used throughout North America. Recent moves toward a European-style administrative model should be discouraged.

Issue #2: Disruption and Innovation

The major changes in the Ontario energy sector are driven by three things:

a. Rapidly increasing electricity costs, particularly for generation.
b. The move to a low-carbon economy.

c. Technology evolution and advances, including declining costs of some technology.

The OEB is not in a position to stop these changes, even if that were a good idea (which it isn't). However, the OEB does have a role in getting out ahead of the issues, and providing a public forum for careful debate on the options. In addition to expanding the use of generic hearings (see SEC Recommendation #2 above), the OEB can:

4. ***Stranded Assets.*** Increase its emphasis on detailed review of Distribution System Plans and capital spending proposals, with a focus on ensuring that they are not creating future stranded assets.

5. ***Encouraging Leadership.*** Encourage regulated utilities to carry out pilot projects in areas of risk, and then share the results of those projects with their peers. Utilities that take a leadership role in this respect should be acknowledged and supported.

Issue #3: Governance Framework

The adjudicative and administrative functions and management of the OEB are currently combined. This has recently created the unfortunate perception that adjudication may be less independent that it should be.

To remedy this evolution at the OEB, the following changes should be implemented:

6. ***Separate the Adjudicative and Administrative Management.*** The combined position of Chair and CEO should be ended. In its place, the OEB should have two functions:

    a. The Board Members should be led by (in the sense of "first among equals") a Chair or Lead Adjudicator, who has overall responsibility for the adjudicative processes at the OEB.

    b. The OEB staff should have a comprehensive management team, as today, but led by a CEO who is not a Board Member.

7. ***Board of Directors.*** The Board Members, including the Chair, should be constituted the board of directors of the OEB, to whom the CEO and management report (much as in a corporation).

8. ***Policy Development and Decisions.*** Much of the work of the OEB is carried out through policies, which have varying levels of force, from truly binding (formal rules and codes) to practically binding (e.g. cost of capital) to indicative only (e.g. certain administrative

practices). The newly restructured OEB should distinguish between administrative policies and adjudicative policies, with the latter being those that are to be considered by adjudicative panels in making decisions. The two types of policies should be developed and approved in different ways:

a. Adjudicative policies should be initiated by the Board Members. The research and analysis would still be done by the staff of the OEB, under the guidance of the Board or, in most cases, a sub-committee of Board Members established for that purpose. Approval would be by the Board as a group, and they would also determine the force of each policy.

b. Administrative policies should be initiated by management, and in many cases can be implemented with management approval. The Board would always have oversight, just as with a corporate board of directors, and can reserve the right to approve any significant administrative policy (a rate handbook, for example).

9. ***Nomination and Selection of Board Members.*** The current practice of allowing the Chair/CEO to essentially nominate all Board Members should be terminated. The Board Members should establish a nominating committee, in the same manner as corporations, and should select appropriate candidates that are recommended for consideration by the government. As is the case today, the government should have the final decision.

Issue #4: Stakeholder Relationships

Customers need to be the centre of all of the OEB's decision-making, since it is the customers the OEB is supposed to protect (as the "market proxy"), and it is the customers that are paying all of the cost of regulation (for the utilities, the regulator, and everyone else).

The grassroots method of customer involvement in the adjudicative process, which is the longstanding Ontario model, is one of the strongest in North America. Most customer representatives in other jurisdictions consider our approach the gold standard.

The involvement of stakeholders in the OEB's processes and decision-making would benefit from the following improvements:

10. ***Adjudicated Applications.*** Restrictions on the participation by customers in adjudicated matters should be removed. This includes:

a. Proportionate Review, which is a direct attempt to cut the customers out of the regulatory process in a misguided attempt to increase "regulatory efficiency".

b. Limitations on discovery through omission of technical conferences.
c. Prohibiting customers from filing evidence in rate cases.
d. Shortening the time available for proceedings, and in particular oral hearings (such as the four day limit on the $29.2 billion Enbridge/Union case currently before the OEB).

11. ***Policy Decisions.*** The increasing practice by the OEB of consulting on policy development with utilities, but not with other stakeholders, should be abandoned. Policies should not be cooked up between the regulator and the regulated entities behind closed doors.

12. ***Voice of the Customer.*** The key management of the OEB should be talking to those persons designated by stakeholders as their relevant specialists. The current standard of speaking only to CEOs means that, for many customer organizations, the person who is interacting with the OEB is not the organization's most knowledgeable person with respect to energy matters, nor the person they have chosen to deal with those issues.

13. ***Fair Allocation of Regulatory Resources.*** While the resources available for utilities in the regulatory process have gone up dramatically over the last decade, the resources available for the customer groups (who are paying for all of it anyway) have stayed flat. This is in part because the maximum rates recoverable by customer groups for their expert advisors have been unchanged for at least ten years. Customer groups have as a result an increasingly difficult task to find experienced specialists to assist them. Those rates should be brought back up closer to market rates, and at the same time the rapid increase in utility regulatory resources should kept under tighter control.

14. ***Delegated Authority.*** The practice of delegating decisions to OEB staff members, as a way of avoiding the requirement in the OEB Act to have a hearing, should be ended. Delegated decisions are intended to be for non-contentious or technical matters, not as a way of avoiding the Statutory Powers Procedure Act.

15. ***Proportionate Review.*** The pilot project to exclude public involvement in rate cases, called Proportionate Review, should be abandoned. The approach is fundamentally about secret decision-making, and is directly antithetical to the OEB's mandate.

16. ***Stakeholder Engagement Survey.*** The OEB should implement an annual stakeholder engagement survey similar to that used by IESO.

Issue #5: Relationship with Government

Regulatory independence is critical not only for the public and the utilities, but also for the government. "Decisions are made by an independent regulator" is no longer an appropriate answer by a politician if the regulator is doing the government's day to day bidding.

The OEB has been criticized recently for taking too much guidance from the government, and for the lack of transparency of that guidance. The division of the OEB into adjudicative and administrative sides, as proposed in SEC Recommendation #6, would go a long way toward improving the situation.

In addition, two other steps could be taken:

17. ***Memorandum of Understanding.*** The current Memorandum of Understanding between the OEB and the Minister should be replaced with one that is strictly limited to administrative and financial matters.

18. ***Directives.*** The government has ample opportunity to step in and direct regulatory matters through the directive powers in the OEB Act. The government should not provide any guidance to the OEB on matters within the OEB's mandate except through the directive powers, or through legislative action, both of which by their nature must take place in a public and transparent manner.

