

# Orientation Session for Electricity Distributors Rebasing for 2014 Rates

**July 23 & 24, 2013**



Ontario Energy Board Offices, 2300 Yonge St, 25<sup>th</sup> Floor, Toronto, ON

West Hearing and ADR Rooms

<i>Day 1</i>	<b>AGENDA</b>	<i>July 23, 2013</i>
<u>Time</u>	<u>Topic</u>	<u>Presenters</u>
<b>8:30 am</b>	<b>Continental Breakfast Available</b>	
9:00 am	Welcome and Meet Your Case Manager	Lynne Anderson
9:15 am	Striving for Excellence	Rosemarie Leclair
9:45 am	The RRFE Report	Brian Hewson
	– A Review of the New Performance Based Approach	
10:15 am	Customer Focus	Alan Findlay / Kristi Sebalj
	– Consumer Touch Points, the New Notice of Application and the Expectations Regarding Letters of Comment	
<b>10:45 am</b>	<b>Refreshment Break</b>	
11:00 am	The Application Process - Part 1	Jennifer Lea / Silvan Cheung
	– A Review of the Hearing Process and COS Application Timelines	
11:30 am	The Applications Process – Part 2	Maureen Helt
	– Review of the Board's Rules and Practice Directions	
<b>12:00 pm</b>	<b>Lunch Break (provided)</b>	
1:00 pm	Filing Requirements	Ted Antonopoulos / Martin Davies
	– Summary of Key Changes	
1:30 pm	Completeness Check	Violet Binette
	– Review of Checklist and Application Completeness Process	
2:00 pm	Exhibit 1 – Administrative Documents	Richard Battista / Kristi Sebalj
	– Review of Exhibit 1 Including Expectations for the New Executive Summary and Corporate Governance	
<b>2:30 pm</b>	<b>Refreshment Break</b>	
2:45 pm	Intervenor Review of Electricity Rate Applications	Jay Shepherd
	– How Intervenors Assess Applications	
3:15 pm	Board Members' Perspective	Marika Hare / Ken Quesnelle
3:45 pm	Questions and Wrap Up	Ted Antonopoulos
<b>4:00 pm</b>	<b>End Day 1</b>	

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<i>Day 2</i>	<b>AGENDA</b>	<i>July 24, 2013</i>
<u>Time</u>	<u>Topic</u>	<u>Presenters</u>
<b>8:30 am</b>	<b>Continental Breakfast Available</b>	
9:00 am	Review of Day 1 Discussions	Ted Antonopoulos
9:15 am	Integrated Planning Requirements – Part 1 – Regional Infrastructure Planning: Process Overview, LDC Obligations and Documentation Requirements	Ashley Hayle / Andres Mand
9:45 am	Integrated Planning Requirements – Part 2 – Consolidated Distribution System Plans: Review of the Chapter 5 Planning Requirements for Capital Expenditures, Renewable Energy Generation, and Smart Grid	Stephen Cain
10:15 am	Treatment of REG Investments – Review of the Treatment of REG Investments and the new COS Appendix on Direct Benefits	Birgit Armstrong
<b>10:45 am</b>	<b>Refreshment Break</b>	
11:00 pm	Exhibit 2 – Rate Base – A Review of Other Chapter 2 Filing Requirements	Christie Clark
11:30 pm	Setting Rates using MIFRS – Review of Requirements for 2014 Filers and Chapter 2 Appendices	Daria Babaie / Fiona O'Connell
<b>12:00 pm</b>	<b>Lunch Break (provided)</b>	
1:00 pm	Setting Rates using CGAAP – Review of Requirements for 2014 Filers and Chapter 2 Appendices	Daria Babaie / Tina Li
1:30 pm	Exhibit 9 - Deferral and Variance Accounts – Review of Continuity Schedule, HST Sub-Account and Accounting Orders	Daria Babaie / Tina Li
2:10 pm	Payments in Lieu of Income Taxes – Review of Requirements for 2014 Filers and PILs Model	Fiona O'Connell
<b>2:30 pm</b>	<b>Refreshment Break</b>	
2:45 pm	Exhibit 3 – Operating Revenue – Review of Load Forecasting Including CDM Impacts and Other Revenue	Keith Ritchie
3:15 pm	LRAM vs LRAMVA – A Review of the Distinction, the Mechanics and the Minimum Requirements	Josh Wasylyk
3:30 pm	Exhibit 7 - Cost Allocation – Review of What Has Changed Since Last Rebasing	Neil Mather / Vince Cooney
4:00 pm	Closing Remarks	Ted Antonopoulos
<b>4:15 pm</b>	<b>End Day 2</b>	

## 2014 Cost of Service Applications Case Managers

<b>Distributor</b>	<b>Docket Number</b>	<b>Case Manager <sup>1</sup></b>
Burlington Hydro Inc.	EB-2013-0115	Martha McOuat
Cambridge and North Dumfries Hydro Inc.	EB-2013-0116	Keith Ritchie
Cooperative Hydro Embrun Inc.	EB-2013-0122	Daniel Kim
Fort Frances Power Corp.	EB-2013-0130	Martin Davies
Haldimand County Hydro Inc.	EB-2013-0134	Christie Clark
Hydro Hawkesbury Inc.	EB-2013-0139	Silvan Cheung
Kitchener-Wilmot Hydro Inc.	EB-2013-0147	Keith Ritchie
Niagara on the Lake Hydro Inc.	EB-2013-0155	Stephen Vetsis
Oakville Hydro Electricity Distribution Inc.	EB-2013-0159	Harold Thiessen
Orangeville Hydro Ltd.	EB-2013-0160	Birgit Armstrong
Veridian Connections Inc.	EB-2013-0174	Richard Battista

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<sup>1</sup> This information is preliminary and may be subject to change.



# Ontario Energy Board Commission de l'énergie de l'Ontario



## 2014 Cost of Service Orientation Session

**Striving for Excellence**

Rosemarie T. Leclair, Chair & CEO

July 23, 2013



# Our Vision

- OEB regulates in a manner that focuses on outcomes valued by consumers
- OEB processes are efficient, effective, understood, and accessible to both industry and consumers
- Ontario regulated entities are among the most efficient in North America and beyond
- Consumers have:
  - a reliable energy supply, at a reasonable cost
  - the information they need to make choices regarding energy use
- Consumers understand the value they receive for their \$\$\$



# Focus on Outcomes



## Utility

- Responsible for managing the business and serving customers

## OEB

- Responsible for ensuring that customers are well served by their utilities

## Changing Focus...

- from inputs/activities  outcomes/results
- from only costs  value for money

# 2014 – A Year of Transition

## **A new approach to rate regulation**

- Suited to business needs
  - Annual Incentive Rate-setting Index
  - 4<sup>th</sup> Generation Incentive Rate-setting
  - Custom Incentive Rate-setting
- Performance-based approach
  - Customer focus
  - Operational Effectiveness
  - Public Policy Responsiveness
  - Financial Performance

## **Improvements to applications and hearing process**

# A Balanced, Outcome-based Approach

Performance Outcomes	Performance Categories
<b>Customer Focus</b>  Services are provided in a manner that responds to identified customer preferences.	Service Quality
	Customer Satisfaction
<b>Operational Effectiveness</b>  Continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives.	Safety
	System Reliability
	Asset Management
	Overall cost performance
<b>Public Policy Responsiveness</b> Utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board).	Government Directive on Conservation & Demand Management
	Connection of Renewable Generation
<b>Financial Performance</b> Financial viability is maintained; and savings from operational effectiveness are sustainable.	Financial Ratios

# Key Components of Outcomes Approach

- Good planning and asset management discipline
- Effective consultation and engagement with customers
- Good corporate governance
- Regular reporting and performance monitoring

# What does that mean for Applicants?

- The Board can create the opportunity
- Utility needs to take ownership of it
  - Provide the context, the business environment, the challenges
  - Consult with and inform customers
  - Align the information with the ask
- The quality of the outcome depends on a quality application

## Own Your Application



# Ontario Energy Board Commission de l'énergie de l'Ontario

## Orientation Session



## Electricity Distributors Rebasing for 2014 Rates

Renewed Regulatory Framework for Electricity  
A Review of the New Performance Based Approach

Brian Hewson, Senior Manager, Networks and Smart Grid  
July 23, 2013



# Renewed Regulatory Framework Objectives

- Shift focus from utility cost to value for customers
- Better align utility reliability and quality of service levels with customer expectations
- Institutionalize continuous improvement and innovation
- Provide for a comprehensive approach to network investments to achieve optimum results
- Better align timing and pattern of expenditures with cost recovery
- Provide a sustainable, predictable, efficient and effective regulatory framework

# The Resulting RRFE

- The renewed regulatory framework is a comprehensive performance-based approach to regulation:
  - that promotes achievement of outcomes that will benefit existing and future customers;
  - will align customer and distributor interests, continue to support the achievement of important public policy objectives, and place a greater focus on delivering value for money; and
  - under which, a distributor will be expected to continuously improve its understanding of the needs and expectations of its customers and its delivery of services, which in turn can lead to reduced costs for customers.

# Performance outcomes



## Customer Focus

- services are provided in a manner that responds to identified customer preferences;



## Operational Effectiveness

- continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives;



## Public Policy Responsiveness

- utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board); and



## Financial Performance

- financial viability is maintained; and savings from operational effectiveness are sustainable.

# **Performance Measurement & Continuous Improvement**

Renewed Regulatory Framework for  
Electricity Distributors: A  
Performance-Based Approach,  
October 18, 2012



# Performance measurement and continuous improvement (cont'd)

- The achievement of the performance outcomes will be supported by specific measures and targets and annual reporting.
- Distributor performance will be compared year over year, both to prior performance and to the performance of other distributors.
  - To facilitate performance monitoring and distributor benchmarking, the Board will use a scorecard approach to link directly to the performance outcomes.
- Existing regulatory mechanisms will be maintained, subject to certain refinements.
  - Additional mechanisms may be necessary and consultation will follow implementation of scorecard on:
    - development of potential incentives to reward superior performance; and
    - potential consequences for inferior performance.



# Standards and measures

- The standards and measures must be suitable for use by the Board:
  - in monitoring and assessing distributor performance against expected performance outcomes;
  - in monitoring and assessing distributor progress towards the goals and objectives in the distributor's network investment plan;
  - in comparing distributor performance across the sector and identifying trends; and
  - in supporting rate-setting.

# Monitoring distributor performance

- Scorecard will be developed and used to monitor individual distributor performance and to compare performance across the distribution sector.
- Distributors will be required to report their progress against the scorecard on an annual basis.
- The Scorecard will:
  - link measures directly to the performance outcomes identified by the Board;
  - effectively organize performance information in a manner that facilitates evaluations and meaningful comparisons;
  - be used to provide a signal to Board if mid-way corrective action is needed; and
  - evolve as appropriate standards and measures are developed to assess distributor performance against performance outcomes.

