

Energy Regulatory Update (Q2, 2023)

Summer has arrived and so has the latest edition of the Shepherd Rubenstein *Energy Regulatory Update*, a quarterly round-up of the key developments in the Ontario energy sector. We scoured the regulatory landscape to provide you with a summary of all the important happenings between April and June (and the first few days of July) so you can stay in the know.

Ontario Energy Board

The OEB issued several notable decisions over the past few months, including:

- [Rejecting a request from Ontario Power Generation to establish a variance account](#) to record the impacts of the overturning of Bill 124 on its nuclear revenue requirement, finding it was not unforeseeable and the amounts did not meet the materiality criteria.
- [Granting approval of EPCOR Natural Gas LP's request to establish a variance account](#) to capture the difference in assumed versus actual average customer consumption for its South Bruce distribution system, albeit on a modified basis. The [OEB allowed](#) only recovery of 50% of the annual balance from customers, until such a point that actual earnings reach 300 basis points below approved ROE. [EPCOR has filed a Motion to Review](#).
- [Providing the necessary interim approvals for Hydro One to take possession and control of Chapleau PUC](#), which had been experiencing difficulty managing the day-to-day operations of the utility.
- [Setting EPCOR Electricity Distribution Ontario's 2023 distribution rates](#). In its decision the OEB made a number of reductions to the proposed revenue requirement, including with respect to capital, OM&A and cost of debt.
- [Approving the Settlement Proposal in PUC Distribution's 2023 distribution rates application](#), which included a unique cost recovery and performance incentive mechanism related to its previously approved Sault Smart Grid project.
- [Denying Grandbridge Energy's request to make certain adjustments and reducing their proposed recovery from customers](#) of amounts related to an accounting error in previously disposed of balances in certain commodity pass-through accounts.
- [Updating the Uniform Transmission Rates](#) (UTRs).

Both the [Chief Executive Officer](#) and [Chief Commissioner](#) provided their respective 2022-2023 year-end updates. As it looks forward, the OEB also published its [2023-2026 Business Plan](#), which was [approved by the Minister of Energy](#).

As part of its [Electric Vehicle Integration \(EVI\) Initiative](#), the OEB [released a consultant's report on Electricity Delivery Rates for EV Charging](#), held a [stakeholder meeting and sought written comments](#) to gather feedback.

The OEB released its inaugural [Innovation Sandbox 2.0 report](#) covering activities of the Innovation Sandbox since July 2020.

In advance of the filing of 2024 incentive regulation applications, the OEB issued:

- [Updated Chapter 3 Filing Requirements for Electricity Distribution Rate Applications](#)
- [2024 Inflation Factor](#) for electricity distributors and transmitters

The OEB made changes to the [Distributed Energy Resources Connection Procedures, requiring the use of standard template forms](#) for certain information provided to a distributor by a customer, and for responding information provided by a distributor.

On the compliance front, the OEB issued its annual [Compliance Report](#). A further 4 Assurances of Voluntary Compliance (AVC) were accepted from electricity distributors ([Synergy North](#), [Fort Francis Power](#), [Atikokan Hydro](#), and [Sioux Lookout Hydro](#)) related to billing errors that resulted in the overcharging of customers through the fixed monthly service charge. The OEB also accepted AVCs from two electricity wholesalers ([Carmeuse Lime \(Canada\)](#) and [Enbridge Pipelines](#)) who had been operating without a license.

Independent Electricity System Operator

The IESO issued its [Resource Adequacy update](#), providing the results from its recent Expedited Long-Term RFP (E-LT RFP) and Same Technology Upgrade procurement. As a result of the E-LT RFP, the IESO has contracted for [881 MW of non-emitting capacity from 15 storage facilities](#) (combined category 1 and 2), and [295 MW of natural gas capacity](#) from on-site expansion of two existing facilities (about half the target capacity). Through the Same Technology Upgrade, the IESO has contracted for [291 MW of additional natural gas capacity](#). The [Minister of Energy issued a directive](#) requiring IESO to enter into its finalized contract to extend Brighton Beach Generation Station to 2034 and provide incremental capacity.

The IESO also announced that for its [next Capacity Auction it will target](#) 1,400 MW for summer 2024 and 850 MW for winter 2024/2025, an increase over the 2022 auction.

Work continued on the [Long-Term RFP](#) which is expected to be issued at the end of September, including [design of the contract](#) and a number of technical matters ([deliverability](#) and the [connection assessment](#) processes).

The [IESO recommended that Hydro One construct phase 2 of the Waasigan Transmission Line](#) between Atikokan and Dryden.

The [Technical Panel](#) recommended market rule amendments:

- Introducing a [capacity qualification process and modifying the performance assessment framework](#) to the Capacity Auction. (The IESO Board of Directors [approved the amendment](#)).
- Codifying the [Interim Alignment Batch for the Market Renewal Program \(MRP\)](#) which integrates amendments between previous MRP batches, and across market rules otherwise unaffected by MRP. (The IESO Board of Directors [approved the amendment](#)).
- Codifying the [Market Renewal Program's market settlement framework](#).