Issue #6: Regulatory Excellence and Benchmarking

Recent moves to rejuvenate the staffing at the OEB are helping to improve the quality of the work being produced by staff.

While it is possible to develop KPI's and other metrics to measure regulatory performance, they can also create a false sense of precision. The only real test is public confidence in the results. It is not clear today that the OEB is seen by the public as defending their interests to the extent that they should.

The SEC recommendations contained under the other issues should, if implemented, have the effect of improving public confidence in the OEB.

Issue #7: Resourcing

The current practice under which all of the costs of the OEB are paid by the regulated entities continues to be the right approach. The result is that the customers, through their rates, pay the regulatory costs of the utilities, the customer groups, and the regulator itself. This is appropriate, as the customers are the primary beneficiaries of regulation.

The OEB is a government agency, and so its budget and business plan should be approved by the government, as is the case today.

One change would improve the OEB's budgeting and planning:

19. ***Business Plan.*** The former practice of public consultation on the OEB Business Plan should be reinstated. Utilities, customer groups, and other stakeholders are a significant resource, with lots of expertise and a broad range of perspectives. The OEB would benefit from more input from the sector, both during the development of the Business Plan, and when a draft is ready for review.

Issue #1: OEB Mandate and Activities

The core mandate of the OEB is to be the independent economic regulator in the area of monopoly electricity and natural gas prices.[1] It does so guided by the objectives in section 1(2) and 2 under the OEB Act. While it does many other things (licensing, enforcement, etc,), primarily it is about setting rates.

Central to this mandate is that the OEB is the "market proxy", the role of protecting the customers and the public in the same manner as competition would do in a non-monopoly situation. In a competitive environment, customers can choose another provider if the terms of the service are unacceptable. Companies compete to serve the customers in the manner the customers want. In a monopoly, the OEB fulfills that role, ensuring that the terms of service, in particular prices, are acceptable. The term "just and reasonable" in the OEB Act is intended to express this principle.

In addition, the other objectives in the OEB Act are, indirectly, entirely about the customers. For example, what is the point of "financial viability" of the sector? The purpose is not to look after utilities. The Legislature has no mandate to protect utilities. The purpose is to ensure that, in the long term, the customers continue to be served by healthy companies that are capable of getting the job done. Utility viability is a public good because it is essential to long term customer benefit.

Licensing, enforcement, merger approvals, and other powers exercised by the OEB are similarly driven by the public interest in ensuring that customers are fairly and properly served, both in the short and long term.

This focus on the customers is the essence of economic regulation of monopolies, and is the key theme throughout these submissions.

The overall mandate is still appropriate. If anything, the Board should be allowed to exercise it more robustly and with fewer constraints. Over the years government has narrowed and directed the Board's usual authority in protecting the interest of consumers.[2] Successive legislation has

[1] "The Board's mandate through economic regulation is directed primarily at avoiding the potential problem of excessive prices resulting because of a monopoly distributor of an essential service." *Advocacy Centre for Tenants-Ontario v. Ontario Energy Board,* 2008 CanLII 23487, para 39.

[2] For example: a) O.Reg 53/05, in setting rates for OPG, restricts many aspects of the usual rate-setting process including determining the Board was required to accept the need for the Darlington Refurbishment Project; b) Increasing directive powers over the last decade, which restricts usual Board authority such as, i), s. 28.3 re: Smart Meter initiative where the Board was required to adopt the program and was subject to considerable commentary by the Auditor General (http://www.auditor.on.ca/en/content/annualreports/arreports/en14/311en14.pdf); c), s. 96.1, which has been used to declare certain transmission projects 'priority projects', which means the Board must accept the 'need' for the project.

narrowed the Board's authority in oversight over the energy system over the years and moved to the Ministry of Energy.[3]

Three things could improve the OEB's role:

1. ***Expansion:*** The OEB's mandate should be expanded to include independent public review of supply side options, including electricity conservation and renewable energy procurement. Final review of these is currently in the hands of the Ministry, on the advice of the IESO. IESO appropriately manages those functions, but the role of independent review would be improved if shifted from the Ministry to the OEB.

The OEB's strength is its reliance on evidence-based decision making. The OEB is uniquely able to carry out a thorough, evidence-driven review of supply side options. This may not have to replace completely the role of the government side, including the political input. However, both policy-makers and the public benefit from a rigorous public review of the evidence driving energy supply decisions.

It is not obvious that IESO, as the proponents of supply side policies and proposals, would object to a more rigorous review process. Properly managed – and the OEB knows how to do this – such a process validates what the IESO proposes (or strengthens it if amendments are recommended), and insulates the IESO from uninformed criticism, whether from inside government or from the public.

2. ***Generic Hearings:*** The OEB should be encouraged to expand its use of generic hearings to get out in front of key issues affecting the sector, such as distributed energy resources (and grid defection), and the impact of lower carbon policies on gas distribution. The recent Community Expansion process (EB-2016-0004) is a good example.

The energy sector is in a state of change, as the Panel has identified in Issue #2: Disruption and Innovation, dealt with below. Just as the OEB can add value for IESO in dealing with supply side options, so too the OEB has the ability to face change in a rigorous way.

Recently, the OEB took applications from the (then) two gas utilities for subsidized expansion into new communities, and on its own turned those applications into a generic hearing, the Community Expansion proceeding. What transpired was a disciplined debate on the needs of those communities, and the choices available to meet those needs. It also dealt with the tradeoffs between served and unserved communities, and the tradeoffs between subsidizing and subsidized customers. There was no obvious right answer. Different stakeholders had different perspectives (including the utilities), and each provided factual and opinion evidence supporting

[3] Most recently, the passing of *Energy Statute Law Amendment Act,* 2016

their point of view. Unlike normal public consultations, that evidence was tested publicly, including questions by opposing interests and questions by the adjudicators.

The result was a carefully reasoned decision by the OEB, distinguished by the fact that it was based, not on persuasion or intensity of belief, but on the (well-tested) evidence.

This is not the first time the OEB has tackled a key public policy issue, within its mandate, with a generic hearing. In the past, things like gas conservation programs and budgets, and gas storage, have benefitted from the OEB's ability to face tough issues from an evidence-based point of view. And, unlike government departments or administrative agencies, the OEB has the ability to conduct that review in public, with all stakeholders at the table and fully engaged.

Recently, the OEB has moved away from generic hearings, which tend to be more expensive and more difficult to control. Instead, similar issues – ones that really need the foundation of tested evidence – are dealt with by consultative processes. Where those processes are working groups, some but not all of the benefits can be retained. Where they are not, the value of strong evidence is lost.