# Clarification: monitoring distributor performance

The Scorecard is not intended to:

- replace the corporate scorecard, if one is already used by the distributor; or
  - It is acknowledged that the corporate scorecard will be more comprehensive than the regulatory scorecard, for example, by including measures important to the shareholder.
- replace RRR or filing requirements.

However, both are useful for identifying potential measures for the Scorecard.

*January, 2013*



# Board staff's Recommended Scorecard – July 2013

Distributor Name	Acme Distribution, Inc.							Target		
Performance Outcomes	Performance Categories	Measures (new in red)	2007	2008	2009	2010	2011	Trend	Industry	Distributor-specific for 2011
<b>Customer Focus</b>  Services are provided in a manner that responds to identified customer preferences.	Service Quality	Connection of New LV Services (DSC s7.2, RRR s2.1.4.1.1)	100.00%	100.00%	100.00%	100.00%	100.00%	↔	90%	
		Appointments: Scheduled (DSC s7.3, RRR s2.1.4.1.2)				97.90%	95.50%	U	90%	
		Appointments: Met (DSC s7.4, RRR s2.1.4.1.3)	100.00%	99.50%	100.00%	99.50%	99.70%	U	90%	
		Telephone Accessibility (DSC s7.6, RRR s2.1.4.1.5)	69.81%	69.70%	76.00%	56.30%	64.90%	U	65%	
	Customer Satisfaction	1st Contact Resolution	To be developed							
		Billing Accuracy	To be developed							
		Results of Distributor Customer Satisfaction Survey								
<b>Operational Effectiveness</b>  Continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives.	Safety	Public Safety measure	To be developed							
	System Reliability	System Average Interruption Duration Index (Loss of Supply) (RRR s2.1.4.2.2)	1.25	1.69	1.89	1.50	1.70	I		at least within 1.50 and 1.89
		System Average Interruption Frequency Index (Loss of Supply) (RRR s2.1.4.2.4)	2.14	2.09	2.00	2.04	2.10	U		at least within 2.00 and 2.09
		Customer-Specific Reliability measure	To be developed							
	Asset Management	System Plan Execution measure	To be developed							
	Overall cost performance	Total Cost Benchmarking	Adjustment to Costs for High Voltage Service	\$0	\$0	\$0	\$0	\$0		
			Adjustment to Costs for Low Voltage Service	\$32,312	\$34,287	\$53,672	\$82,355	\$147,596		
			Efficiency Assessment (Cohort Ranking I through V)			III	III	III		
			Econometric Benchmarking (Cost performance significantly superior, average, or significantly inferior)			average	average	average		
			Unit cost/peer group benchmarking (Quintile Ranking 1 through 5)			3	4	3		
		OM&A Cost	per Customer	169.97	178.29	186.71	187.87	203.97		
			per kWh Delivered	0.00709	0.00748	0.00805	0.00875	0.00888		
			per Circuit Km of Line	9,266.95	9,711.21	9,654.09	10,194.63	10,806.90		
		Net Plant Cost	per Customer	1,204.45	1,240.25	1,289.19	1,307.24	1,330.50		
			per kWh Delivered	0.05024	0.05202	0.05561	0.06090	0.05791		
			per Circuit Km of Line	65,666.26	67,552.75	66,659.98	70,937.58	70,493.40		
<b>Public Policy Responsiveness</b>  Utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board).	Government Directive on Conservation & Demand Management	Net Annual Peak Demand Savings (MW)					6.68			41.44
		Net Cumulative Energy Savings (GWh)					21.13			156.64
		% of CIA Completed for Renewable Generation Facilities >10 kW within the applicable timeline prescribed by Ontario Regulation 326/09 made under the Electricity Act, 1998					100.00%			
	Connection of Renewable Generation	MicroFit Connection measure	Requisite RRR to be developed							90%
<b>Financial Performance</b>  Financial viability is maintained; and savings from operational effectiveness are sustainable.	Financial Ratios	Liquidity: Current Ratio (Current Assets/Current Liabilities)	1.66	1.87	1.88	1.18	1.47			
		Leverage: Total Debt (Includes short-term and long-term debt) to Equity Ratio	0.55	0.53	0.51	0.62	0.17			
		Profitability: Regulatory Return on Equity (RRR 2.1.5.6)					10.66%			

**Legend:**

- U up
- D down
- ↔ flat
- target met
- target not met



# Performance Measurement & Continuous Improvement

Questions?



# **Electricity Distribution Rate-Setting**

Renewed Regulatory Framework for  
Electricity Distributors: A  
Performance-Based Approach,  
October 18, 2012



# Rate-setting overview

- The Board's Renewed Regulatory Framework for Electricity, amongst other matters, establishes three rate-setting methods for distributors:
  - 4th Generation Incentive Rate-setting - suitable for most distributors;
  - Custom Incentive Rate-setting - suitable for those distributors with large or highly variable capital requirements; and
  - the Annual Incentive Rate-setting Index - suitable for distributors with limited incremental capital requirements.

# Rate-setting overview (con't)

“Each distributor may select the rate-setting method that best meets its needs and circumstances, and apply to the Board to have its rates set on that basis. This will provide greater flexibility to accommodate differences in the operations of distributors, some of which have capital programs that are expected to be significant and may include ‘lumpy’ investments, and others of which have capital needs that are expected to be comparatively stable over a prolonged period of time.”

*(pp. 9-10, RRF Report)*

# Rate-setting overview – elements of three methods

		4th Generation IR	Custom IR	Annual IR Index
“Going in” Rates		Single forward test-year	Multi-year	Existing rates
Form		Price Cap Index	Custom Index	Price Cap Index
Coverage		Comprehensive	Comprehensive	Comprehensive
Annual Adjustment Mechanism	Inflation	Composite Index	Distributor-specific rate trend for plan term, informed by: (1) forecasts; (2) Board inflation and productivity analyses; and (3) benchmarking to assess reasonableness of forecasts	Composite Index
	Productivity	Peer Group X-factors: productivity and stretch		Based on 4 <sup>th</sup> Generation IR X-factors
Role of Benchmarking		To assess reasonableness of forecasts and assign stretch factor		n/a
Sharing of Benefits		Productivity and stretch factor	Case-by-case	Productivity and stretch factor
Term		5 years (rebasing plus 4 years)	Minimum term of 5 years	No fixed term
Incremental Capital Module		On application	N/A	N/A
Treatment of Unforeseen Events		Existing Z-factor rules continue	Existing Z-factor rules continue	Existing Z-factor rules continue
Deferral and Variance		Status quo	Status quo, plus to track capital spending against plan	Disposition limited to Group 1; Separate application for Group 2
Performance Reporting and Monitoring		A regulatory review may be initiated if a distributor’s annual reports show performance outside of the $\pm 300$ basis points earnings dead band or if performance erodes to unacceptable levels.		

# Electricity Distribution Rate-Setting

Questions?



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## VIA E-MAIL AND WEB POSTING

October 18, 2012

**To:** All Participants in Consultations EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0043 and EB-2011-0004

All Licensed Electricity Transmitters and Distributors  
All Other Interested Stakeholders

**Re: Renewed Regulatory Framework  
Issuance of Board Report and Next Steps  
Board File Nos.: EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0043  
and EB-2011-0004**

Today, the Board issued its "Report of the Board: A Renewed Regulatory Framework for Electricity Distributors: A Performance Based Approach." A copy of the Report is available on the Board's website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca).

The issuance of this Report completes the consultation process which began in October of 2010. The Board thanks all participants in this consultation for their contribution to the development of the Report. The Board will address the issue of cost awards for this consultation by separate correspondence.

## Implementation of the Board's policies

Work will now commence on implementation of the Renewed Regulatory Framework. Three new stakeholder working groups are being established to provide staff with expert assistance and to review and advise staff on proposals regarding the implementation matters identified in Chapters 3 and 4 of the Board's Report. In addition, the Smart Grid Working Group will be reconvened. Working groups will work with staff on:

- **An Integrated Approach to Network Planning:** To revise the Board's filing requirements for distributors and transmitters and issue guidance in accordance with the Board's conclusions in the Report. The development of an integrated set of revised filing requirements will include those related to distribution network planning, smart grid planning and regional planning.



- **Regional Infrastructure Planning:** To develop guidance regarding the implementation of the Board's conclusions in the Report related to moving to a more structured approach to regional infrastructure planning, as well as the appropriate redefinition of certain line connection assets and Transmission System Code cost responsibility rule changes to remove barriers related to regional plan execution.
- **Development of the Smart Grid:** To develop the regulatory documents to implement the Minister's Directive and the Board's conclusions in the Report
- **Performance, Benchmarking and Rate Adjustment Indices:** To implement the Board's conclusions in the Report in relation to performance standards, measures, and the development of benchmarking. This will also include consideration of rate adjustment indices (i.e., inflation and X factors).

The stakeholder members of the working groups will be selected by the Board. By sharing certain members in common, working group efforts will be coordinated and mutually informed on an on-going basis. **The Board will announce the people who will participate in these working groups shortly.** It is expected that working group meetings will be scheduled over the November 2012 through February 2013 period.

Detailed activities contemplated over the coming months, and approaches that will be used to facilitate stakeholder input are outlined in Attachment A. Consultations will conclude with the issuance of filing requirements and guidance, code amendments, and/or supplemental Board policies in support of the framework.

The Board expects that the three rate setting methods will be available for the 2014 rate year. At that time, distributors may select the appropriate rate setting method for their utility.

The rate-setting policy set out in the Report addresses the variety of circumstances facing distributors by broadening the rate-setting methods available. The new policies achieve an appropriate balance between recognizing individual distributor circumstance and achieving regulatory efficiency. Accordingly, the Board will only depart from its rate-setting policy in exceptional circumstances. If a distributor applies to have its rates set using an approach other than one of the three established rate setting methods provided by the Board's policy, it will be required to demonstrate why and how it cannot adequately manage its resources and financial needs under any of the established methods.

### ***Webcast in October***

All interested stakeholders will be invited to participate in a webcast on the Board's Report and on the implementation plan set out in Chapter 5 of that Report. The webcast will be hosted by Board staff on **October 31, 2012**. The webcast is intended to give stakeholders an opportunity to ask Board staff clarifying questions so as to help better inform stakeholder understanding of the new framework and their participation in

the consultations scheduled throughout the fall and winter. Information on how to participate in the webcast will be posted on the Board's regulatory calendar a week before the event.

## Cost Awards

Cost awards will be available to stakeholders in relation to the consultation activities described in this letter. However, the Board is not grandfathering cost award eligibility awarded prior to the issuance of this letter. A stakeholder must apply for cost eligibility status by filing with the Board a written submission requesting eligibility. **Important information on cost awards is set out in Attachment B.** Filings to the Board in relation to cost awards must be made in accordance with the filing instructions set out below.

