

## Energy Regulatory Update (Q4, 2023)

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 October and December.

If you have not already, check out our special [2023 Year in Review](#) edition which explores some of the most important themes and regulatory developments in the Ontario energy sector in 2023.

### **Ontario Energy Board**

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

- The [Phase 1 decision of Enbridge Gas' 2024-2028 rates application](#). As part of that decision, the OEB found that the energy transition poses a risk that assets used to serve Enbridge's customers will become stranded, and the company has not provided an adequate assessment of that risk to demonstrate its plan is prudent.

As a result, the OEB, among other things, i) [reduced the proposed 2024 capital budget](#) by \$250M, ii) [increased the company's equity thickness](#) to 38% (less than the requested 42%) and, iii) ordered (with one commissioner dissenting), that [beginning in 2025, all new small volume connecting customers will bear their connection costs upfront](#) (as opposed to spread over 40 years as of now). Unhappy with the split decision regarding setting the customer connection revenue horizon to zero, the Minister of Energy announced the day after the decision was released that the [Government would use its authorities to pause it, and introduce legislation, to reverse it](#).

The OEB also addressed a number of other issues, including [related to amalgamation and harmonization](#) (i.e. integration capital, depreciation and overhead capitalization methodology, recovery of certain deferral and variances accounts).

- [Denying EPCOR South Bruce's motion to review and vary](#), an earlier [decision](#) that while approving the request to establish a variance account to capture differences in assumed versus actual average customer consumption, only allowed recovery of 50% of the annual balance from customers until earnings reach 300 basis points below its approved ROE.
- [Denying Ontario Power Generation's motion to review and vary](#), an earlier [decision](#) that rejected the request to establish a variance account to record the impacts of the overturning of Bill 124 on its nuclear revenue requirement.
- [Rejecting Entegrus Powerlines' application for a Service Area Amendment \(SAA\)](#) to its St. Thomas Energy Rate Zone to include a property (and the customer) currently part of Hydro One Network's service territory because of a 1997 agreement.
- [Approval of a generic sector-wide variance account to track incremental locate costs](#) arising from the implementation of Bill 93 (*Getting Ontario Connected Act, 2022*).
- [Denying a motion to review brought by Environmental Defence](#), challenging certain aspects of decisions made as part of two Enbridge Gas community expansion leave to construct proceedings.

The Minister of Energy issued a new [Letter of Direction to the Chair of the OEB](#). The Minister highlighted a lengthy list of [near-term initiatives](#) that he expects the OEB to advance, including among others:

- *Powering Ontario Growth*: Working with Ministry of Energy on initiatives to support the [Powering Ontario Growth](#) plan.
- *Housing, Transportation, Job Creation*: In the context of the Government's goals for new homes, transportation, and job creation, review and report back by June 2024 on: i) electricity

infrastructure unit costs in the electricity sector and potential models for cost recovery that could help to ensure infrastructure costs are kept low and are not a barrier to growth, ii) electricity distribution system expansion connection horizon and revenue horizon to ensure that the balance of growth and ratepayer costs remain appropriate.

- *Facilitating Innovation within Ontario's Regulatory Framework*: Report back by September 2024, through its existing work on the [Benefit-Cost Analysis Framework for Addressing Electricity System Needs](#), or another report by September 2024 on what changes may be required to utility remuneration to ensure timely investment is being made, to support the right outcome, to enable low-carbon investments while protecting customers interests to deliver on the government's vision.
- *DER's and Future Utility Business Models*: Working with the Ministry of Energy and IESO to develop and assess local and market opportunities for DERs, including consideration of the future regulatory landscape for alternative utility business models.
- *Electricity and Natural Gas Conservation*: Consult with IESO and Enbridge and report back by April 2024 in how gas and electricity low-income and residential programs could be delivered through a single window.
- *Intervenor Process*: Continue to review current intervenor processes and identify opportunities to improve efficiency and reduce regulatory burden. The Minister asked the OEB to report back by September 2024 with a plan to implement reforms, including but not limited to, consideration around a designated consumer advocate and capping costs.
- The Minister of Energy also highlighted initiatives regarding Electric Vehicles, Performance Measurement Framework Review, Red Tape Reduction, Distribution Sector Resiliency, Responsiveness, and Cost Efficiency, and the Electrification and Energy Transition Panel.