3. ***Quasi-Judicial Model:*** The government should reaffirm that decision-making by the OEB is supposed to use the quasi-judicial model commonly used throughout North America. Recent moves toward a European-style administrative model should be discouraged.

The OEB has, for at least the last five years, been consciously moving away from the quasi-judicial model on which the OEB Act is based, and in favour of an administrative model similar to that in Great Britain and other European jurisdictions. In some instances this has been by ignoring the spirit of the OEB Act. More often, it has been by going as far as the Act allows to avoid the quasi-judicial paradigm.

North American regulators almost all use the quasi-judicial model of decision-making, while European regulators are more often administrative in structure. The administrative model has two main failings:

a. It is more heavily dependent on the personality of individual leadership to be successful. For example, the administrative model worked at Ofgem in Britain, but only because Professor Stephen Littlechild, the guru of energy regulation, was put in charge. When he went back to academia, Ofgem suffered from bureaucratic bloat and high prices to consumers. The structure itself offers little guarantee of good results, whereas the quasi-judicial model builds in more structural protections and drivers of quality decisions.

b. It tends to shift concerns from the public to the political side, rather than facing and responding to those concerns directly. This is largely because its independence – if there at all - is less apparent than with the quasi-judicial model.

The OEB has been moving more towards the administrative model, with things like Proportionate Review (behind-closed-doors analysis and decision-making on rate applications) and regulatory policies that are not adjudicated, but are treated, for practical purposes, as if they had the force of law (such as capital recovery and cost of capital).

This loses the advantages of transparency and evidence-based decision-making, central elements in the OEB's traditionally high level of public confidence.

In jurisdictions in which the administrative model is used, one result is that the government acknowledges its accountability for energy decisions. Another result is that energy decisions are seen to be fundamentally political, rather than empirical. In the past, the OEB has been able to point to its empirical tradition to support its decisions. As the administrative approach gains prominence, that ability is undermined. The OEB is moving in the direction of being an instrument of government, rather than an independent protector of the public.

Issue #2: Disruption and Innovation

The major changes in the Ontario energy sector are driven by at least three things:

a. Rapidly increasing electricity costs, particularly for generation.
b. The move to a low-carbon economy.
c. Technology evolution and advances, including declining costs of some technology.

These changes are inevitable. Within the next five to ten years, the declining cost of storage and self-generation will mean that many customers will no longer need the province-wide electricity grid. The move to a low-carbon economy will produce a shift from fossil fuels, including gas, to cleaner electricity. Both storage and renewable energy are continuing to evolve, meaning that the predictable results probably understate the actual level of disruption. And, both of those areas of change may be overcome by changes not currently forecast ("unknown unknowns", as they say).

The direction of all of these changes is towards billions of dollars of stranded assets, which will have to be paid for by someone. This just increases the incentive of customers to get off the grid before those remaining are forced to foot the bill.

The desire of some utilities, and even some customer groups, to slow down the pace of change is understandable, but ill-conceived. Adaptation involves being proactive, not hiding one's head in the sand.

The OEB is not in a position to stop these changes, even if that were a good idea (which it isn't). To date, the main role of the OEB in this area has been to authorize additional investments by utilities in adaptive technologies, but little more. Unfortunately, throwing money at this issue only exacerbates the problem, and in any case so far the OEB has not shown a visionary approach to proposals by utilities to be leaders. More than one initiative by utilities to embrace future technologies has been shut down by an OEB focused primarily on short term service to customers. While that is indeed appropriate, the long term cannot be ignored.

The OEB also has a role, in its review of the Distribution System Plans of the regulated utilities (gas and electric), in ensuring that the utilities are not building more and more future stranded assets. However, the OEB will only move in that direction – putting the brakes on recent massive capital spending increases - with clear guidance from government, or visionary leadership from within.

The OEB could have a role in getting out ahead of the issues, and providing a public forum for careful debate on the options. In addition to expanding the use of generic hearings (see SEC Recommendation #2 above), the OEB can:

4. ***Stranded Assets.*** Increase its emphasis on detailed review of Distribution System Plans and capital spending proposals, with a focus on ensuring that they are not creating future stranded assets.

The OEB, in its Renewed Regulatory Framework, required all wires and pipes companies to develop longer term (at least five years) plans for the management and enhancement of their systems. This direction is "best practices" amongst regulators.

The short term result of forcing companies to look more closely at their systems, and make a plan for how to manage them in the future, is that companies saw many more things that they perceive to be in need of urgent attention. Asset condition was worse than people thought. Risks became more obvious. Capital plans increased, and with them rates.

This was to be expected. However, with the initial adjustment done, it is time for the OEB to turn to the other side of the Distribution System Plan equation. Utilities should be planning for the risks that will be facing them in the future, including those fundamental changes that could produce stranded assets.

The OEB is in a strong position on this matter. Having required the filing of Distribution System Plans, and having established a standard five year rate-setting cycle, the OEB has the mandate and the processes available to it to focus on how utility planning is facing the disruptions of the future.

Unfortunately, the OEB has not, to date, taken this step. Decisions have (mostly) favoured increased utility spending, even where stranded asset issues are lurking. The OEB should be encouraged to lengthen its horizon, and more thoroughly engage its lateral thinking, so that it can assess distribution system planning with a more nuanced approach.

5. ***Encouraging Leadership.*** Encourage regulated utilities to carry out pilot projects in areas of risk, and then share the results of those projects with their peers. Utilities that take a leadership role in this respect should be acknowledged and supported.

This theme of being somewhat overly conventional extends to utilities that ARE planning longer term. When Guelph Hydro thought ahead, and decided that its smart meters should include the potential for in-home energy monitoring[4], the OEB denied recovery for the incremental cost in the face of customer groups supporting the utility. As a practice, the OEB has tended to support innovation by utilities only when it is independently supported by government programs or financing. This is an abdication of the OEB's role.

[4] EB-2011-0123.

This also extends to listening to the customers and their representatives. As we note under Issue #4, the current direction of the OEB is towards listening less to the customers, not more. It is the customers who will benefit from innovation, and will be hurt if disruption is not managed effectively. Stifling their voice is exactly the wrong direction.

As with all aspects of the Board's role, innovation in the energy sector should be for the benefit of customers. This is not about protecting the utilities. It is about protecting the customer, short and long term.

OEB does not appear to think so. The new Chair's Advisory Committee on Innovation does not contain a single consumer representative.[5] This is as tone deaf as one can imagine.