## Filing Instructions

Stakeholders must file two paper copies and one electronic copy of their filings with the Board Secretary by **4:45 pm** on the required dates. The Board requests that stakeholders make every effort to provide electronic copies of their filings in searchable / unrestricted Adobe Acrobat (PDF) format, and to submit their filings through the Board's web portal at [www.pes.ontarioenergyboard.ca](http://www.pes.ontarioenergyboard.ca). A user ID is required to submit documents through the Board's web portal. If you do not have a user ID, please visit the "e-filings services" webpage on the Board's website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca), and fill out a user ID password request. Additionally, interested stakeholders are requested to follow the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail at [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca). Persons that do not have internet access should provide a CD or diskette containing their filing in PDF format.

All filings must quote file numbers **EB-2010-0377, EB-2010-0378, EB-2010-0379, EB-2011-0004, and EB-2011-0043** and include your name, address telephone number and, where available, your e-mail address and fax number.

All filings received by the Board will form part of the public record. Copies of the filings will be available for inspection at the Board's office during normal business hours and the filings may be placed on the Board's website.

If the filing is from a private citizen (i.e., not a lawyer representing a client, not a consultant representing a client or organization, not an individual in an organization that represents the interests of consumers or other groups, and not an individual from a regulated entity), before making the filing available for viewing at the Board's offices or placing the filing on the Board's website, the Board will remove any personal (i.e., not business) contact information from the filing (i.e., the address, fax number, phone number, and e-mail address of the individual). However, the name of the individual and

the content of the filing may be available for viewing at the Board's offices and will be placed on the Board's website.

If you have any questions regarding the consultation process, please contact Board staff by e-mail at [RRF@ontarioenergyboard.ca](mailto:RRF@ontarioenergyboard.ca).

The Board's toll free number is 1-888-632-6273, and the Market Operations Hotline is 416-440-7604.

Yours truly,

*Original Signed By*

Kirsten Walli  
Board Secretary

Attachment A – Consultation Activities Timeline

Attachment B – Cost Awards

**ATTACHMENT A**  
To Letter Dated October 18, 2012

**A timeline for the planned activities**

Target	Infrastructure investment planning			The outcome based framework		Electricity distribution rate-setting
	Distribution Network Investment	Smart Grid	Regional	Performance	Benchmarking and Rate Adjustment Indices	
2012						
October	Working groups established to address distribution network investment planning, smart grid, and regional planning issues			Working group established to address both performance- and benchmarking-related issues		
	A web-cast on the “Report of the Board: A Renewed Regulatory Framework for Electricity” and next steps will be held					
November	Staff proposal issued in relation to asset management and capital planning filing requirements	Working group meetings			Summary of data points and time series needed for empirical analysis issued for distributor validation	
				Staff proposal on standards, measures and scorecard issued	Consultant concept paper on empirical analyses (including consideration for inflation and productivity) and benchmarking issued	
December	Working group meetings		Working Group Reports to the Board issued: (1) Asset Redefinition; (2) Regional Planning Process	A stakeholder meeting to inform and generate ideas prior to convening the working group		
				Working group meetings on standards, measures and scorecard		
2013						
January		Supplementary report of the Board issued: Smart grid policy		Working group meetings (continued)	Distributor validation of data points and time series due	
	Staff proposal for consolidated capital planning filing requirements issued					
	Working group meetings					

Target	Infrastructure investment planning			The outcome based framework		Electricity distribution rate-setting
	Distribution Network Investment	Smart Grid	Regional	Performance	Benchmarking and Rate Adjustment Indices	
February	Working group meetings (continued)		<b>Proposed amendments to the Transmission System Code</b> issued  <b>If needed, proposed amendments to the Distribution System Code</b> issued		Working group meetings on empirical analyses <i>(including consideration for inflation and productivity)</i> and benchmarking	
	<b>Application filing requirements and guidelines</b> issued setting out consolidated capital planning provisions					
March				<b>A Board Staff Report to the Board</b> on standards, measures and scorecard issued for comment	<b>Consultant report</b> on methodology, data analysis, calculations, and results in relation to the preferred approach to benchmarking issued <i>(consideration for inflation and productivity will inform a Stakeholder Conference in April)</i>	
April			<b>Amendments to the Transmission System Code</b> issued	Stakeholder meeting on performance and benchmarking related issues		Stakeholder conference on appropriate values for inflation and productivity factors
May				Written <i>comments due on staff report and the preferred approach to benchmarking and results</i>		
June				Supplemental Report of the Board issued describing the standards, measures and scorecard reporting associated with utility outcomes for customer service and cost performance		Board determination on inflation, productivity factor, and stretch factors issued
				Consultant final report setting out the approach to total cost benchmarking that will be used by the Board issued		Application filing guidelines issued setting rate application provisions
July				If needed, proposed amendments to the Electricity Reporting & Record Keeping Requirements issued		Board determination on stretch factor assignments issued

**ATTACHMENT B**  
To Letter Dated October 18, 2012

**Cost Awards**

Cost awards will be available under section 30 of the *Ontario Energy Board Act, 1998* in accordance with this letter.

Costs will be recovered from all rate-regulated licensed electricity distributors (65% of the costs awarded) and all rate-regulated licensed transmitters (35% of the costs awarded).

The Board advises that it will use the process set out in section 12 of the Board's *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards relating to this consultation process.

**Requests for Cost Eligibility**

The Board determines eligibility for costs in accordance with its *Practice Direction on Cost Awards*.

A stakeholder must apply for cost eligibility status by filing with the Board a written submission requesting eligibility in accordance with the filing instructions set out in the attached letter. The submission must be received by the Board by October 29, 2012. It must identify the policy initiative(s) in respect of which the participant is requesting cost eligibility, the nature of the participant's interest in the initiative(s) so identified and the grounds on which the participant believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the participant has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the participant intends to retain.

Participants requesting cost eligibility should indicate in their request whether specific costs for separate expert submissions should be provided for in relation to a given initiative and, if so, a description of and rationale for the proposed separate expert submissions and whether the participants intend to combine with other stakeholders with similar interests for this purpose.

All requests for cost eligibility will be posted on the Board's website. Licensed electricity distributors and transmitters will be provided with an opportunity to object to any of the requests. If an electricity distributor or transmitter has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by November 8, 2012. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting participants.

## Eligible Activities

Cost awards will be available to each eligible participant as follows.

Activity Eligible for Cost Awards		Maximum Number of Hours
For each eligible participant	Preparation for, attendance at, and reporting on December stakeholder meeting	10 hours per day
	Preparation for, attendance at, and reporting on April stakeholder meeting on performance and benchmarking issues	10 hours per day
	Preparation for, attendance at, and reporting on April stakeholder conference on inflation, productivity and stretch factors	TBD
	Written comments	TBD

Cost awards will be available to each eligible participant that is also a working group member as follows.

Activity Eligible for Cost Awards		Maximum Number of Hours
For each eligible participant on any Working Group	Participation on stakeholder working group for covering preparation, attendance, and reporting time. <ul style="list-style-type: none"> <li>• <i>Performance, Benchmarking, and Rate Adjustment Indices: up to 8 days are anticipated;</i></li> <li>• <i>Regional Infrastructure Planning: up to 8 days are anticipated;</i></li> <li>• <i>Development of the Smart Grid: up to 4 days are anticipated; and</i></li> <li>• <i>Integrated Approach to Network Investment Planning: up to 4 days are anticipated.</i></li> </ul>	10 hours per day
For each eligible participant on the Regional Infrastructure Planning Working Group	Drafting of Regional Infrastructure Planning Working Group reports to the Board.	TBD

**Ontario Energy Board**



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# **Report of the Board**

## **Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach**

October 18, 2012



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# 1 Introduction

The Ontario Energy Board regulates the rates of the 77 local electricity distributors that operate Ontario's local electricity delivery networks. These networks are essential to the seamless delivery of electricity from generators to end users. The cost of distributing electricity represents approximately 20% to 25% of the total electricity bill. Revenues collected from customers contribute to the ongoing operation and maintenance of the system as well as its expansion and modernization. Ontario's electricity distributors represent significant capital investments, with total assets of approximately \$17 billion, and new investment of \$1.9 billion in 2011. And while all distributors perform a similar service, their investment needs vary over time. Ontario's energy sector is evolving, as are the expectations of customers and the obligations placed on distributors as a result. The Board believes that our approach to regulation needs to evolve along with the sector.

The Board needs to regulate the industry in a way that serves present and future customers, and that better aligns the interests of customers and distributors while continuing to support the achievement of public policy objectives, and that places a greater focus on delivering value for money. A number of factors have prompted the Board's work on a renewed regulatory framework: government policy, aging infrastructure, customer concerns regarding rate increases, the increased maturity of the industry, and a need to harmonize and consolidate Board policies related to planning and rate setting.

The Board's renewed regulatory framework for electricity is designed to support the cost-effective planning and operation of the electricity distribution network – a network that is efficient, reliable, sustainable, and provides value for customers. Through taking a longer term view, the new framework will provide an appropriate alignment between a sustainable, financially viable electricity sector and the expectations of customers for reliable service at a reasonable price. The performance-based approach described in

this Report is an important step in the continued evolution of electricity regulation in Ontario.

In developing the policies set out in this Report, the Board has been informed by, and has benefitted greatly from, extensive consultation and dialogue with stakeholders representing a broad range of interests and perspectives. The materials generated for and through this consultation provide useful background and context for the issues discussed in this Report, as well as a detailed record of stakeholder comments on those issues. Many of these materials are listed in Appendix A, and all are readily available on the Board's website.

The renewed regulatory framework is a comprehensive performance-based approach to regulation that is based on the achievement of outcomes that ensure that Ontario's electricity system provides value for money for customers. The Board believes that emphasizing results rather than activities, will better respond to customer preferences, enhance distributor productivity and promote innovation. The Board has concluded that the following outcomes are appropriate for the distributors:

*Customer Focus:* services are provided in a manner that responds to identified customer preferences;

*Operational Effectiveness:* continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives;

*Public Policy Responsiveness:* utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board); and

*Financial Performance:* financial viability is maintained; and savings from operational effectiveness are sustainable.

The Board has developed a set of related policies to facilitate the achievement of these performance outcomes. The Board remains committed to continuous improvement within the electricity sector. The Board's policies for setting distributor rates as outlined below are supported by fundamental principles of good asset management; coordinated, long term planning; and a common set of performance, including productivity expectations.

