

Energy Regulatory Update (Q1, 2022)

Welcome to the latest edition of the Shepherd Rubenstein *Energy Regulatory Update*, a quarterly round-up of the important developments in the Ontario energy sector. Below are some of the key regulatory happenings between January and March (as well as the first couple of days in April).

Ontario Energy Board

The OEB issued a number of decisions, including:

- Granting leave for amalgamations between [Brantford Power Inc. and Energy+ Inc.](#), and [North Bay Hydro Distribution Inc. and Espanola Regional Hydro Distribution Corporation \(Phase 2\)](#).
- [Approved a settlement proposal in IESO's application, in its role as a Smart Metering Entity](#), setting out a framework to allow access to MDM/R meter data to Canadian government entities. In its [decision](#), the OEB noted that the Smart Metering Entity should expedite its assessment of expanding access to MDM/R data sooner than the planned 2025 date.
- In its [approval of a settlement proposal of London Hydro's 2023 rates](#) application, granted an extension of its authorization to allow the company to carry on certain Green Button services other than through an affiliate until April 2025, subject to various conditions and commitments.

With respect to innovation, the OEB:

- Released a final [Notice of Amendments to the Distribution System Code To Facilitate Connection of Distribution Energy Resources](#) that will come into force in October, 2022. The amendments include, among other things, the establishment of a new [DER Connection Procedures](#) document.
- Issued the final design of its [Innovation Sandbox 2.0](#).
- In conjunction with the IESO, [announced four pilot projects](#) from its joint call through the combined use of the Grid Innovation Fund (IESO) and Innovation Sandbox (OEB) for proposals for innovative project proposals.

To further incent consolidation, the OEB [updated its policy](#) for the availability of the Incremental Capital Module (ICM) for electricity distributors during extended rebasing deferral periods after consolidation. The OEB will allow distributors to apply in years six to ten of the deferred rebasing period for an ICM for an annual capital program if certain requirements are met.

On the modernization front, the OEB issued:

- [A letter](#) indicating that it will be applying many of the improvements it made to the filing requirements for small distributors to all other distributors filing applications for 2023 rates. It also [announced that it was establishing](#) and later [membership of a working group](#) to review the filing requirements for large distributors for 2024.
- Its [Framework for the Review of Intervenor Process and Cost Awards](#).
- A new [Natural Gas Facilities Handbook](#).

The OEB provided [further details regarding its Reliability and Power Quality Review](#). In do so, it provided the results of a customer survey, defined the objectives of a proposed regulatory framework, and outlined the next steps, which includes forming a working group.

In furtherance of the [Minister of Energy's requirement to report back and advise on a design of an optional enhanced time of use rate structure](#), the [OEB held a stakeholder engagement meeting](#) and presented a [proposed ultra-low overnight pricing design](#).

The OEB accepted Assurances of Voluntary Compliance, from [E.L.K. Energy](#) for its inability to provide evidence that it undertook for required asset inspections in compliance with the Distribution

System Code, [Greater Sudbury Hydro](#) for overcharging customers caused by the way its billing system translated approved rates into amounts charged on bills, and [Lafarge Canada](#) for operating in the wholesale market without a licence.

As a result of current global supply chain issues, OEB Staff issued a [Bulletin](#) advising that it will not take compliance action against electricity distributors who, despite exercising due diligence, are unable to obtain smart meters due to current semiconductor supply constraints.

The Market Surveillance Panel issued its [semi-annual monitoring report](#).

Independent Electricity System Operator

In late January, the [Minister of Energy issued a directive to the IESO](#) that, among other things, authorized a number of procurement initiatives that the IESO has been working on as part of its Resource Adequacy Framework. This included directing the IESO to:

- Undertake a Medium-Term RFP (and a contract bridging mechanism for successful proponents).
- Enter into a contract for the Oneida Energy Storage Project and the Calstock Generation Station;
- Design a Long-Term RFP for at least 1,000MW, with an RFQ to be undertaken before the end of Q2,2022.
- Design a program to re-contract with existing small hydroelectric facilities (<10MW) and conduct an assessment of a program for existing large hydroelectric facilities (>10MW).

With respect to other procurement matters, the IESO continued its [stakeholder engagement on the design of the Long-Term RFP](#), including with respect to the [draft RFQ](#). The IESO also [entered into a supply contract with OPG for the Lennox GS](#) that will run until May 2029.

On April 4th, the IESO released its [2022 Annual Acquisition Report \(AAR\)](#). The AAR highlighted the need for additional supply to meet capacity needs in 2025 and 2026. On the same day, the [Minister of Energy wrote the IESO](#) to ask it to initiate an engagement on potential designs to acquire further capacity and report back with recommendations by mid-July. The [letter also asked](#) the IESO examine and report back by the end of July with options on cost-effective additional or expanded CDM to help address needs identified in the AAR. Additionally, the [letter](#) asked the IESO to consider accelerating the [CDM Mid-Term Review](#). The IESO had just launched the [engagement](#) days earlier.

In addition to the [AAR](#), the IESO has released some other notable reports so far this year, including:

- Its most recent 18 month [Reliability Outlook \(April 2022-September 2023\)](#);
- A [third-party evaluation](#) of projects funded by the Grid Innovation Fund; and
- [Windsor-Essex Integrated Regional Resource Plan Addendum](#) Report.

After delaying the vote at its February Meeting to seek further stakeholder input, in March a [majority of the Technical Panel](#) voted to provisionally recommend a number of market rule amendments related to the [Market Renewal Program \(MRP\) market power mitigation framework](#).