[5] https://www.oeb.ca/sites/default/files/OEB-Advisory-Committee-on-Innovation-bios.pdf

Issue #3: Governance Framework

The adjudicative and administrative functions and management of the OEB are currently combined. This has recently created the unfortunate perception that adjudication may be less independent that it should be.

Neither the regulated entities, nor the customers, have sufficient confidence today that adjudication is implemented solely on the basis of the public record. Many people in the industry believe that the OEB is no longer committed to the adjudicative model of decision-making, and is in some cases just going through the motions because they are obligated to do so. Too much time is spent internally at the OEB trying to figure out how to comply with the OEB Act's adjudicative requirements without actually going through a full quasi-judicial process.

In addition, as noted under Issue #5 there are increasing questions whether the OEB's decision-making is independent of government influence. While no evidence has yet come to light that government opinions are affecting the OEB's supposedly independent decision-making, it is commonplace for utilities and customers in a proceeding to wonder whether the government's view of the proceeding will be a relevant, even deciding factor.

There is no real value to the OEB if it is not independent.

A central issue in this is the overlap of the administrative side of the OEB with the adjudicative side. The Chair is also the CEO. While nominally a Board Member, the Chair/CEO in fact hears no cases, and has no experience with the adjudicative process. However, the Chair has two powers that trump the adjudicators: she has an effective veto on appointments and reappointments (as well as assignments for part-time Board Members), and she has the final say on all Board policies.

The top-down CEO model is not wrong for corporations, because in the end the Board of Directors and shareholders have the final say. That model doesn't work for an agency that cannot report to government and still remain independent. The governance of the agency must be designed to include appropriate checks and balances. That is not the case with the OEB today.

This was not always true at the OEB. It is the result of an evolution of management philosophy, and acceptance by the government of expansions of the power of the Chair/CEO. This has not been a healthy evolution. While some good results have arisen in part because the Chair/CEO had more power, the structure also invites mistakes which cannot be remedied because no-one has the ability to challenge the head of the organization.

To remedy this evolution at the OEB, the following changes should be implemented:

6. ***Separate the Adjudicative and Administrative Management.*** The combined position of Chair and CEO should be ended. In its place, the OEB should have two functions:

    a. The Board Members should be led (in the sense of "first among equals") by a Chair or Lead Adjudicator, who has overall responsibility for the adjudicative processes at the OEB.

    b. The OEB staff should have a comprehensive management team, as today, but led by a CEO who is not a Board Member.

It is non-intuitive to think that a non-adjudicator should have control over the supposedly independent adjudicators of the OEB. This is not just a question of who's in charge. It is a question of whether the OEB understands that the adjudicative function is a unique role that needs to be protected. Someone who has not bought into that paradigm (mandated by the OEB Act) has to either change it legislatively, or allow someone who does support it to take that responsibility.

It is actually common amongst North American regulators that adjudicative and administrative functions are separated. Separating the role of the Chair and CEO is what is done at the Alberta Utilities Commission, and what has been proposed in the Bill C-59 for the new Canada Energy Regulator (formerly the National Energy Board).

This does not mean that the OEB should be separated into two entities. That would be inefficient. Instead, the OEB staff side, which has a dual role in administering many aspects of energy regulation, and in supporting the adjudicative side, should be managed separately from the adjudicators themselves. That group of 150 people or more, many of them with very high skill levels of value to the energy sector, would have a management structure similar to a corporation. As is the case today, they would have a CEO, COO, and Vice-Presidents in charge of functional areas. This is a tried and true structure for getting things done.

What the SEC recommendation envisions is that the adjudicative side, comprising the Board Members and perhaps a few direct support staff, would not report up to the CEO. They would also have a dual role: as independent adjudicators, similar to judges, and as a board of directors to which the administrative management team would ultimately report. The board would have a Chair, but that chair would be a Board Member (and adjudicator), just as the OEB Act originally envisioned. (Every group needs a leader.)

This separation has a number of valuable elements.

For example, today OEB Staff participate in hearings to ensure that the record is complete. In doing so, they also take positions on issues, and on settlements reached between utilities and their customers. With the current structure, the adjudicators who have to make independent decisions in those cases report to the Chair/CEO (and rely on the Chair/CEO to be appointed or reappointed), but they also know that the OEB Staff who are taking positions before them report ultimately to the same person. It is human nature to assume that the positions from OEB Staff are a message from your boss.

It doesn't really matter whether there is undue influence in these cases. What matters is that there is the potential for that to occur, and there are no checks and balances preventing it. A structure that guards against this will increase perceived and actual independence, and increase public confidence in the OEB.

7. ***Board of Directors.*** The Board Members, including the Chair, should be constituted the board of directors of the OEB, to whom the CEO and management report (much as in a corporation).

Management of the OEB (as opposed to the adjudicators) have to report to someone. One could imagine a separate board of directors, or reporting directly to the Minister.

In the end, however, the role of the OEB is to make decisions, particularly decisions with respect to the amounts utilities can recover from customers (through rates, leaves to construct, MAADs, DVA accounts, and other applications). The administrative side, while having important functions partially independent of adjudication, are primarily there to support the adjudicators. Having the adjudicators, who are uniquely positioned for the role, as the board of directors is an efficient and effective solution.

8. ***Policy Development and Decisions.*** Much of the work of the OEB is carried out through policies, which have varying levels of force, from truly binding (formal rules and codes) to practically binding (e.g. cost of capital) to indicative only (e.g. certain administrative practices). The newly restructured OEB should distinguish between administrative policies and adjudicative policies, with the latter being those that are to be considered by adjudicative panels in making decisions. The two types of policies should be developed and approved in different ways:

    a. Adjudicative policies should be initiated by the Board Members. The research and analysis would still be done by the staff of the OEB, under the guidance of the Board or, in most cases, a sub-committee of Board Members established for that purpose. Approval would be by the Board as a group, and they would also determine the force of each policy.

b. Administrative policies should be initiated by management, and in many cases can be implemented with management approval. The Board would always have oversight, just as with a corporate board of directors, and can reserve the right to approve any significant administrative policy (a rate handbook, for example).

The OEB has increasingly over the years used the development of policies as a replacement for application by application adjudication.

This is not stupid. Stupid would be deciding the same issue over and over again, with different evidence in each case, as if there were no common elements to the cases. The OEB is smart enough not to do that.

The problem is that the OEB does not have the common law advantage of ***stare decisis***, in which decisions from one case are legally or practically binding on the adjudicators in a subsequent case. A Board panel in one case still has to look at the issues afresh, even if the underlying policy and technical issues have previously been reviewed in detail. While Board panels try to maintain consistency with the decisions of other panels, the legal requirement means they still have to pay attention to the evidence before them.