The following are the three main policies:

- **Rate-setting:** There will be three rate-setting methods: 4<sup>th</sup> Generation Incentive Rate-setting (suitable for most distributors), Custom Incentive Rate-setting (suitable for those distributors with large or highly variable capital requirements), and the Annual Incentive Rate-setting Index (suitable for distributors with limited incremental capital requirements). These rate-setting methods will provide choices suitable for distributors with varying capital requirements, while ensuring continued productivity improvement. Rate-setting is discussed in Chapter 2.
- **Planning:** Distributors will be required to file 5-year capital plans to support their rate applications. Planning will be integrated in order to pace and prioritize capital expenditures, including smart grid investments. Regional infrastructure planning will be undertaken where warranted. The Board will also propose amendments to the Transmission System Code to facilitate the execution of regional plans. Planning is discussed in Chapter 3.
- **Measuring Performance:** The Board will develop standards, and measures that will link directly to the performance outcomes listed above. Using a scorecard approach distributors will be required to report annually on their key performance outcomes. Performance measures and monitoring are discussed in Chapter 4.

In developing the policies in this Report, the Board has been guided by its objectives in relation to electricity, as listed in section 1(1) of the *Ontario Energy Board Act, 1998* (the “OEB Act”). These objectives are:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

The first two objectives, the protection of consumer interests and the promotion of economic efficiency and cost effectiveness within a financially viable industry, are the foundation of the renewed regulatory framework. These objectives are reflected in the outcomes set out above and are the main principles of the distribution rate-setting and performance measurement policies. They are also key considerations in the emphasis on pacing and prioritization of capital investment embodied in the planning policy.

The remaining three objectives of the Board in relation to electricity are reflected in the policies regarding infrastructure planning. Steps toward achieving these public policy objectives in respect of conservation and demand management, smart grid

implementation and the expansion or reinforcement of the system to facilitate renewable generation are incorporated into the planning policy.

With the exception of regional infrastructure planning and smart grid, which apply to both distributors and transmitters, the policies set out in this Report apply to distributors only at this time. In due course, the Board will provide further guidance regarding how the policies in this Report may be applied to transmitters.

Policies in relation to the conclusions set out in this Report will be largely implemented in time for the 2014 rate year. Specifically, the new instruments for all three rate setting methods will be available to those seeking to rebase rates effective May 1, 2014.

The Board is committed to monitoring and evaluating the effectiveness of its policies. It will do so by identifying desired policy outcomes and requiring annual monitoring and reporting to measure success against those outcomes. The Board will develop the policy evaluation framework for the renewed regulatory framework after further work has been completed in relation to the distributor performance “scorecard”. More information on this policy evaluation framework will be provided later.



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## 2 Electricity Distribution Rate-Setting

### 2.1 Background

The Board has employed incentive regulation (“IR”), including formula-based and cost-based rate-setting, since it began regulating the rates of electricity distributors in 2001. Under its current approach to IR, the Board uses one year forecasted cost and revenue information to determine a base revenue requirement and the “base” rates that are set to recover that revenue requirement. In subsequent years, those base rates are adjusted annually according to a Board-approved formula that includes components for inflation and the Board’s expectations of efficiency and productivity gains.

The Board’s current IR plan for distributors (“3<sup>rd</sup> Generation IR”) was established in 2008.<sup>1</sup> The core of the 3<sup>rd</sup> Generation IR plan is an “inflation minus X-factor” price-cap form of rate adjustment mechanism, which is intended to incent innovation and efficiency. The X-factors for individual distributors consist of an empirically derived industry productivity trend and differentiated stretch factors. Benchmarking, based only on operations, maintenance and administration (“OM&A”) cost data, provides the basis for the annual assignment of stretch factors to distributors.

### 2.2 Evolving the Board’s Approach to Rate-setting

As noted in Chapter 1, the maintenance and modernization of electricity distribution infrastructure will continue to exert cost pressures on customers. The Board’s approach to rate-setting must continue to support a sustainable, financially viable and reliable

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<sup>1</sup> The Board’s 3<sup>rd</sup> Generation IR policy approach is set out in the [“Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors”](#) dated July 14, 2008. A [Supplemental Report of the Board](#) setting out the Board’s determination of the values for the productivity factor, the stretch factors, and the capital module materiality threshold for use in the 3<sup>rd</sup> Generation IR plan was issued on September 17, 2008; and on January 29, 2009, the Board issued its [“Addendum to the Supplemental Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors”](#) which sets out the Board’s determination on the model it would use to assign stretch factors to distributors.

electricity system. It must do so in a manner that is responsive to customers' concerns about affordability, by promoting increased efficiency which in turn can lower costs and provide for more predictable rates. It must also do so in a manner that better accommodates differing circumstances of distributors (for example, with respect to customer expectations, asset profile and investment needs) and facilitates the cost-effective and efficient achievement of expected performance outcomes. Finally, the rate regime must also recognize the inter-connected nature of the electricity system in Ontario, promote ongoing productivity improvements, encourage innovation, and support efficient regulation.

As part of the renewed regulatory framework consultation process, the Board issued a "straw man" model regulatory framework that identified at a high level certain potential changes to the Board's approach to rate-setting, including the pre-approval of multi-year plans, a focus on reliability, targeted rate-setting (treating OM&A and capital separately) to increase the pursuit of operating efficiencies, and greater flexibility in respect of the period between cost of service reviews.

### ***Stakeholder Views***

Stakeholder views on whether rate-setting should be targeted or comprehensive diverged significantly. Some distributors expressed strong support for targeted rate-setting. Those opposed argued that the capital and operating expenditures are too inter-related to be easily severed. Further, these stakeholders expressed concern that severing the two could create bias for one over the other resulting in sub-optimal investment, particularly in the absence of least-cost planning processes.

Stakeholder comment was generally in support of flexibility in the length of an IR term. Some stakeholders representing different business groups noted that aligning the IR plan term to match a 5-year planning horizon would be a sensible approach.

With respect to the current 3<sup>rd</sup> Generation IR plan, many stakeholders supported revising the inflation and productivity indices to better reflect circumstances faced by distributors in Ontario. Regarding the ICM some argued it is too restrictive while another commented it is sufficient because it is meant to be used in extraordinary circumstances rather than on a regular basis.

Many stakeholders commented on the need for flexibility in rate-setting to accommodate distributor differences, especially with respect to different capital spending needs. A menu approach – one that could include more than one type of rate-setting method (e.g., a simple index method and a multi-year approval-type method) – was identified by a few stakeholders as the preferred means of providing such flexibility. It was suggested that a distributor's ability to access certain rate-setting options should be linked to the distributor's benchmarked performance ranking.

Off-ramps and earnings sharing mechanisms were identified by some as necessary ratepayer protection mechanisms, particularly in longer term IR rate-setting.

### ***The Board's Conclusions***

The Board continues to support a comprehensive approach to rate-setting, recognizing the interrelationship between capital expenditures and OM&A expenditures. Rate-setting that is comprehensive creates stronger and more balanced incentives and is more compatible with the Board's implementation of an outcome-based framework.

Three alternative rate-setting methods will be available to distributors.

Each distributor may select the rate-setting method that best meets its needs and circumstances, and apply to the Board to have its rates set on that basis. This will provide greater flexibility to accommodate differences in the operations of distributors, some of which have capital programs that are expected to be significant and may

include “lumpy” investments, and others of which have capital needs that are expected to be comparatively stable over a prolonged period of time.

The Board remains committed to the principles enunciated in its 3<sup>rd</sup> Generation IR report, and all three rate-setting methods are based on a multi-year IR mechanism. Each rate method will be supported by: the fundamental principles of good asset management; coordinated, longer-term optimized planning; a common set of performance expectations; and benchmarking. Rate applications will be supported by a five-year capital plan that includes consideration of regional infrastructure planning.

The Board believes that this more flexible approach to rate-setting will:

- enhance predictability necessary to facilitate planning and decision-making by customers and distributors;
- better align rate-setting with distributor planning horizons;
- facilitate the cost-effective and efficient implementation of distributor multi-year plans that have been developed to achieve the outcomes for customer service and cost performance; and
- help to manage the pace of rate increases for customers.

The Board’s rate-setting policy in this Report represents a further development of the approach adopted by the Board when it first established performance based regulation (“PBR”) for electricity distributors in its January 18, 2000 Decision with Reasons:

... PBR is not just light-handed cost of service regulation. For the electricity distribution utilities in Ontario, PBR represents a fundamental shift from the historical cost of service regulation. It provides the utilities with incentive for behaviour which more closely resembles that of competitive, cost-minimizing, profit-maximizing companies. Customers and shareholders alike can gain from efficiency enhancing and cost-

minimizing strategies that will ultimately yield lower rates with appropriate safeguards for service quality. Under PBR the regulated utility will be responsible for making its investments based on business conditions and the objectives of its shareholder within the constraints of the price cap, and subject to service quality standards set by the Board.”<sup>2</sup>

Going into PBR, distribution rates are set based on a cost of service review. Subsequently, rates are adjusted based on changes to the input price index and the productivity and stretch factors set by the Board. PBR decouples the price (the distribution rate) that a distributor charges for its service from its cost. This is deliberate and is designed to incent the behaviours described by the Board in 2000. This approach provides the opportunity for distributors to earn, and potentially exceed, the allowed rate of return on equity. It is not necessary, nor would it be appropriate, for ratebase to be re-calibrated annually.

In implementing the new approach to rate-setting, the Board will use a rigorous performance reporting and monitoring process to ensure that, while distributors are responding to performance incentives, customer interests are being protected. As described in Chapter 4, a scorecard will be developed to measure distributor performance on four performance outcomes: customer focus, operational effectiveness, public policy responsiveness, and financial performance. One measure that will continue to be considered by the Board is annual earnings. The Board’s policy in relation to the off-ramp, as set out in its [July 14, 2008 EB-2007-0673 Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors](#), continues to be appropriate. Each rate-setting method will include a trigger mechanism with an annual return on equity (“ROE”) dead band of  $\pm 300$  basis points. When a distributor performs outside of this earnings dead band, a regulatory review may be initiated. The Board will continue to require consistent, meaningful and timely reporting to enable the Board to monitor utility performance and determine if the expected outcomes are being achieved. This approach will, in turn, allow the Board to take corrective action if required, including the possible termination of the distributor’s rate-setting method and requiring the distributor to have its rates rebased. Customer

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<sup>2</sup> Paragraph 2.0.14, p. 13, RP-1999-0034 Decision with Reasons, January 18, 2000

interests will also remain protected through regulatory processes that will continue to be open and transparent.

To ensure that the benefits from greater efficiency are appropriately shared throughout the rate-setting term between the distributor/shareholder and the distributor's customers, the expected benefits will be taken into account in establishing the rate adjustment mechanisms applicable to each rate method through the X factor.

With the introduction of these three rate-setting methods, the Board will review its existing rate-related policies for continued efficacy and to confirm whether and to what extent they can be integrated into any one or more of these rate-setting methods. The Board currently expects that existing policies will remain in place to support rate-setting in the future.

The key elements of the three rate-setting methods are set out in the following Table, and are described in greater detail below.