The OEB released its updated [RPP Price Report](#) for the Regulated Price Plan and [set RPP prices as of November 1<sup>st</sup>](#). It also issued its [cost of capital parameters](#) for 2024 rate applications. As part of the accompanying letter, the OEB noted that it plans to hold a [generic hearing to review the deemed capital structure and ROE formula](#) early in the 2024-2025 fiscal year.

An industry guidance letter was issued regarding its intended approach to [capital funding requests related to DER integration between rebasing applications from distributors on Custom IR](#).

The OEB released two reports to the Minister of Energy regarding [defining Ontario's typical residential electricity consumer](#), and [improving distribution sector resilience, responsiveness, and cost efficiency](#) (and the Minister's response to the latter report was then included in his [2023 Letter of Direction](#)).

The [DER Connections Review](#) work on system readiness for EV charger connection resulted in the OEB issuing a [Notice of Proposal to Amend the Distribution System Code \(DSC\) to facilitate connection of EV charging infrastructure](#). The Notice creates [Electric Vehicle Charging Connection Procedures](#), which standardize many elements of the connection requirements and process.

Significant work was undertaken as part of the [consultation to develop a Benefit-Cost Analysis \(BCA\) Framework](#). The OEB held a [stakeholder meeting](#), provided a [draft project plan](#), and issued the [draft BCA Framework Handbook](#) for comment.

As a follow-up to a survey it completed earlier this year amongst distributors, the OEB released a report it had conducted by [KPMG on the issues of regulatory treatment of cloud computing costs](#), and established a [generic deferral account](#) effective December 1<sup>st</sup>, for distributors to record [incremental cloud computing implementation costs](#).

The OEB updated its [performance standard for natural gas facilities applications](#) (i.e. certificate of public convenience and necessity, municipal franchise, well drilling and storage).

As part of its [Low-Income Energy Assistance Program Emergency Financial Assistance \(LEAP EFA\) Program Review](#), [OEB Staff issued its Report](#) for [comment](#).



The OEB announced the membership of the second term of the [Adjudicative Modernization Committee \(AMC\)](#) (*Note: Mark Rubenstein was once again selected a member*).

Both the [CEO](#) and [Chief Commissioner](#) issued their respective mid-year 2023-2024 updates.

There was considerable compliance activity during the final quarter of 2023. Assurances of Voluntary Compliance (AVC) were accepted from [Wellington North Power for a delay in implementing Green Button](#), and [Newmarket-Tay Power distribution for its failure to comply with a number of customer disconnection obligations](#) under the Distribution System Code. AVCs were accepted from three more electricity distributors ([Niagara Peninsula Energy](#), [Milton Hydro](#), and [E.L.K. Energy](#)) related to billing errors that resulted in the overcharging of customers through the fixed monthly service charge. The OEB also accepted AVCs from a [cement production facility conducting business as an electricity wholesaler without a license](#), and a [unit sub-metering company \(Priority\) who had not correctly delivered the Ontario Electricity Rebate to its customers](#). The OEB [Mid-Year Compliance Report](#) was also issued.

The OEB shared [version 1.1. of the Ontario Cyber Security Framework \(OCSF\)](#) used by electricity transmission and distributors to report on cyber security readiness.

As it committed in its response to the Auditor of General of Ontario's 2022 audit, the OEB commenced a [review of its existing customer protection framework for Unit Sub-Meter Providers \(USMPs\)](#).

The OEB and the IESO also issued their [Innovation Sandbox/Grid Innovation Fund Joint Target Call Interim Report](#).

The Market Surveillance Panel issued its [State of the Market Report 2022](#).

### ***Independent Electricity System Operator***

On the electricity procurement front, the IESO's [Long-Term 1 RFP \(LT1 RFP\)](#) process is currently underway, which is expected to procure [2,500 MW of dispatchable new build resources](#). The submission deadline was in mid-December, and contracts are expected to be offered to successful proponents in Q1/Q2 2024.