The OEB is increasingly moving away from dealing with generic issues through hearing decisions, but instead relying almost blindly on non-binding policy documents. These policies are sometimes not transparent, and are often made in the absence of the robust evidence testing from a hearing.

These policies come in three general categories:

a. ***Rules and codes***. The OEB Act allows the OEB to pass binding rules and codes in certain circumstances, but there is a mandatory procedure that must be followed.

b. ***Board Policies***. What are formally called Board Policies are decisions by the Board about common matters that come up in adjudicative proceedings. For example, there is a standard rule for the calculation of working capital, and another for the costs of affiliate debt and shareholder equity, etc. The entire Renewed Regulatory Framework, including the Incremental and Advance Capital Modules, is a set of this kind of policies. While not legally binding on adjudicative panels (who are not allowed to follow them blindly), the practice is that adjudicative panels apply the relevant policy unless there is clear evidence in the case before them that it is not appropriate for that fact situation. Thus, they are guidelines, but very strong guidelines.

c. ***Administrative Policies.*** Usually developed by OEB staff, administrative policies establish what evidence has to be filed with an application, and the format of that evidence. They describe how utilities should set up their accounting systems, and what reporting is required. For the most part, administrative policies are designed to make the OEB run more smoothly, although periodically they include judgment calls on substantive issues that an adjudicator should decide.

The first category is governed by the OEB Act. The second and third categories are not clearly distinguished, and in both cases are decided primarily by the Chair/CEO and management team. The traditional practice that had Board Members actively involved in the second category of policies has declined. It is not gone, but the influence of Board Members in substantive policies is less than it once was.

SEC's proposal would require a clear delineation between adjudicative policies, which are the purview of the adjudicators, and administrative policies, which are the purview of management. Rules and codes would, of course, also be the responsibility of the adjudicators, since with a few exceptions they are adjudicative in nature.

Coupled with SEC Recommendation #2 to expand the use of generic hearings, this new approach to policies would allow adjudicative panels to rely on policies that are more evidence-driven and transparent.

9. ***Nomination and Selection of Board Members.*** The current practice of allowing the Chair/CEO to essentially nominate all Board Members should be terminated. The Board Members should establish a nominating committee, in the same manner as corporations, and should select appropriate candidates that are recommended for consideration by the government. As is the case today, the government should have the final decision.

Technically, the appointments process appears to be governed by section 8.1(j) of the MOU.[6] In practice, nominations and renewals of appointments are always at the recommendation of the Chair/CEO, and both Board Members and government understand that, without the approval of the Chair/CEO, no-one becomes or remains a Board Member.

This has two effects.

First, Board Members and candidates perceive the Chair/CEO to be their "boss", in the sense that they work for or report to the Chair/CEO, who must approve of their actions and performance. This is sensible in a corporate management structure, but is less appropriate where the

[6]Minister is responsible for: "following consultation with the Chair, as appropriate, making recommendations to Cabinet relating to the appointment and reappointment of the Chair, Vice-Chairs, and other Members, pursuant to the process established by the Public Appointments Secretariat of Ontario."

individuals are independent adjudicators whose primary responsibility is to the public interest. It is not really good to sit in a hearing room, and hear people seriously speculate on whether this or that Board Member will decide the instant case in a manner consistent with the view of the Chair/CEO, who has not heard the evidence. Whether or not such influence actually exists, a structure that suggests it might is not optimal.

Second, the practice is that, in addition to unsolicited applications to the Public Appointments Secretariat, the Chair/CEO actively seeks recruits to apply for open Board positions. This is positive, but is limited by the industry reach and connections of the Chair/CEO. A nominating committee of Board Members, usually longstanding industry participants, would have a much broader reach to recruit the best people.

Most well-run corporations do not rely on their CEO to recruit new board members. That is a function of the existing board members. That practice is even more important where the board members are not just sitting as a board of directors, but are also quasi-judges adjudicating major cases in the public interest.

Issue #4: Stakeholder Relationships

Customers need to be the centre of all of the OEB's decision-making, since it is the customers the OEB is supposed to protect (as the "market proxy").

There are four general methods of stakeholder involvement in energy regulation:

a. ***Grassroots.*** Organizations representing customers and other stakeholders participate directly in the regulatory process, usually by hiring economists, engineers and lawyers who specialize in the field. A participant funding system covers the cost of those organizations' involvement. This is the Ontario model.

b. ***Government-driven.*** A government agency, such as a utility consumer advocate or division of the Attorney General's Office, is tasked with the responsibility of representing the interests of customers in the regulatory process. Because it involves the creation of an additional government body, it tends to be significantly more costly, and there are regular problems with diversity of perspectives amongst customer groups. This is the Alberta model, although it is supplemented there with the grassroots model as well.

c. ***Regulator-driven***. Many regulators, particularly in Europe and Australia, use top-down stakeholdering to test proposals and utility applications. These systems, like a Consumer Challenge Panel or a Stakeholder Advisory Committee, allow limited stakeholder input. The customers, lacking resources to carry out any independent analysis, and in many cases regular customers who understandably have no specialised expertise themselves, end up being forced to believe whatever utilities or the regulator tell them. They don't get to read the utility evidence, or to test it in a rigorous process, so their input is of limited value. As a result, the real focus of customer concerns shifts to the political realm. This is the British model, and has been attempted by the OEB in Ontario without success.

d. ***None.*** Where the administrative model is used, there is often no formal process for effective stakeholder input. Stakeholders are usually given an opportunity to say their piece in some form of open forum, but lacking any expertise or resources, they are not able to add significant value to the process.

The grassroots method of customer involvement in the adjudicative process, which is the longstanding Ontario model, is one of the strongest in North America. Most customer representatives in other jurisdictions consider our approach the gold standard.

The involvement of stakeholders in the OEB's processes and decision-making would benefit from the following improvements:

10. ***Adjudicated Applications.*** Restrictions on the participation by customers in adjudicated matters should be removed. This includes:

    a. Proportionate Review, which is a direct attempt to cut the customers out of the regulatory process in a misguided attempt to increase "regulatory efficiency".

    b. Limitations on discovery through omission of technical conferences.

    c. Prohibiting customers from filing evidence in rate cases.

    d. Shortening the time available for proceedings, and in particular oral hearings (such as the four day limit on the $29.2 billion Enbridge/Union case currently before the OEB).