The IESO [sought comment](#) on its [application for an exemption from the Market Rules to allow it to cancel Transmission Rights auctions](#) to facilitate transition to the new market.

The IESO issued a number of reports, including:

- [Integrated Regional Resource Plans: Guide to Assessing Non-Wires Alternatives](#)
- [North & East of Sudbury: Integrated Regional Resource Plan](#)
- [ISO Markets and Planning Data Jurisdictional Review for IESO](#)
- [Q2 2023 Reliability Outlook](#)

A [settlement agreement was entered into with ArcelorMittal Dofasco](#) for breaches of the Market Rules related to the Operating Reserve market.

Legislative and Regulatory

On July 5th, the [Minister of Energy announced](#) that the Ontario Government is beginning pre-development work to construct a new large scale nuclear generation on the Bruce Power site. [Bruce Power will start necessary consultations and undertake a federal environmental assessment](#) to determine the feasibility of sitting up to 4,800 MW of new nuclear generation on the existing site.

The Government of Ontario introduced and passed [Bill 91, Less Red Tape, Stronger Economy Act, 2023](#), which among other things:

- Amended the [Ontario Energy Board Act](#) by: i) expanding the types of penalties or fines that are not eligible expenses for inclusion in rates for electricity and gas distributors, and transmitters to include all those made under any legislation, and ii) allowing the OEB to exempt proponents that wish to undertake innovative projects from various license requirements on a time-limited basis.
- Amended the [Oil, Gas and Salt Resources Act](#), by creating a process for the designation of special projects to test, pilot or demonstrate new or innovative activities, [such as carbon storage](#).

In parallel with the introduction of [Bill 91](#), the Government of Ontario initiated consultations for each of these three legislative amendments: [keeping penalties off rates](#), [advancing innovation on Ontario's energy sector](#), and [proposed changes to OGSRA to regulate test projects](#).

The Electrification and Energy Transition Panel released an [Open Call document](#) and sought [written feedback](#) to assist in its work.

The Government of Ontario issued, amended or proposed to amend a number of regulations, including:

- Amending [Ontario Regulation 429/04](#) under the *Electricity Act*, exempting Global Adjustment charges for power purchased from outside of the province using private transmission lines.
- Amending [Ontario Regulation 393/07](#) under the *Electricity Act*, expanding the objectives and the definition billing quantity data of the Smart Metering Entity to allow it to collect data on the electricity conveyed into the grid from a generation or energy storage system installed behind the customer's meter.
- Issuing [Ontario Regulation 153/23](#) under the *Electricity Act*, amending [Ontario Regulation 429/04](#) under the *Electricity Act*, [Ontario Regulations 14/18](#), [198/17](#), [197/17](#), [330/09](#), [442/01](#) under the *Ontario Energy Board Act*, [Ontario Regulation 30/22](#) under the *Ontario Fair Hydro Plan Act*, and [Ontario Regulation 363/16](#) under the *Ontario Rebate for Electricity Consumers Act* which will implement the 2-year limitation period for certain payments, adjustments, and amounts to be settled with the IESO that was previously enacted as part of the [amendments to the Electricity Act](#).

On May 1st, [seven electricity distributors started offering the new Ultra-Low Overnight Electricity Price Plan](#) with all others required to offer the plan by November 1st.

Judicial Decisions

More than sixteen years after the Supreme Court of Canada's [ATCO Gas \(aka Stores Block\) decision](#), the Alberta Court of Appeal (ABCA) released the latest [decision](#) that wades through its implications. In [ATCO Electric Ltd v Alberta Utilities Commission](#), the ABCA overturned an Alberta Utilities Commission (AUC) decision that determined that the undepreciated value of assets lost by ATCO in Ft. McMurray were losses to be borne by the shareholder. The ABCA found that the AUC had misread the implications of the Supreme Court's Stores Block (and a subsequent ABCA decision) that constrained the regulator's discretion with respect to destroyed assets. The ABCA sent the matter back to the AUC for reconsideration.

The Ontario Court of Appeal (OCA) released its decision in [Hydro One Networks Inc. v. Shiner](#) allowing the appeal. The OCA found that Hydro One had made out the test for prescriptive easement over certain lands used to access and maintain its transmission facilities since the 1930s.



The Ontario Superior Court of Justice [granted an interim receivership application](#) under the *Bankruptcy and Insolvency Act* over the assets of Planet Energy, an Ontario electricity and natural gas retailer.

Things We Are Reading

The Canadian Energy Regulator released its [Canada's Energy Future 2023: Energy Supply and Demand Projections to 2050 Report](#). Canadian Climate Institute issued a report on [Clean Electricity, Affordable Energy](#). The National Association of Convenience Stores in the United States released a [report](#) it had commissioned on the [benefits of competitive EV charging stations](#).

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 Rubenstein at mark@shepherdrubenstein.com.