As part of the [LT1 RFP](#) procurement, [project proponents must get consent from the host municipal council](#). In the leadup to the submission deadline, a number of project proponents were facing opposition in various municipalities (primarily on environmental grounds). Recognizing the issue, the [Minister asked the IESO](#) to ensure it made itself [available to municipal councils](#) to answer questions on Ontario's electricity system needs. Ultimately, municipal councils in [Thorold](#), [Halton Hills](#) and [Kingston](#) refused to give the necessary consents for any new natural gas facilities (or expansion of existing facilities), while they were allowed in [Napanee](#), and earlier in [Windsor](#).

The IESO completed its annual [Capacity Auction](#) procuring a record [1,867MW of capacity for summer 2024 and 1,310 MW for winter 2024/2025](#). As previously [directed by the Minister of Energy](#), the IESO also launched the [Small Hydro Program](#), which is to provide [new contracts for existing hydroelectric facilities with installed capacities of 10MW and below](#).

In December, in response to a [request earlier that month from the Minister of Energy](#), the IESO issued a [Resource Adequacy Update](#), focused on Ontario's system needs beginning in 2029. The [Resource Adequacy Update](#) includes a [5000 MW procurement target](#) for energy needs to be met through 3 bi-annual long-term RFPs. The first of these, [Long-Term 2 RFP is](#) expected to take place in 2025. The IESO has begun [engagement](#) for it, and is anticipated to target [2,000 MW of new energy producing resources](#).

The IESO [provided its comments](#) on the Federal Government's proposed [Clean Electricity Regulations \(CER\)](#). In its view the CER as drafted are unachievable in Ontario by 2035 without risking the reliability

of the electricity system, electrification of the broader economy and economic growth. The [Minister of Energy](#) tasked the IESO to provide a more [detailed assessment on the CER's impacts on Ontario](#) by the end of February.

The [Minister of Energy issued a procurement directive to increase annual IESO funding to indigenous energy support programs](#).

The [January 2024-June 2025 Reliability Outlook](#) was released.

The [Minister of Energy approved an amendment to the IESO's 2023-2025 Business Plan](#), which includes increases in funding for 2024 and 2025 to carry out initiatives in support of the [Powering Ontario's Growth](#) plan. The IESO has indicated that it will file an application to the OEB for approval for the necessary revenue requirement and fee increases pursuant to its [previously approved fees settlement proposal](#).

The IESO, which was [directed to administer the Hydrogen Innovation Fund \(HIF\)](#), announced [10 projects that had been awarded funding](#).

As of December 1, 2023, IESO made available for purchase a portion of its available [clean energy credits](#).

The Market Assessment and Compliance Division (MACD) completed [two investigations of TransCanada Energy, and found it breached of a number of market rules, levying penalties](#) of \$3.72M.

### **Legislative and Regulatory**

The Government of Ontario [issued an Order-in-Council](#) declaring three new transmission projects (a new 230 kV transmission line from the Mississagi TS to the Third Line TS, a new 500 kV transmission line from the Mississagi TS to Hanmer TS, and a new 230 kV transmission line from the Dobbin TS to either the Cherrywood TS or Clarington TS) as [priority projects under section 96.1 of the Ontario Energy Board Act](#). The Minister of Energy [issued a directive to the OEB requiring it to amend Hydro One's transmission license](#) to require the company to develop and seek all necessary approvals for the three projects.

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

- Amending [Ontario Regulation 160/19](#) under the *Ontario Energy Board Act*, [161/99](#) under the *Electricity Act*, and [389/10](#) under the *Electricity Consumer Protection Act*, implementing [recent amendments to the Ontario Energy Board Act](#) that permit the OEB to exempt certain licensing requirements with respect to specified activities for the purposes of participating in a pilot or demonstration project.
- Issuing [Ontario Regulation 373/23](#) under the *Ontario Energy Board Act*, that requires the OEB to exclude from rates awards, damages, or penalties required to be paid under the [Building Transit Faster Act](#), or amounts required under section 59 of that *Act*.
- Amending [Ontario Regulation 39/23](#) under the *Electricity Act*, specifying how the IESO and Ontario Power Generation should account for proceeds from transfer of its clean energy credits.
- Amending [Ontario Regulation 506/18](#) under the *Electricity Act*, to streamline the exemption process for energy consumption and water use reporting.
- Amending [Ontario Regulations 679/21](#) under the *Ontario Energy Board Act*, and [389/10](#) under the *Energy Consumer Protection Act*, to clarify regulatory requirements for community net-metering and third-party net-metering ownership.