No-one wants regulatory efficiency more than the customer organizations, because they are the ones with the most constrained resources. For the utilities, on the other hand, "regulatory efficiency" is code for "light-handed regulation", which simply means that their rate and spending proposals are subjected to less, or even no, scrutiny. For the regulator, "regulatory efficiency" helps demonstrate fiscal prudence because there is lower spending on regulation. It also simplifies life, because there are fewer customer representatives around asking uncomfortable questions.

Regulatory efficiency is undoubtedly important, but it should not be achieved by giving up on the primary strength of the Board's role: rigorous decision-making based on tested evidence.

11. ***Policy Decisions.*** The increasing practice by the OEB of consulting on policy development with utilities, but not with other stakeholders, should be abandoned. Policies should not be cooked up between the regulator and the regulated entities behind closed doors.

SEC Recommendation #8 deals in detail with the development and approval of policies, and SEC Recommendation #2 proposes expansion of the use of generic hearings, so that policies can be more evidence-driven. An additional problem arises when the OEB, through the Chair/CEO and through management at all levels, consult extensively with utilities, and then decide on new policies before talking to the customer representatives. Private interactions between the OEB and the utility managements have expanded in recent years, while similar dialogue with customer groups has declined.

12. ***Voice of the Customer.*** The key management of the OEB should be talking to those persons designated by stakeholders as their relevant specialists. The current standard of speaking only to CEOs means that, for many customer organizations, the person who is interacting with the OEB is not the organization's most knowledgeable person with respect to energy matters, nor the person they have chosen to deal with those issues.

Some years ago the OEB established a practice that the CEO of the OEB would only meet with other CEOs. This was OK for the utilities, because their CEOs were in the energy business, and were in most cases knowledgeable on regulatory issues.

This was not, however, suitable for most customer groups. Those groups, with a few exceptions, are established to deal with many issues affecting a customer category, not just energy. As a result, their CEOs would rarely be sufficiently knowledgeable on energy issues to engage effectively with the OEB. In most cases, an internal or external person with some expertise is given responsibility for the energy file. The refusal of the OEB's CEO to meet with those people, because they are not CEOs, was and is inappropriate.

13. ***Fair Allocation of Regulatory Resources.*** While the resources available for utilities in the regulatory process have gone up dramatically over the last decade, the resources available for the customer groups (who are paying for all of it anyway) have stayed flat. This is in part because the maximum rates recoverable by customer groups for their expert advisors have been unchanged for at least ten years. Customer groups have as a result an increasingly difficult task to find experienced specialists to assist them. Those rates should be brought back up closer to market rates, and at the same time the rapid increase in utility regulatory resources should kept under tighter control.

Customers pay ALL of the costs of energy regulation through their rates. They pay the cost of staff, consultants and lawyers to make the utilities' case for more money or other requests. They pay the cost of staff, consultants and lawyers at the regulator to adjudicate the utility requests, and make policy decisions. It is perverse that the only people involved in the process whose costs to participate are not sufficiently funded in rates are the very people paying for everything. Stakeholder involvement should be fully funded through rates, at levels comparable to the funding available to the utilities, also from the customers' pockets.

Instead, what has happened at the OEB is that utility budgets to pay staff, lawyers and consultants to press their case (or to advocate for favourable regulatory policies) have expanded at more than double the rate of inflation. Utilities routinely pay external experts hundreds of thousands, sometimes millions, of dollars to write reports supporting their rate and spending proposals. They hire top lawyers, at high hourly rates, to represent them in hearings, knowing that ultimately the customers will pay for those costs in rates.

At the same time, the amounts reimbursed to customer groups and other stakeholders for their participation in the same cases is roughly the same today as it was ten years ago. This is partly because of the OEB's active steps to limit customer involvement. More directly, however, it is because the maximum hourly rates for which customer groups can get reimbursement were set in 2008, and have not changed. They are also less than in other peer jurisdictions, such as Alberta and B.C.[7] For lawyers, for example, that means the caps are less than half what the utilities pay (and recover) for comparable legal talent.

No surprise that, today, it is common to see economists and engineers conducting cross-examination on behalf of customers. Many simply cannot recruit the specialized lawyers needed because the market has passed them by. Even many of the non-lawyers assisting them have been at it for a long time, and the customers have limited ability to bring new people into the field.

Ironically, the utilities would like to see the customer groups pay for their own participation, even though the customers pay for utility participation. This would end the involvement of most customers, and reduce the rigour of the hearing process. The grassroots system works as well as it does precisely because all of the costs of the process – utilities, regulator, and stakeholders – are paid by the customers in their rates.

14. ***Delegated Authority.*** The practice of delegating decisions to OEB staff members, as a way of avoiding the requirement in the OEB Act to have a hearing, should be ended. Delegated decisions are intended to be for non-contentious or technical matters, not as a way of avoiding the Statutory Powers Procedure Act.

The OEB Act requires that the OEB hold a hearing on most applications, unless the OEB determines that no person would be adversely affected by a decision in the matter[8]. However, the OEB Act also allows the OEB to delegate decision-making to a staff member, and where that is done the staff member can make their decision without holding a hearing[9].

Recently, the OEB has started to use this statutory structure to obviate the need for a hearing through the use of delegated authority. It would appear, for example, that the Proportionate Review pilot is based on this technical reading of the OEB Act[10].

This is an anomaly in the OEB Act that should be corrected, because it allows the OEB to authorize a staff member to do something – decide a case without a hearing – that the OEB Board Members cannot themselves do. In the meantime, the OEB should end the practice.

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[7] Alberta Utilities Commission: http://www.auc.ab.ca/Shared%20Documents/rules/Rule022.pdf; BC Utilities Commission: https://www.ordersdecisions.bcuc.com/bcuc/orders/en/179994/1/document.do

[8] OEB Act, section 21(4).

[9] OEB Act, s. 6(4)

[10] Lawyers are divided on whether this interpretation would be accepted by a court, but to date it has not been tested.

15. ***Proportionate Review.*** The pilot project to exclude public involvement in rate cases, called Proportionate Review, should be abandoned. The approach is fundamentally about secret decision-making, and is directly antithetical to the OEB's mandate.

A new pilot project – Proportionate Review – excludes all public involvement in rate cases that the OEB determines, administratively and without any consultation, do not require either transparency or customer input. The OEB and the affected utility work behind closed doors until a formal decision is made, then make it public[11].

Announced in the fall of 2017, the OEB determined that it would assign staff members to look at applications, and test them using a currently secret assessment model. None of the process would be public. After the staff review, the staff would issue a report, which would then be considered by another staff member, who would make the rate decision. The first time the customers would see the OEB analysis and decision would be when it was complete.