Table 1: Rate-Setting Overview - Elements of Three Methods

		4 <sup>th</sup> Generation IR	Custom IR	Annual IR Index
Setting of Rates				
“Going in” Rates		Determined in single forward test-year cost of service review	Determined in multi-year application review	No cost of service review, existing rates adjusted by the Annual Adjustment Mechanism
Form		Price Cap Index	Custom Index	Price Cap Index
Coverage		Comprehensive (i.e., Capital and OM&A)		
Annual Adjustment Mechanism	Inflation	Composite Index	Distributor-specific rate trend for the plan term to be determined by the Board, informed by: (1) the distributor’s forecasts (revenue and costs, inflation, productivity); (2) the Board’s inflation and productivity analyses; and (3) benchmarking to assess the reasonableness of the distributor’s forecasts	Composite Index
	Productivity	Peer Group X-factors comprised of: (1) Industry TFP growth potential; and (2) a stretch factor		Based on 4 <sup>th</sup> Generation IR X-factors
	Role of Benchmarking			To assess reasonableness of distributor cost forecasts and to assign stretch factor
Sharing of Benefits		Productivity factor		
		Stretch factor	Case-by-case	Highest 4 <sup>th</sup> Generation IR stretch factor
Term		5 years (rebasing plus 4 years).	Minimum term of 5 years.	No fixed term.
Incremental Capital Module		On application	N/A	N/A
Treatment of Unforeseen Events		The Board’s policies in relation to the treatment of unforeseen events, as set out in its <a href="#">July 14, 2008 EB-2007-0673 Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario’s Electricity Distributors</a> , will continue under all three menu options.		
Deferral and Variance		Status quo	Status quo, plus as needed to track capital spending against plan	Disposition limited to Group 1 Separate application for Group 2
Performance Reporting and Monitoring		A regulatory review may be initiated if a distributor’s annual reports show performance outside of the ±300 basis points earnings dead band or if performance erodes to unacceptable levels.		



The Board is establishing three rate-setting methods. Each distributor will select the method that best meets its needs and circumstances, and apply to the Board to have its rates set on that basis. 4<sup>th</sup> Generation Incentive Rate-setting (“4<sup>th</sup> Generation IR”), which builds on 3<sup>rd</sup> Generation IR, is most appropriate for distributors that anticipate some incremental investment needs will arise during the plan term. The Board expects that this method will be appropriate for most distributors.

Distributors with relatively steady state investment needs (i.e., primarily sustainment), may prefer the Annual Incentive Rate-setting Index (“Annual IR Index”).

The Custom Incentive Rate-setting (“Custom IR”) method may be appropriate for distributors with significantly large multi-year or highly variable investment commitments with relatively certain timing and level of associated expenditures.

## **2.2.1 Description of the Three Rate-setting Methods**

### **4<sup>th</sup> Generation IR**

Building on the current 3<sup>rd</sup> Generation IR, the 4<sup>th</sup> Generation IR method includes certain enhancements to better align indexing of rates with the inflation faced by distributors in Ontario and to strengthen the efficiency incentives inherent in the rate-adjustment mechanism. The 4<sup>th</sup> Generation IR method will be appropriate for distributors that anticipate that some incremental investment needs may arise during the term of the rate method.

Under this method, rates are set on a single forward test-year cost of service basis and subsequently indexed by the 4<sup>th</sup> generation price cap index formula. The Board will retain a comprehensive price cap form of adjustment mechanism. The Board believes that the price cap approach, like that used in the Board’s earlier IR plans, continues to be appropriate for most distributors.

The Board has determined that the term for 4<sup>th</sup> Generation IR will be five years (rebasing plus 4 years). This longer term will better align rate-setting and distributor planning, strengthen efficiency incentives, support innovation and help manage the pace of rate increases for customers.

A distributor on 4<sup>th</sup> Generation IR may request early termination and seek to have its rates rebased if it meets the Board's criteria for early rebasing.<sup>3</sup> As noted previously, a regulatory review may be initiated if the distributor performs outside of the  $\pm 300$  basis points earnings dead band or if its performance erodes to unacceptable levels.

### Annual Adjustment Mechanism

As with current 3<sup>rd</sup> Generation IR, the allowed rate of change in the price of regulated services will be adjusted by the growth in an inflation factor minus an X-factor.

### *The Inflation Factor*

Under price cap mechanisms, changes in price indices are reflected in allowed changes in output prices for regulated services (i.e., indices escalate the allowed prices).

The inflation factor could be established in one of two ways: either an industry-specific price index ("IPI") designed to track the inflation of the industry inputs, or a macroeconomic index. The Board has consulted with stakeholders on several occasions over the last ten years on inflation factors. The merits of, and concerns

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<sup>3</sup> In keeping with the Board's approach as set out in its [April 20, 2010 letter](#), a distributor that seeks to have its rates rebased earlier than scheduled must justify, in its cost of service application, why early rebasing is required and why and how the distributor cannot adequately manage its resources and financial needs during the remainder of the 4<sup>th</sup> Generation Plan term.

associated with, an IPI were summarized by the Board in its [July 14, 2008 EB-2007-0673 Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario's Electricity Distributors](#) as follows:

...an IPI would track industry input price fluctuations better than an economy-wide measure. It may better mitigate significant gains and losses that might result from the failure of a macroeconomic index to track industry input price inflation. However, the Board observes that the implementation of the IPI methodology that was used in 1<sup>st</sup> Generation IR with recent data produces a very volatile index, as shown in the illustrative example presented in the [Staff] Discussion Paper. Such volatility could be harmful to both ratepayers and distributor shareholders, if reflected in rates. The Board believes that further research is required on the methodological approach to address such volatility and to ensure that the chosen sub-indices appropriately track the inflation faced by the industry.<sup>4</sup>

The Board has concluded it is now appropriate to adopt a more industry specific inflation factor for 4<sup>th</sup> Generation IR. Concerns regarding volatility will be mitigated by the methodology selected by the Board. The Board also will be guided by the following:

- the inflation factor must be constructed and updated using data that is readily available from public and objective sources such as, for example, Statistics Canada, the Bank of Canada, and Human Resources and Social Development Canada;
- to the extent practicable, the component of the inflation factor designed to adjust for inflation in non-labour prices should be indexed by Ontario distribution industry-specific indices; and
- the component of the inflation factor designed to adjust for inflation in labour prices will be indexed by an appropriate generic and off-the-shelf labour price index ( i.e., not distribution industry-specific)

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<sup>4</sup> At pp. 10-11.

*X Factors*

The Board described the components of an X-factor in its [July 14, 2008 EB-2007-0673 Report of the Board on 3<sup>rd</sup> Generation Incentive Regulation for Ontario's Electricity Distributors](#) as follows:

The productivity component of the X-factor is intended to be the external benchmark which all distributors are expected to achieve. It should be derived from objective, data-based analysis that is transparent and replicable. Productivity factors are typically measured using estimates of the long-run trend in TFP growth for the regulated industry.

The stretch factor component of the X-factor is intended to reflect the incremental productivity gains that distributors are expected to achieve under IR and is a common feature of IR plans. These expected productivity gains can vary by distributor and depend on the efficiency of a given distributor at the outset of the IR plan. Stretch factors are generally lower for distributors that are relatively more efficient.<sup>5</sup>

The Board has concluded that X-factors for individual distributors under 4<sup>th</sup> Generation IR will continue to consist of an empirically derived industry productivity trend (productivity factor) and stretch factor, but will be based on Ontario Total Factor Productivity (TFP) trends.

All distributors will be subject to the same productivity factor that will be set in advance for the purposes of the 4<sup>th</sup> Generation method. The Board will continue to use an index-based approach for the derivation of an industry productivity trend to form the basis for the productivity factor. The Board will update the industry productivity factor every five years (e.g., the update after 2014 would be in 2019).

The Board's approach in relation to the use and assignment of stretch factors under 3<sup>rd</sup> Generation IR will continue under 4<sup>th</sup> Generation IR. Distributors will continue to be assigned annually to one of three efficiency cohorts. The Board will make these

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<sup>5</sup> At page 12.

assignments on the basis of total cost benchmarking evaluations. As is the case currently, each group will have its own specific stretch factor. The assignments will continue to be revised annually to reflect changes in efficiencies in the sector. The Board will further consider whether the current three stretch factor values of 0.2, 0.4, and 0.6 continue to be appropriate or whether there should be greater differentiation between the three values. The Board will determine the appropriate stretch factor values for the three efficiency groups in conjunction with its determination of the productivity factor for 4<sup>th</sup> Generation IR.

### Incremental Capital Module (ICM)

The ICM is intended to address incremental capital investment needs that may arise during the IR term. Under 4<sup>th</sup> Generation IR, the Board's policies in respect of ICM in effect under 3<sup>rd</sup> Generation IR will continue to apply.

In 2011, the Board revised its *Filing Requirements for Electricity Transmission and Distribution Applications* to clarify the ICM specifications on how to calculate the incremental capital amount that may be recoverable when a distributor applies for an ICM. In the Filing Requirements issued in June 2012, the ICM was further revised to remove words such as "unusual" and "unanticipated" as prerequisites to an application for incremental capital, although the requirement that the proposed expenditures be non-discretionary remains.

### **Custom IR**

In the Custom IR method, rates are set based on a five year forecast of a distributor's revenue requirement and sales volumes. This Report provides the general policy direction for this rate-setting method, but the Board expects that the specifics of how the costs approved by the Board will be recovered through rates over the term will be determined in individual rate applications. This rate-setting method is intended to be

customized to fit the specific applicant's circumstances. Consequently, the exact nature of the rate order that will result may vary from distributor to distributor.

The Custom IR method will be most appropriate for distributors with significantly large multi-year or highly variable investment commitments that exceed historical levels. The Board expects that a distributor that applies under this method will file robust evidence of its cost and revenue forecasts over a five year horizon, as well as detailed infrastructure investment plans over that same time frame. In addition, the Board expects a distributor's application under Custom IR to demonstrate its ability to manage within the rates set, given that actual costs and revenues will vary from forecast.

The Board has determined that a minimum term of five years is appropriate. As is the case for 4<sup>th</sup> Generation IR, this term will better align rate-setting and distributor planning, strengthen efficiency incentives, and support innovation. It will help to manage the pace of rate increases for customers through adjustments calculated to smooth the impact of forecasted expenditures.

The adjudication of an application under the Custom IR method will require the expenditure of significant resources by both the Board and the applicant. The Board therefore expects that a distributor that applies under this method will be committed to that method for the duration of the approved term and will not seek early termination. As noted above, however, a regulatory review may be initiated if the distributor performs outside of the  $\pm 300$  basis points earnings dead band or if its performance erodes to unacceptable levels.

### Annual Adjustment Mechanism

The allowed rate of change in the rate over the term will be determined by the Board on a case-by-case basis informed by empirical evidence including:

- the distributor's forecasts (revenues and costs, including inflation and productivity);

- the Board's inflation and productivity analyses; and
- benchmarking to assess the reasonableness of distributor forecasts.

