

CHIEF COMMISSIONER PLAN INITIATIVES

2021



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1 | INTRODUCTION AND SUMMARY

On October 1, 2020, the Minister of Energy, Northern Development and Mines sent a mandate letter (Mandate Letter) to the Ontario Energy Board (OEB) outlining priorities for the upcoming year. While all of the 17 priorities can affect the OEB's adjudication processes indirectly, some of the priorities are more directly related to adjudication. In particular, the Mandate Letter sets the expectation that the OEB will:

Develop a plan to enhance the efficiency, effectiveness, and independence of adjudicative processes. The plan should include clear guidelines to assist Commissioners in administering efficient hearings while also ensuring that the rules of natural justice are considered. A forecast of expected case load and resource requirements should also be regularly maintained and updated.

Furthermore, the Mandate Letter included priorities for establishing key performance indicators (KPIs) for decision cycle time, and for reviewing intervenor processes to identify opportunities for operational efficiencies. The Chief Commissioner has developed a plan (the Plan) to consider all of these priorities, as well as prior work undertaken in the past two years since the release of the report from the Ontario Energy Board Modernization Review Panel (Review Panel Report).¹

Work has been completed to transition to the new governance for adjudication at the OEB, particularly the introduction of the new role of Chief Commissioner. The Chief Commissioner is now assigning panels of Commissioners to proceedings, has introduced regular meetings to discuss adjudication and has organized training for Commissioners. In addition, a forecast is maintained for upcoming applications based on normal application cycles and forward planning information from utilities.

Specific initiatives to enhance the effectiveness and efficiency of OEB's adjudicative processes have been developed. These initiatives were considered in the development of the OEB's 2021 - 2024 Business Plan.

¹ Released on October 2018 <https://www.ontario.ca/document/ontario-energy-board-modernization-review-panel-final-report>

2 | INITIATIVES



The Minister’s Mandate Letter states that the OEB’s broad priorities should align with the recommendation in the OEB Review Panel Report. This report identified five characteristics that a regulator should embody: Independence, Accountability, Certainty, Efficiency and Effectiveness.

This section describes specific initiatives to enhance these characteristics for adjudication at the OEB.

2.1 | Independence



The OEB has various internal protocol documents that have been developed over the past several years. These protocols clarify how Commissioners and OEB staff interact in regulatory proceedings. Having clear protocols assists in ensuring that panels of Commissioners are independent in making their determinations by clarifying roles and responsibilities. This approach is consistent with the Mandate Letter that the OEB should make a priority of reinforcing “effective operational and communication protocols within the organization that support the independence of adjudication.”

The protocols have been reviewed, enhanced and consolidated for ease of reference and training so Commissioners and OEB staff involved in regulatory proceedings have a clear understanding of responsibilities for each step of the regulatory process. Examples of these protocols include: roles and responsibilities for members of a case team (presiding Commissioner, Commissioner, case manager, hearing advisor, case administrators, legal), protocols for decision drafting and issuance, pausing a hearing, peer review, confidentiality requests, expert witnesses, hearing management, with more to be developed as required. This is an internal document written as a guide for OEB staff and Commissioners on administrative practices.

INITIATIVES

Initiative	Status	Timing
Prepare a Consolidated Document of Internal Protocols for Adjudication	Complete with ongoing updates as necessary	2020

2.2 | Accountability



Activities have been completed to transition the OEB to its new governance for Commissioners. Forums, such as the Commissioners Caucus have been established to provide an opportunity for Commissioners to understand the broader context in which decisions are made in the public interest, and to discuss common issues. Training of Commissioners will be an ongoing activity.

The Mandate Letter refers to the rules of natural justice. A key component of this is ensuring procedural fairness, but this also must consider that the “right to be heard” does not mean unlimited access and time within OEB proceedings. We will review and implement best practices in natural justice.

Further initiatives are expected to be developed as a result of the Top Quartile Regulator Project.