Proportionate Review sounds like an efficient way of dealing with applications by small utilities. What it actually means is preventing the customers of those utilities from reviewing the utility's rate and spending proposals. The rate structure already only fully reviews spending once every five years. This process would exclude customers from their one chance to test their utility's proposals, and leaves the rate review entirely one sided.

Limiting participation of directly affected parties is, of course, also not procedurally fair. Courts have said that nature of the OEB's decision-making requires the highest degree of procedural fairness.[12] The reason the OEB can implement this approach is that it knows the customer groups do not have sufficient resources to fund a court challenge relating to the rate cases of small utilities[13].

Smaller utilities already have lower regulatory costs, because customer groups and other stakeholders control their involvement in order to be cost-effective. The only purpose of the Proportionate Review project is to set a precedent for a continued shift away from listening to the customers. It should be stopped immediately.

16. ***Stakeholder Engagement Survey.*** The OEB should implement an annual stakeholder engagement survey similar to that used by IESO.

This is self-explanatory, and works in tandem with SEC Recommendation #19, review of the OEB Business Plan. One of the problems with the OEB today is that it has reduced its outreach

[11] Needless to say, customers didn't ask for this. Utilities did.
[12] *Rogers Communications Partnership v Ontario Energy Board*, 2016 ONSC 7810, para. 16
[13] There is little doubt that, if Proportionate Review cut out the opportunity of the utility to make their case, there would be a court challenge immediately. Of course, the cost of that challenge would ultimately be part of the utility's regulatory budget, and included in rates.

to its formal constituency, the customers of the utilities. While it has added consumer panels and other forums with minimal interaction (essentially places where the OEB can announce policies without being challenged very much), it has to some extent disengaged from the customer groups that have an interest in energy regulation and policy.

Adding a consumer survey would provide an opportunity for the general public to give feedback to the OEB. Reinstating an annual business plan review process would provide an opportunity for the organized customer groups, advised by experts, to provide feedback as well.

Issue #5: Relationship with Government

Regulatory independence is critical not only for the public and the utilities, but also for the government. "Decisions are made by an independent regulator" is no longer an appropriate answer by a politician if the regulator is doing the government's day to day bidding.

The OEB has been criticized recently for taking too much guidance from the government, and for the lack of transparency of that guidance[14]. It is not just the perception that government views could influence OEB actions. It is the more difficult problem that no-one knows how much the government is influencing the OEB, because any communications are non-transparent.

The division of the OEB into adjudicative and administrative sides, as proposed in SEC Recommendation #6, would go a long way toward improving the situation. Codes of conduct for the adjudicative side would expressly limit interaction between independent adjudicators and government officials. While management could and should continue to interact actively with the government (since they have common issues to address), the independence of the adjudicators has to be enforced.

The issue of the relationship between governments and their independent regulators is a common problem, and throwing up a wall to separate the two is neither technically possible, nor necessary. However, limiting their interaction, and adding transparency, is valuable.

In addition, two other steps could be taken:

17. ***Memorandum of Understanding.*** The current Memorandum of Understanding between the OEB and the Minister should be replaced with one that is strictly limited to administrative and financial matters.

The current Memorandum of Understanding goes beyond simply administrative/financial areas.[15] There is value in documenting the administrative and financial relationships between the regulatory body, which is a government agency, and the Ministry to which it is attached. Anything further than that runs the risk of eroding the public's confidence in the OEB's independence.

18. ***Directives.*** The government has ample opportunity to step in and direct regulatory matters through the directive powers in the OEB Act. The government should not provide any guidance to the OEB on matters within the OEB's mandate except through

[14] For example, Vegh, George, *Report on Energy Governance in Ontario*, November, 2017, written for the Ontario Energy Association. See https://energyontario.ca/wp-content/uploads/2018/04/Governance_Report_to_OEA_and_APPrO.pdf.

[15] https://www.oeb.ca/oeb/_Documents/About%20the%20OEB/Memorandum_of_Understanding_OEB_Ministry.pdf

the directive powers, or through legislative action, both of which by their nature must take place in a public and transparent manner.

The advantage of directives is that they are transparent intervention by the government in the independent regulatory process. Just as is the case with legislative amendments, or with regulations, directives show the public the steps the government is taking to determine energy policy, but in a less cumbersome way. The public knows the extent to which the government is taking responsibility for energy policy decisions, and thus the extent to which the freedom of the independent regulator is being curtailed.

Government has the authority to direct the OEB to do certain things under the *OEB Act* under its various (and growing) directive powers. That is how it should order the Board to undertake certain regulatory actions. It should not direct the Board through other, less transparent means, such as letters asking the Board to do certain things,[16] or, even worse, private discussions with the Chair/CEO and management of the OEB.

[16] See for example, RNG: https://www.oeb.ca/oeb/_Documents/EB-2015-0238/letter_to_OEB_Renewable_Natural_Gas_20161210.pdf; Natural Gas Expansion https://www.oeb.ca/oeb/_Documents/Documents/Letter_Minister_to_OEB_Chair_20150217.pdf;

Issue #6: Regulatory Excellence and Benchmarking

Recent moves to rejuvenate the staffing at the OEB are helping to improve the quality of the work being produced by staff.

While it is possible to develop KPI's and other metrics to measure regulatory performance, they can also create a false sense of precision. The only real test is public confidence in the results. It is not clear today that the OEB is seen by the public as defending their interests to the extent that they should.

A particular example is the increasing investment in distribution infrastructure, both gas and electric. It is an accepted "truth" that the increases in electricity bills over the last decade, for example, are the result of the decision to go off coal, and the high cost of renewables and nuclear. Some of that is in fact true, but another significant component of the problem is the willingness of the OEB to encourage wires companies to spend more on capital renewal. The same thing is happening in gas distribution, although it has been masked by lower market prices for the gas commodity.

The SEC recommendations contained under the other issues should, if implemented, have the effect of improving public confidence in the OEB. For example, a rejuvenated and invigorated adjudicative side of the OEB should improve decision-making, and should indirectly empower staff to add value to the process.

Issue #7: Resourcing

The current practice under which all of the costs of the OEB are paid by the regulated entities continues to be the right approach. The result is that the customers, through their rates, pay the regulatory costs of the utilities, the customer groups, and the regulator itself. This is appropriate, as the customers are the primary beneficiaries of regulation.

The OEB is a government agency, and so its budget and business plan should be approved by the government, as is the case today.