Expected inflation and productivity gains will be built into the rate adjustment over the term.

### Capital Spending

There will not be an ICM in the Custom IR method. Under this method, distributors will be expected to operate under their Board-determined multi-year rates.

Under Custom IR, planned capital spending is expected to be an important element of the rates distributors will be seeking, and hence will be subjected to thorough reviews by parties to the proceeding. Once rates have been approved, the Board will monitor capital spending against the approved plan by requiring distributors to report annually on actual amounts spent. If actual spending is significantly different from the level reflected in a distributor's plan, the Board will investigate the matter and could, if necessary, terminate the distributor's rate-setting method. A distributor on the Custom IR method will have its rate base adjusted prospectively to reflect actual spend at the end of the term, when it commences a new rate-setting cycle. This is consistent with the Board's existing policies in relation to incremental capital under 3<sup>rd</sup> Generation IR.

### **Annual IR Index**

The Annual IR Index will be appropriate for distributors with primarily sustainment investment needs. The Annual IR Index is intended to provide a rate-setting approach that is simpler and more streamlined than the other two. Among other things, there is no forecast cost of service review under this method. Rates are adjusted by a simple price cap index formula. Initial rates are set by applying this adjustment to existing rates. The annual rate adjustments are designed to reflect "steady-state mode" operations – that is, rate adjustments will be comparatively minor.

Distributors, who apply under this method for 2014 rates or later, must have had a cost of service hearing in 2008 or later. The Board also expects that a distributor applying under this method will not be exceeding its approved annual ROE by more than 300 basis points.

Like other rate setting methods, a rate application under the Annual IR Index must also include a five year forecast of capital investments, except as noted in section 5.2 of this Report dealing with transitional issues. However, as indicated in Chapter 3, the scope and level of detail required in this plan will be proportional to the scope and magnitude of the proposed investments. As with all the rate-setting methods, annual reporting will be required from distributors on the Annual IR Index.

The prudence review associated with the disposition of Group 2 variance and deferral accounts makes their disposition generally incompatible with the design of the Annual IR Index. For that reason, a distributor that applies to have its rates set under the Annual IR Index is expected to limit requests for disposition of deferral and variance accounts to Group 1 accounts while it is on the Annual IR Index. If a distributor is seeking the disposition of any Group 2 accounts, that review and disposition will need to be the subject of a separate application.

Given the nature of the rate adjustments under this method, the Board does not believe that it is necessary to establish a fixed term for it, and a distributor whose rates have been set under it may apply to have its rates rebased and set under a different method at any time. As noted previously, however, a regulatory review may be initiated if the distributor performs outside of the  $\pm 300$  basis points earnings dead band or if its performance erodes to unacceptable levels.



### Annual Adjustment Mechanism

Under the Annual IR Index rates will be adjusted annually by the growth in an inflation factor minus an X-factor.

#### *Inflation Factor*

The inflation factor determined for use in 4<sup>th</sup> Generation IR will also be used in the Annual IR Index.

#### *X-Factor*

Under the Annual IR Index, the Board will index rates by a percentage of the inflation factor so that annual adjustments under the Annual IR Index include recognition of expected productivity gains over time. This is particularly important given that there is no fixed term for this plan. To achieve this, the Board has determined that the X-factor for the Annual IR Index will be set after the Board's determination of the X-factor values for 4<sup>th</sup> Generation IR. The X-factor for the Annual IR Index will be the same as the highest X-factor set for 4<sup>th</sup> Generation IR in 2014, as updated every five years. This will ensure that the resultant rate adjustment under the Annual IR Index is equal to the lowest rate adjustment under 4<sup>th</sup> Generation IR. All distributors on the Annual IR Index will be subject to the same X-factor. When updated by the Board, the new X-factor will automatically be applied to all distributors that are then on the Annual IR Index.

### Capital Spending

There will be no ICM in the Annual IR Index. The method presumes a largely steady-state or sustainment mode of operation by the distributor.

## 2.3 Decoupling

In 2010 the Board initiated a consultation process in relation to revenue decoupling mechanisms. The focus of that consultation was to examine the extent of revenue erosion due to, among other things, energy conservation efforts. The Board issued a consultant's report for stakeholder comment. That report contained a review of revenue decoupling mechanisms implemented in other jurisdictions and proposed options for consideration in Ontario.<sup>6</sup>

The Board indicated, when it initiated the renewed regulatory framework project in 2010, that the revenue decoupling consultation would proceed once there was substantial completion of the renewed regulatory framework policy initiative. The Board is of the view that it is now appropriate to resume the revenue decoupling initiative. Information regarding this initiative will be provided in due course.

## 2.4 Rate Mitigation

Rate mitigation has been a policy of the Board since 2000. At that time, the Board established a requirement that distributors *consider* mitigation where total bill increases for any customer class exceed 10%.<sup>7</sup> Since only consideration and not implementation of mitigation is required, this percentage is referred to as a “soft” threshold. The most recent articulation of the Board's mitigation policy confirmed the continuation of the “soft” 10% threshold for the filing of mitigation plans and provides guidance to distributors on preparing those plans.<sup>8</sup> In its mitigation plan a distributor may propose any, or no, mitigation mechanism as may be suitable in a particular circumstance.

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<sup>6</sup> Lowry, Mark Newton, Ph.D., et al., Pacific Economics Group Research LLC. [Review of Distribution Revenue Decoupling Mechanisms](#). March 19, 2010.

<sup>7</sup> January 18, 2000 Decision with Reasons in a proceeding to determine certain matters relating to the proposed Electricity Distribution Rate Handbook (RP-1999-0034).

<sup>8</sup> Report of the Board May 11, 2005 – 2006 Electricity Distribution Rate Handbook, p. 90.

### **2.4.1 Mitigation Policies under the Renewed Regulatory Framework**

An objective for the development of a renewed regulatory framework is to ensure that distributors are encouraged to manage the prioritization and pace of network investments having regard to the total bill impact on customers. This prompted the Board to include the re-examination of its rate mitigation policy as part of the renewed regulatory framework consultation.

#### ***Stakeholder Views***

There was broad support for the idea that distributors should consider mitigation when engaged in planning, ensuring that capital and OM&A expenditures are paced and prioritized in a manner such that costs are smoothed and minimized over the long term. Ensuring that the Board's approach to rate setting is designed such that rate increases are more gradual also received support from stakeholders. Conflicting views were expressed about whether the Board should consider total bill increases for rate mitigation purposes. A hybrid approach was proposed under which distributors would be required to consider anticipated total bill increases when planning investments. However, mitigation after the revenue requirement has been determined would only apply in relation to anticipated increases in distribution rates.

Stakeholder's comments reinforced that mitigation may not necessarily be appropriate in all circumstances. Some argued that the threshold should be "soft", thereby providing more flexibility in determining when the filing of a mitigation proposal is required. Other stakeholders, however, supported a firm and consistently-applied threshold, arguing that this will achieve greater predictability for both ratepayers (in relation to their electricity costs) and distributors (in relation to the regulatory process).

There was agreement among most stakeholders that, regardless of methodology, an empirical threshold should be developed. Proposals for a methodology on which to base the threshold include: a customer 'willingness to pay' survey or an 'economic tolerance'

study; a factor of an inflation index such as the Consumer Price Index; and the establishment of criteria rather than relying on a specific figure.

In general, stakeholders were comfortable with continued use of conventional mechanisms but believed that alternative mechanisms should be further explored.

### ***The Board's Conclusions***

The Board has concluded that it will maintain its current policy with respect to rate mitigation. The implementation of the renewed regulatory framework should make the need for mitigation of large rate increases less likely as controls to address cost increases are integrated into the planning and rate-setting processes, and each distributor will be able to choose the rate-setting approach that best suits its particular investment profile. The Board will expect distributors to consider total bill increases when they engage in planning, an exercise that will be facilitated under the integrated approach to network planning described in Chapter 3, and to demonstrate to the extent possible the responsiveness of their planned capital and OM&A expenditures to the need for reasonably stable and affordable rates for customers. The Board is therefore of the view that changes to its rate mitigation policy are not necessary at this time. Once the Board and stakeholders have gained experience with the new rate-setting methods, the Board may revisit this issue if the need arises.

The Board further concludes that it is not necessary at this time to limit the mitigation mechanisms that distributors may want to propose. The Board will continue to evaluate proposed mechanisms on a case-by-case basis.

## **2.5 Implementation**

Issues related to the inflation and productivity adjustment mechanisms have been explored in several different consultations over the last ten years. The Board has benefited from those consultations and has gained significant experience applying the

results of those consultations. Consequently, the Board is of the view that the most expeditious way to reach a determination on these issues is through a Board-led stakeholder conference followed by written submissions. To inform the conference, new inflation, productivity and stretch factors, will be developed in consultation with stakeholders as part of the performance, benchmarking and rate adjustment indices work described in Chapter 4. The Board expects to issue its determinations on these issues in mid-2013.

<b>Product</b>	<b>Planned issuance</b>	<b>Process</b>
Determination of inflation & productivity factors, and stretch factors	June 2013	Stakeholder conference followed by written submissions
Revised Filing Requirements for cost of service rate applications (and IR adjustment if necessary)	June 2013	Consolidation of work from Network Infrastructure Investment Planning and Performance Measurement
Board determination on stretch factor assignments for 4 <sup>th</sup> Generation IR	July 2013	As per current process

### 3 Distribution Infrastructure Investment Planning

Under the renewed regulatory framework, good planning is necessary to ensure that the Board's outcomes as set out in Chapter 1 are being achieved. The Board's approach to rate-setting described in Chapter 2 also depends on effective planning by distributors. The Board needs evidence that a distributor's planning and prioritization process is sufficiently rigorous to support and justify its proposed capital budget. Distributor plans must therefore demonstrate consideration of all relevant factors, including the needs of existing and future customers and the costs to meet them, and that planning has been informed by appropriate consultation with customers, municipalities and neighbouring distributors and transmitters where applicable.

#### 3.1 An Integrated Approach to Distribution Network Planning

##### 3.1.1 Planning as the Foundation for Rate-Setting

A number of Board planning requirements have evolved over time, and different regulatory instruments have been issued in response to specific regulatory needs. Figure 1 illustrates the Board's current regulatory framework. It sets out the relationships between a distributor's asset management and network investment planning processes, notes the Board's regulatory instruments that call for distributors to file certain network planning information, and identifies the information to be provided.<sup>9</sup>

The Board's filing requirements identify the planning horizon for different types of investment. Section 2.5.2.4 of the Board's *Filing Requirements for Transmission and Distribution Applications* (the "CoS Filing Requirements")<sup>10</sup> stipulates that, at a minimum, a three-year forecast of capital expenditures, covering the test year plus two

<sup>9</sup> Section 2 of the *Staff Discussion Paper on Distribution Network Investment Planning* summarizes the Board's current approach.