- Amending [Ontario Regulation 14/18](#) under the *Ontario Energy Board Act*, increasing the income threshold for the Ontario Electricity Support Program.
- Amending [Ontario Regulation 363/16](#) under the *Ontario Rebate for Electricity Consumers Act*, increasing the Ontario Electricity Rebate (OER) amount from 11.7% to 19.3%.
- Proposal to amend [Ontario Regulations 429/09](#) under the *Electricity Act* to allow Class A customers under the Industrial Conservation Initiative (ICI) to enter into [power purchase agreements \(PPAs\) with renewable generation](#) facilities to allow them to offset their peak demand.
- Proposal to amend [Ontario Regulation 160/99](#) under the *Electricity Act* to expand the exemption for legacy clean energy credits until they expire in 2027.

The Ministry of Energy launched a [consultation on the future of the Natural Gas Expansion Program](#), issuing a [discussion paper](#), and sought comments. The Ministry of Energy is [consulting on potential changes to the Ontario Energy Board Act](#) that would allow it to prescribe certain conditions by regulation to [exempt the leave to construct requirements for energy projects](#). One of those regulations would be exempting projects that cost between \$2-\$10M from the requirements for leave to construct, subject to an OEB determination that the Crown has satisfied its duty to consult.

The Government of Ontario also introduced [Bill 153, Building Infrastructure Safely Act, 2023, which amends the Ontario Underground Notification Systems Act](#) (i.e. the One Call Act), that makes a number of changes, including prohibiting underground infrastructure owners and operators (such as utilities) from charging for locates, and to allow the Minister to make improvements to locates delivery through regulation.

### **Federal Government**

As part of its [Fall Economic Statement \(FES\)](#), the Federal Government announced that the Canada Growth Fund will be allocated \$7Bn, on a priority basis, for carbon Contract for Differences (CfD) and offtake agreements. In late December, the Canada Growth Fund announced its [first carbon credit offtake agreement](#).

The [FES](#) also provided further information on the [delivery timeline for various investment tax credits](#). Accompanying [legislation was introduced](#) implementing the [CCUS and Clean Technology Investment Tax Credits](#).

The [Canadian Electricity Advisory Council](#) issued an [Interim Report](#), and launched a [consultation](#). NRCan released a [summary of what it heard from its Request for Information](#) regarding regulatory, policy and market barriers and opportunities for accelerating the pace of electrification and electricity grid modernization.

### **Judicial Decision**

The Alberta Court of Appeal in [Alta Link Management Ltd v. Alberta Utilities Commission](#) overturned a decision of the Alberta Utilities Commission (AUC), finding that the AUC breached its duty of procedural fairness when it did not provide adequate notice to electricity utilities that it was considering the issue of whether to allow a fair return that should be earned on customer contributions (from distributors paid to transmitters). The AUC had determined that neither distributor nor transmitters should be permitted to earn a return on those capital contributions, which was a change from the previous policy.

### **What We Are Reading**

The Ontario Energy Association's [Distribution System Operator \(DSO\) Study](#). Analysis and commentary on the Minister of Energy's announcement to overturn the OEB's decision on Enbridge's



Shepherd Rubenstein

customer connection policy ([Power Advisory](#), [Gowlings \(Ian Mondrow\)](#) and the [Ivey Energy Policy and Management Centre](#)). British Columbia Utilities Commission's [Final Report on its Inquiry into the Regulation of Hydrogen Energy Services](#).

*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](mailto:mark@shepherdrubenstein.com).*