One change would improve the OEB's budgeting and planning:

19. ***Business Plan.*** The former practice of public consultation on the OEB Business Plan should be reinstated. Utilities, customer groups, and other stakeholders are a significant resource, with lots of expertise and a broad range of perspectives. The OEB would benefit from more input from the sector, both during the development of the Business Plan, and when a draft is ready for review.

In the best of all possible worlds, the OEB Business Plan would be a collaborative process between OEB management, the utilities, and the customers (who will in the end be paying the bills). Not only would prioritization be enhanced, with more perspectives around the table. As well, utilities and their customers would get greater visibility into the future directions of the regulator. In turn, the regulator would hear from customers and utilities about future activities that they would like the regulator to take on.

The actual cost of regulation is a tiny part of the cost of energy in Ontario, so the OEB budget is not the most critical issue. The cost of cutting corners can be many times the cost of doing things right. Customer and utility involvement in the planning would allow the OEB to assess where it needs to spend, or not, and to get buy-in from the stakeholders on where it is going.

APPENDIX A

Ontario Education
Services Corporation
La corporation des
services en éducation
de l'Ontario

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School Energy Coalition

The School Energy Coalition (SEC) is the energy regulation project of the Ontario Education Services Corporation (OESC). SEC intervenes in Ontario Energy Board proceedings to represent the interests of Ontario public schools and their students.

Ontario Education Services Corporation

OESC was formed in 2002 to allow Ontario school boards to procure goods and services jointly where they have common needs, and where joint procurement can produce better quality and/or lower costs.

OESC is a non-profit corporation whose members/owners are:

- Association des conseils scolaires des écoles publiques de l'Ontario
- Association franco-ontarienne des conseils scolaires catholiques
- Ontario Catholic School Trustees' Association
- Ontario Public School Boards' Association
- Council of Ontario Directors of Education

The first four members are the associations of school boards. Their membership includes all 72 publicly-funded school boards in the Province of Ontario. The fifth member, CODE, is made up of the Directors of Education (essentially, CEOs) of all of the Province's school boards. The members of OESC therefore represent the approximately 5,000 schools in the Province of Ontario, which together provide education to almost two million Ontario children and adults.

Participation in each OESC project by individual school boards is voluntary, although many projects have participation by all or a majority of school boards. Costs of each project are shared by the school boards participating. Information on OESC projects can be found at http://www.oesc-cseo.org/en-ca/Pages/Our%20Services.aspx.

Mandate and Objectives

Ontario schools spend more than $500 million each year on the cost of energy, and more than 65% of that cost is established through rates regulated by the Ontario Energy Board. That includes gas distribution, electricity transmission and distribution, and the regulated payment amounts of Ontario Power Generation.

For each school board, the impact of regulation is big enough to be material, but the cost to acquire appropriate expert assistance, and to intervene in each of the rate and other cases that could have an impact, would be prohibitive. Further, each individual school board would have to develop its own internal expertise in the regulatory process. Otherwise, they would not be able to access the regulatory process effectively.

SEC, one of the projects run by OESC, also includes two other school organizations:

- Council of Ontario Senior Business Officials (COSBO)
- Ontario Association of School Business Officials (OASBO)

The members of the former are the senior management of school boards (CFOs, COOs, etc.), while the members of the latter include line management, such as officials responsible for plant management, etc

The seven organizations that support and control the School Energy Coalition make up all of Ontario's school boards, and all of the people within those school boards responsible for managing Ontario's schools.

SEC has as its founding principle a three part approach to the regulatory process:

Always look for win-win solutions.
Think long term.
Walk softly but carry a big stick.

This is the core of the instructions SEC gives to its representatives. Based on this regulatory philosophy, SEC seeks to keep the costs to school boards for regulated services as low as possible, while maintaining good quality services and ensuring the long-term sustainability of energy infrastructure.

Programs and Activities

The mandate of SEC is achieved through four types of participation:

- As an intervenor, in applications by regulated utilities for changes in their rates, or recovery of specific costs, or approval of expenditures or commitments.
- In policy consultations with respect to the regulation of gas and electric utilities.
- In policy, program development, audit and other committees and discussions with respect to gas and electricity conservation.
- General advice to school boards with respect to energy issues.

In the case of individual rate and related applications, SEC cannot intervene in all such applications. Therefore, a limited number are selected for participation each year, primarily based on the dollar impact of the application on member school boards, and the number of schools affected by the application. In a few cases, SEC will also intervene where the dollars or the number of schools are smaller, but the issues arising in the application have potential to affect other regulated utilities, and other schools, indirectly.

SEC retains specialized energy counsel to represent SEC and its members in Ontario Energy Board proceedings and consultations. In keeping with the procurement requirements of our members, SEC selects its counsel through an open and independent Request for Proposals process.

Governance and Communications

Executive oversight of SEC is primarily the responsibility of the Executive Director of OESC, Ted Doherty. Direct responsibility for the SEC project is in the hands of the project co-ordinator, Wayne McNally.

SEC reports to, and obtains feedback from, its members through:

- Quarterly, SEC provides a written report to each of its member school boards detailing the work done by SEC for that quarter. The quarterly report goes to the senior finance official, and the senior plant management official, of each school board, as well as to trustees and others who have requested to be included. It is also posted on the OESC website.
- Annually, SEC provides a summary report to each of its member school boards along with its annual invoice for their contribution to the project. This usually includes a projection of key priorities for the coming year. This report goes to the CEO, CFO or equivalent of each school board.
- Annually, SEC reports to the OESC annual meeting. The heads of each of the seven member organizations are usually in attendance, and both the OESC Executive Director, and external SEC counsel, provide reports and respond to questions. Periodically SEC also reports at OESC board of directors meetings, on an as-requested basis.
- OESC management, and/or external legal counsel for SEC, regularly speak at conferences, seminars and meetings of the member organizations, particularly those dealing with plant management and finance issues.
- SEC also meets periodically with school board officials in geographic regions to discuss issues of concern to those school boards. These meetings will typically be timed to coincide with major upcoming proceedings that specifically affect those school boards.

Authors of these Submissions

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Jay Shepherd is a Toronto energy lawyer and lead counsel for the School Energy Coalition. Mr. Shepherd, originally a tax lawyer, first appeared before the OEB more than 30 years ago, and has since appeared in several hundred OEB proceedings and processes, for the School Energy Coalition, the HVAC Coalition, the Ontario Geothermal Association, and others.

Mark Rubenstein is a Toronto energy lawyer, and co-counsel for the School Energy Coalition. In addition to appearing before the OEB more than a hundred times for the School Energy Coalition and others, he is currently a member of the OEB committee that considers administrative issues with respect to its processes.