<sup>10</sup> Revised version issued June 28, 2012.

subsequent years, must be filed. The Board's *Filing Requirements: Distribution System Plans – Filing under Deemed Conditions of Licence*<sup>11</sup> (“GEA Filing Requirements”) state that “GEA Plans” should cover a five year horizon. The Board understands that distributors typically use five- to ten-year horizons for their own internal planning purposes. The GEA Filing Requirements are currently the only ones that integrate regional considerations and call for broader consultation

### **Stakeholder Views**

There was wide-spread stakeholder support for integrated network planning, although some stakeholders noted that certain investment drivers are inherently unpredictable. Stakeholders suggested that integrated planning would facilitate the identification and analysis of trade-offs amongst different investment options, promote sustainable least cost planning, and support optimized regional infrastructure planning.

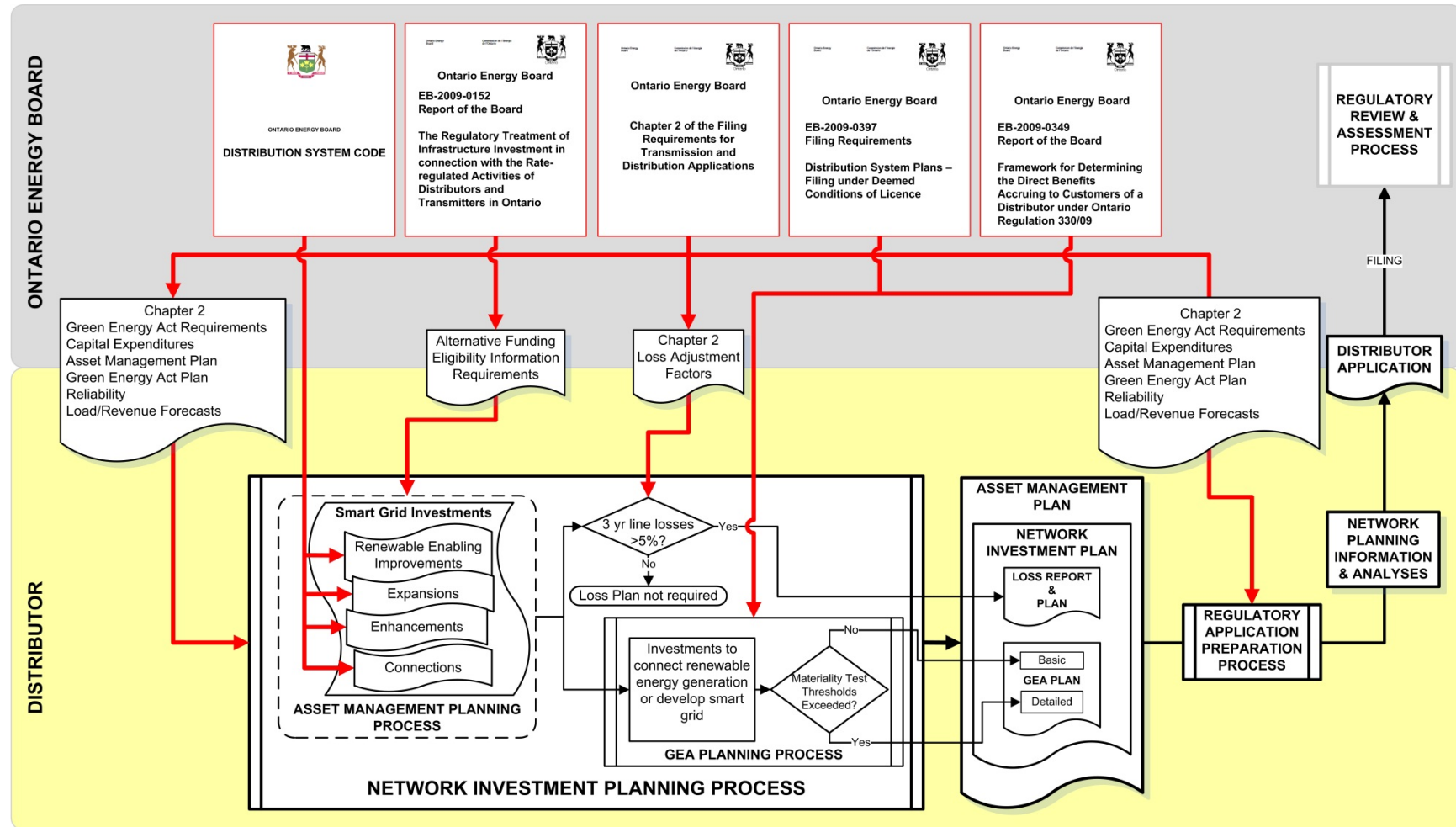
Stakeholders generally agreed that a longer term view is needed in relation to investment planning, noting among other things that a multi-year approach better accommodates planning for large investments and allows greater scope to prioritize and pace investments and smooth rate increases. Reconciling long-term capital planning with shorter-term rate cycles and accommodating differences between transmission and distribution investments in terms of the time between planning and “in service” status were noted as challenges. Distributors largely favoured a planning horizon of three to five years as the minimum standard. Some stakeholders suggested that planning information be updated annually.

Several stakeholders underscored that the implementation of an integrated approach to planning must include the consolidation, simplification or standardization of the Board's various planning-related filing requirements.

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<sup>11</sup> Revised version issued May 17, 2012.

Figure 1: Current Regulatory Framework for Distribution Network Planning





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### ***The Board's Conclusions***

The Board concludes that, in order to have distribution plans that support the Board's performance outcomes approach to rate-setting, an integrated approach to infrastructure planning is required. Under an integrated approach, all categories of network investments will be planned together, including investments for the renewal and expansion of networks and, where applicable, investments for the connection of renewable generation facilities, investments for smart grid development and implementation, and investments identified in the course of regional infrastructure planning exercises. An integrated approach to planning will provide a foundation for the setting of distribution rates and lead to optimized investments that support the achievement of the outcomes identified by the Board.

The Board will work to consolidate its various planning-related filing requirements. Harmonization and consolidation of these regulatory requirements can facilitate planning that will better support the achievement of the desired outcomes of the renewed regulatory framework. To the extent practicable, the terms and definitions used for asset management and investment planning information filings will be standardized to enhance clarity, consistency, and comparability. Also to the extent practicable, the Board will develop standardized requirements for capital plans and related filings.

Figure 2 provides a high level illustration of this approach, the main elements of which are discussed in later sections of this Chapter.

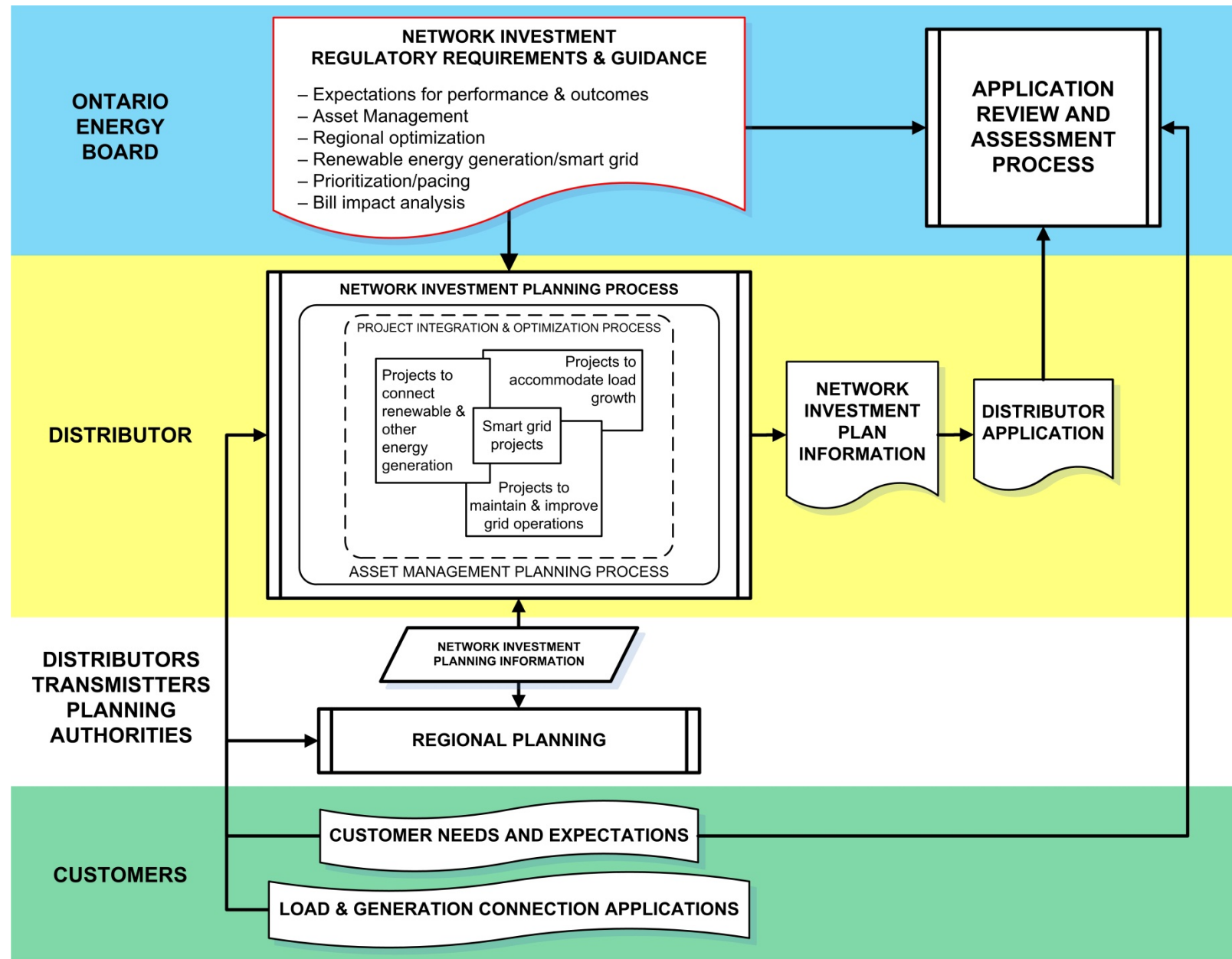
The Board further concludes that a planning horizon of five years is required to support integrated planning and better align distributor planning cycles with rate-setting cycles. This time horizon, along with the integrated approach to planning, will allow distributors to pace and prioritize projects with a view to the impact on the total bill for customers.

This planning horizon should also enhance cost predictability for both the distributor and its customers.

All distributors will therefore be required to file network investment planning information for five forecast years (where the initial or test year is the first forecast year) as part of any application for the rebasing of their rates under 4<sup>th</sup> Generation IR, or for the setting of their rates under the Custom IR method. Distributors using the Annual IR Index method will also be required to file a plan at intervals to be specified by the Board. The scope and level of detail required in the plan will depend on the scope and magnitude of the capital investments the plan is intended to support.