INITIATIVES

Initiative	Status	Timing
Review and implement best practices for ensuring procedural fairness, while improving the efficiency of adjudication	The OEB is in the process of identifying initiatives based on internal discussions and feedback from: <ul style="list-style-type: none">• The OEB Financial Review Report, November 2020• The Ipsos Stakeholder Survey, January 2021• The Top Quartile Regulator Report, March 2021 The OEB’s Rules of Practice and Procedure have been updated for the OEB’s new governance, and work has started to review the Rules for motions and confidentiality requests. Training has been held for Commissioners on procedural fairness and decision writing	2021

2.3 | Certainty



The Review Panel Report identified the need for process improvements to achieve predictable regulatory processes. The Mandate Letter also indicated that KPIs should be developed for decision cycle times.

The protocols discussed under Section 2.1 will also enhance the predictability and dependability of OEB proceedings by ensuring there is clarity of responsibilities and a common understanding of internal operating protocols.

In addition, new application performance standards have been developed for Leave to Construct Applications and Motions to Review. Updated performance standards for rate applications were posted in March 2019 for new applications filed as of April 1, 2019, following the release of the Review Panel Report.

The current target for meeting the total decision cycle time performance standard is 80%, i.e. the decision must be issued on or before the target decision date 80% of the time. The approach to setting the target will be reviewed, with the goal of setting the target for continuous improvement. This will include establishment of a clear protocol (that is auditable) for when a hearing can be considered “paused” or in abeyance.² Consideration will also be given to protocols for extending timelines in special circumstances.

The OEB has developed a pilot using detailed case schedules for rate applications that has been posted. The case schedules compare the timeline for procedural steps based on the performance standard with the planned case schedule and actual procedural steps. Where the actual procedural steps differ from the planned case schedule, an explanation will be provided along with a new planned date for the decision. Feedback on the pilot is being sought from stakeholders.

²Examples could include an applicant asking the OEB to halt procedural steps to negotiate with a landowner, or to make a significant amendment to an application. Another example could be a proceeding that is paused to await the outcome of a court ruling.

INITIATIVES

Initiative	Status	Timing
Application Performance Standards (KPIs) for Leave to Construct and other application types	Completed for Leave to Construct applications and Motions to Review. New Performance Standards will be effective April 1, 2021	2021
Review targets for application performance standards	In progress	2021
Document protocols for timelines	In progress	2021
Case Schedules for Rate Applications Pilot, including target for decision issuance	Pilots completed. Evaluation underway	2021

2.4 | Efficiency



The Review Panel Report identified the need for process improvements to enhance the efficiency of regulatory processes. The Mandate Letter also provided the expectation that the OEB will give priority to reviewing intervenor processes to identify opportunities for operational efficiencies.

A review of intervenor processes could be a major undertaking with significant implications that must be considered carefully. A short-term initiative is planned to update the OEB's Rules with respect to granting intervenor status in a proceeding. The current Rules state that a party must have a "substantial interest" in a proceeding to be granted intervenor status. This initiative will consider greater clarity on what constitutes a substantial interest.

The OEB will also conduct a jurisdictional review of intervenor processes and approaches to cost awards to consider strategies for reducing overlapping or duplicative interventions. This could inform other considerations with the intervenor process.

The OEB has one set of filing requirements for rate applications regardless of whether a utility has 1.3 million or 1,200 customers (approximately 50% of electricity distributors have less than 20,000 customers and 20% have fewer than 10,000 customers). The OEB will review the filing requirements for smaller electricity distributors to determine the information the OEB requires to make its determinations on rates. Stakeholdering and pilots will be conducted

to better understand what aspects of the filing requirements have the greatest impact on a distributor’s workload.

The OEB has been doing total cost benchmarking of electricity distributors since 2013. Work is underway to benchmark specific areas of utility business (e.g. tree trimming). This work can be used to evaluate utility performance and to inform rate applications. Benchmarking may also lead to more focused rate applications, making them more efficient. The OEB will determine the approach to using this benchmarking in rate applications.