The IESO launched its [Pathways to Decarbonization stakeholder engagement](#), to inform the study that the Minister of Energy has asked be undertaken to evaluate a moratorium on procurement of new natural gas generation, and a pathway to phase-out natural gas and achieve zero emissions in the electricity sector.

Earlier in the year, the [Minister of Energy wrote](#) the IESO and asked it to continue discussions, and update its assessment regarding the proposed Lake Erie Connector Project. In a separate [letter, the Minister of Energy](#) asked the IESO to assess and provide design options for a registry to support a

voluntary clean energy credit (CEC) market, and report back by July, 2022. The IESO subsequently launched a [stakeholder engagement](#) to support that work.

Market Assessment and Compliance Division (MACD) announced that it had [entered into a settlement on behalf of the IESO with MAG Energy Solutions](#), regarding certain intertie trading activities between 2016 and 2020.

Legislative and Regulatory

After [undertaking consultations](#) earlier this year, the [Government Ontario issued an Order-in-Council declaring three electricity transmission projects](#) in Southwest Ontario (a new 230kv line between the existing Chatham SS to the new Lakeshore TS, a new 230kv line between Lambton TS and Chatham SS, and new 500kv line between the Longwood TS and Lakeshore TS) as [priority projects](#) under [section 96.1 of the Ontario Energy Board Act](#). Separately, the [Minister of Energy issued a directive to the OEB requiring it to amend Hydro One's transmission licence](#) requiring it to develop and seek all necessary approvals regarding two of the of the priority projects in the [Order-in-Council](#) (the third had already been subject to a [2020 directive](#)), as well as a second new 500kv line between the Longwood TS and Lakeshore TS and a new 230kv line to connect the Windsor area to the Lakeshore TS.

Government of Ontario issued a number of new regulations, amendments to existing regulations, and other regulatory proposals, including:

- Amending [Ontario Regulation 363/16](#) to add to the types of accounts eligible to receive the Ontario Electricity Rebate, common areas in multi-unit complexes, retirement residences, and mobile home parks, effective July 1.
- Amending [Ontario Regulation 835/20](#), to include biomass contracts entered into with the IESO as being eligible to be paid in whole or in part by general revenues as opposed to through electricity rates.
- Amending [Ontario Regulation 123/02](#), to exempt OPG from paying the Gross Revenue Charge for its Sir Adam Beck 2 Generation Station between 2024 and 2031 when it is producing electricity for the purpose of hydrogen production, but only during the time when it is providing regulation services.
- Amending [Ontario Regulation 245/97](#), to regulate compressed air energy storage projects.
- Amending [Ontario Regulation 95/05](#) to apply the off-peak TOU rate 24 hours day for 21 days beginning January 18, 2022, to provide rate relief during COVID-19 restrictions that were put in place in early January.
- Amending [Ontario Regulation 429/04](#), to facilitate an [electricity rate pilot](#), as well as to make a number of [administrative changes](#) to the Industrial Conservation Initiative (ICI) program .
- Amending [Ontario Regulation 198/17](#), to adjust annually the Distribution Rate Protection caps by the OEB's inflation factor.
- Issuing [Ontario Regulation 30/22](#), setting a 2-year limitation period for customers under the [Ontario Fair Hydro Plan Act, 2017](#).
- Proposing amendments to the [Industrial Conservation Initiative \(ICI\)](#) program eligibility to prohibit participation by facilities that mine cryptocurrency.

The Minister of Infrastructure introduced [Bill 93, Getting Ontario Connected Act, 2022](#). The proposed legislation would amend the [Building Broadband Faster Act, 2021](#) to, among other things, provide that the Minister of Infrastructure, may by notice, require a distributor or transmitter to complete necessary work for deployment of a designated broadband project. It would add a new provision requiring utility infrastructure owners to share certain information about the infrastructure, if it is close to a designated broadband project.

Judicial Decisions

In February, the Divisional Court issued its decision in [West Whitby Landowners Group Inc. v. Elexicon Energy](#). The Court dismissed an application for judicial review brought by a group of developers to set aside two letters issued by the staff of the OEB, in which the OEB provided its opinion, as requested by the developers and Elexicon, under the terms of a dispute resolution provision in an Offer to Connect agreement, that the construction of a substation was an expansion as opposed to an enhancement under the Distribution System Code. The developers argued that the OEB should have held a hearing, and that the decision-making process was both procedurally unfair, and substantively unreasonable. The Court found that even though the developers escalated the matter as a formal complaint, it had no standing to require the OEB to hold a hearing or undertake any specific investigatory process. The Court also found that it had no jurisdiction to hear the application as it was an opinion and not a decision. The Court found that while the developers and Elexicon may agree to be bound by an opinion of the OEB, that itself does not make it a statutory power of decision that is amendable to judicial review. The only decision that the OEB made was not to refer the matter for further investigation, which decision the developers do not have standing to challenge.

Other News

The Federal Government released a [discussion paper on its proposed Clean Electricity Standard](#) for comment. It also released its [2030 Emissions Reduction Plan](#).

The Government of Ontario (in conjunction with Governments of Alberta, Saskatchewan, and New Brunswick) released a [Strategic Plan for the Deployment of Small Modular Reactors](#).

Things We Are Reading and Listening To

There were a few interesting new reports issued over the last few months. The International Energy Agency (IEA) issued its [Canada 2020: Energy Policy Review](#) report, and the Bank of Canada and OFSI released its [Using Scenario Analysis to Assess Climate Transition Risk](#) report. A great podcast to keep on top of what is happening in the climate-tech space, which almost always involves energy, is [Catalyst with Shayle Kann](#).

As always, if you have any questions, or think we can be of assistance to you or your organization, please do not hesitate to reach out to mark@shepherdrubenstein.com.