Motions are an aspect of regulatory proceedings that cannot be predicted. Motions can arise within a proceeding or after a decision has been issued. These motions consume significant resources but must be dealt with to ensure procedural fairness. The OEB plans to update its Rules for greater clarity on the “test” for granting a motion. This is particularly important as various court rulings have weighed in on the appropriate tests for appeals. A similar issue is the test for an appeal of a decision made by OEB staff under delegated authority.

INITIATIVES

Initiative	Status	Timing
Assess the rules for the “substantial interest” in a proceeding to be an intervenor	Initiation – included in the 2021- 2024 Business Plan	2021
Complete jurisdictional review of intervenor processes and consider strategies for reducing overlap and duplication	Initiation – included in the 2021- 2024 Business Plan	2021
Approach to Small Utility Rate Applications	Stakeholder meeting held with smaller electricity distributors. Approach under development	2021
Determine use of benchmarking in rate applications to reduce filing requirements	Will commence with outcome of benchmarking work in 2021	2022
Review of Rules for Motions and Appeals of Delegated Decisions	In progress for motions on final decisions	2021

2.5 | Effectiveness



The OEB regulates utilities under a policy called the Renewed Regulatory Framework (RRF). This approach was designed to focus on outcomes of regulation, rather than activities, in order to better respond to customer preferences, enhance distributor productivity and promote innovation. The broad outcomes were defined as: Customer Focus, Operational Effectiveness, Public Policy Responsiveness and Financial Performance.

Under the RRF, the OEB established an expectation in its rate applications that utilities have engaged with their customers and have a five-year distribution/utility system plan. The OEB has specifically not provided direction on how a utility should do customer engagement because:

1. Utilities should be in the best position to know how to engage with their customers.
2. The engagement should be commensurate with the nature of the utility's plan.

This has led utilities, in some instances, to conclude they need to spend considerable time and money on the customer engagement activities that do not seem warranted given the size of the utility and the nature of their system plan. The OEB plans to consider what further guidance can be provided.

The OEB has provided detailed filing requirements with respect to distribution/utility system plans. This may lead to the impression that having a system plan is solely a rate application requirement, rather than a general requirement of good utility practice expected of utilities at all times. The OEB plans to consider whether further clarification can be provided.

INITIATIVES

Initiative	Status	Timing
Review expectations for customer engagement and distribution/utility system plans in applications	Work is first focusing on small utilities coincident with the initiative to review the approach to small utility rate applications	2021 for small utilities
		2022 for larger utilities

3 | COMPETENCIES AND SKILLS MIX FOR COMMISSIONERS

3.1 | Competencies for Commissioners

Competencies have been defined for Commissioners as either core competencies or technical competencies. The core competencies currently identified for Commissioners are as follows:

- Financial Literacy
- Industry Knowledge
- Integrity/Ethics
- Panel Membership
- Presiding
- Leadership

Technical competencies do not need to be possessed by each Commissioner but should reside within the skills mix of the Commissioners as a group. The technical competencies currently identified include:

- Economics/Accounting
- Finance/Business Management
- Natural Gas or Power Operations/Engineering
- Public Law
- Regulation/Adjudication
- Consumer/Public Interest
- Other competencies can be defined, such as:
 - First Nations
 - Environmental/Conservation
 - Government Policy/Relations

The competencies provide a basis for addressing the professional development needs of Commissioners. They also provide a baseline against which to identify prospective Commissioners as vacancies arise.

3.2 | Assessment of Current Skills Mix

The current complement of Commissioners is seven, including the Chief Commissioner. The OEB Act permits the appointment of up to 10 Commissioners. The OEB should target phasing to a full complement of Commissioners to support the modernization.

At the end of the two-year transition period on October 1, 2022, the OEB's Board of Directors will assume responsibility for Commissioner appointments. The terms for all current Commissioners end in 2022.

INITIATIVES

Initiative	Status	Timing
Review and update core competencies and current skills mix	Recruitment underway based on current core competencies	2021
Assess the skills mix at the end of 2021 and identify skills gaps to be considered for reappointments and/or recruitment	Recruitment underway based on current core competencies. Competencies will be reviewed and the skills mix updated to assist with appointments in 2022	2022