The Board will also monitor and measure plan implementation and plan achievement as discussed in Chapter 4.

Figure 2: Integrated Approach to Distribution Network Planning



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### **3.1.2 The Board's expectations for asset management and investment planning**

Since 2009, the Board has required distributors to file an asset management plan if available. Where no asset management plan is available, the distributor must file information outlining its approach to the planning and prioritization of capital projects.<sup>12</sup>

#### ***Stakeholder Views***

There was a general recognition that greater standardization of asset management plans in terms of concepts, definitions and key plan elements is needed to reduce costs, facilitate regulatory review and enhance regulatory predictability.

Stakeholders suggested different approaches for addressing uncertainty in the context of a multi-year planning horizon and for avoiding the adverse impact that deferred investments can have on customer rates. A “best practice” approach to asset management planning was suggested as a means of ensuring that investments are adequately supported and justified in distributor asset management plans.

#### ***The Board's Conclusions***

The Board concludes that further development and rationalization of the Board's filing requirements should be undertaken to assist the production of planning information to better support distribution rate setting. The Board will further engage stakeholders in the development of standard requirements for asset management and capital plans. The standard requirements will facilitate the testing of the plans and ensure that the Board's expectations are clear to utilities and other stakeholders.

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<sup>12</sup> CoS Filing Requirements, section 2.5.2.4.

### **3.1.3 Tools and methods to support proposed investments**

The Board's filing requirements identify minimum requirements with respect to the quantitative data and qualitative information that is to be provided by distributors as part of their filings. The onus, however, remains on a distributor to provide the data, information and analyses necessary to justify the forecasted costs that are the basis for the distributor's proposed rates. Filings must enable the Board to assess whether and how a distributor has sought to control costs in relation to its proposed investments through the appropriate optimization, prioritization and pacing of investment expenditures.

There is a need, therefore, to consider whether specific qualitative and quantitative analyses should be required to assist the Board in its review and consideration of distributor investment plans. Whether and how experts might be used to assist in the assessment of distributor investment plans and planning processes was also noted for consideration.

#### ***Stakeholder Views***

Some stakeholders endorsed the involvement of independent third party experts in the assessment of distributor planning processes and filings. It was noted that this is currently a practice in the United Kingdom, and that some Ontario distributors already routinely use third party experts for plan evaluation purposes.

Stakeholder proposals for tools and methods to support and justify distributor investments included specific quantitative analyses and verifiable or authoritative qualitative information. A variety of data and quantitative analyses were suggested.

Stakeholder views varied on bill impact estimations and associated tools. Some stakeholders were supportive of a requirement that distributors consider forecasts of the 'total bill' when developing their spending plans, identifying this as essential to the

pacing and prioritization of investment in a manner that controls year-over-year rate increases and to reducing the need for mitigation at the time of Board approval. Others noted that some costs on the total bill are outside of a distributor's control, and that increases in these costs should not result in automatic offsetting adjustments to distribution investment spending.

### ***The Board's Conclusions***

As indicated in the Introduction to this Report, the Board's first two statutory objectives are key considerations for the policies described in this Chapter. Pacing and prioritization of capital investments to promote predictability in rates and affordability for customers must be a primary goal in a distributor's capital plan. The Board recognizes that factors beyond a distributor's control may add complexity and uncertainty to any effort to estimate bill impacts on customers. However, a distributor must exercise control over the pace of its own capital spending, as this factor can be an important element in the total cost of electricity to customers. To aid distributors in this essential task, standardized methods and tools should be developed for use by distributors in the preparation of their plans. In addition, the Board sees merit in receiving the evidence of third party experts as part of a distributor's application, or retaining its own third party experts, in relation to the review and assessment of distributor asset management and network investment plans (along with other evidence filed by the distributor).

The Board will further engage stakeholders on the identification and development of qualitative and quantitative approaches and tools to be used by distributors to support their investment proposals, including methodologies to assist in prioritizing and pacing proposed investments in consideration of the total bill impact on customers. The output of any methodology will need to be transparent, robust and reproducible, and include forecast information from independent and authoritative sources where these are publicly available.



## 3.2 Regional Infrastructure Planning

### 3.2.1 Background

Regional planning has been undertaken for many years in Ontario. However, until recently most distributors focused almost exclusively on the delivery of electricity to their own load customers. The *Green Energy and Green Economy Act, 2009* has created an increased need for coordinated planning among distributors and transmitters, and also among neighbouring distributors, on a regional basis. The development and implementation of the smart grid will also require regional coordination.<sup>13</sup>

### 3.2.2 Integration of Regional Considerations

Some Ontario utilities are already engaged in regional or otherwise coordinated planning exercises or discussions. In the context of the Board's conclusion that more integrated planning is needed in the renewed regulatory framework, the question is whether a more structured approach to regional infrastructure planning is required.

#### ***Stakeholder Views***

Many stakeholders were supportive of a more formal approach to regional planning as a means of addressing key concerns with the current approach. In their view, the current approach is not sufficiently inclusive (in particular, ratepayer interests are under-represented) and a more formal approach would address this issue and ensure participation by all distributors. Other stakeholders, however, were of the view that the current approach is adequate.

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<sup>13</sup> The Minister's Directive referred to later in this Chapter identifies regional coordination as a policy objective to guide the Board in the development of guidance to the industry on the development and implementation of the smart grid.

There was general agreement that any regional planning process should be a “one-step” process, with the Ontario Power Authority (“OPA”), the relevant transmitter and the relevant distributors involved in developing a single regional plan. There was also general agreement on the need for all potential solutions, including distribution and transmission infrastructure, distributed generation and conservation and demand management (“CDM”) solutions, to be considered in the context of a new regional planning process.

Some stakeholders suggested that regional plans should be approved by the Board, whether separately or in the context of a rate or leave to construct proceeding.

### ***The Board’s Conclusions***

The Board concludes that infrastructure planning on a regional basis is required to ensure that regional issues and requirements are effectively integrated into utility planning processes, which will, in turn, help promote the cost-effective development of electricity infrastructure in the Province. The effective use of regional infrastructure planning and the inclusion of regional considerations in distributors’ and transmitters’ plans will also be key in ensuring that the development and implementation of the smart grid in Ontario is carried out on a coordinated basis and that smart grid investments are made at the system level (distribution or transmission) that will best serve the interests of the region.

Distributors and transmitters will therefore be expected to file evidence in rate and leave to construct proceedings that demonstrates that regional issues have been appropriately considered and, where applicable, addressed in developing the utility’s capital budget or infrastructure investment proposal. The Board does not expect that a formal regional infrastructure plan will be required in all instances to satisfy this filing requirement. While the Board will consider regional infrastructure plans in its regulatory processes, the Board will not formally approve these plans.

The Board believes that effective regional infrastructure planning will be best achieved by allowing relevant stakeholders a further opportunity to build on their practical experience and on the input received through this consultation to date. The Board will convene a stakeholder working group to prepare a report that sets out the details of appropriate regional infrastructure planning processes, that designs the outputs of the planning process and that identifies any changes to the Board's regulatory instruments that may be needed to support the process. The Board expects the following to be reflected in that report:

- The Board expects regional infrastructure planning to be more structured, and therefore lead responsibility must be assigned. The Board believes that there is merit in having this responsibility lie with the appropriate transmitter. The transmitter will work with the OPA to identify where CDM or distributed generation options may represent potential solutions.
- Regions that will form the foundation for the process will be identified, such that all distributors will have an understanding of the regions within which they reside. The Board sees merit in having predetermined regions that are based on electrical system boundaries, and suggests that the Independent Electricity System Operator's electrical zones be used as a starting point.
- Protocols will be in place for the sharing of information among relevant parties.
- Distributors will be expected to participate in regional infrastructure planning processes.

Following receipt of that report, the Board will determine whether any changes to its regulatory instruments are required.

### **3.2.3 Facilitating the Implementation of Regional Infrastructure Planning through Amendment of Board Codes**

Two issues relating to cost responsibility for transmission connection assets have been identified as potential impediments to the implementation of regional infrastructure planning and the execution of regional infrastructure plans.

The first issue (the “Otherwise Planned and Refund” issue) is centered on sections 6.3.6 and 6.2.24 of the Transmission System Code (“TSC”). As a general rule under the TSC, cost responsibility for transmission connection assets lies with the transmission customer, who may be required to make a capital contribution before the asset is built. Section 6.3.6 of the TSC creates an exception by stating that a capital contribution is not required for connection facilities that are “otherwise planned” by the transmitter. Section 6.2.24 of the TSC contemplates that, where a customer has made a capital contribution for the construction of a connection facility and that capital contribution includes the cost of capacity not needed by the customer, the customer is entitled to a refund of a portion of the capital contribution if that capacity is later assigned to another customer. However, that entitlement to a refund ends five years after the connection facility comes into service.

The second issue (the “Transmission Asset Definition” issue) pertains to the definition of certain transmission connection assets and the cost responsibility consequences that flow from that definition. Specifically, the question is whether certain line connection assets are more appropriately treated as network assets for cost responsibility purposes.

## **Stakeholder Views**

### *Otherwise Planned and Refund Issue*

Stakeholders generally agreed that changes to the current TSC cost responsibility rules for line connection assets are required to facilitate regional infrastructure planning and the ultimate execution of regional plans. Stakeholders were also broadly supportive of a shift away from the current emphasis on a ‘trigger’ pays model in relation to new or upgraded line connection investments.

It was noted that section 6.3.6 of the TSC can act as a disincentive to joint planning between the transmitter and distributors and that there are ambiguities in relation to when or how that section applies, as previously acknowledged by the Board.<sup>14</sup>

Some stakeholders identified that the effect of the five-year sunset proviso in section 6.2.24 of the TSC is that later-arriving customers that benefit from a connection asset are able to avoid contributing to the cost of that asset. It was noted that this can create an inappropriate incentive for a distributor to delay requesting additional capacity until after the five year period expires.

### *The Transmission Asset Definition Issue*

Stakeholders were generally supportive of redefining line connection assets. Among the concerns noted with the current cost responsibility regime is that it does not take into account the evolutionary nature of the transmission system and that, in some

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<sup>14</sup> In its September 7, 2007 Decision and Order issued in respect of a combined proceeding regarding the connection procedures of two transmitters (EB-2006-0189/EB-2006-0200), the Board stated that “[T]here can be ambiguity with respect to whether an enhancement of the system is one which is designed primarily to address system integrity and reliability issues as identified by the transmitter, on the one hand, and those which are primarily of benefit to one or a small group of customers who have a pressing local need, on the other.... That ambiguity is most easily resolved where the transmitter can demonstrate that the enhancement was identified as part of its planning process and not merely because a customer has requested it. To be clear, where planning involves joint studies between Hydro One and one or more distributor(s) to meet different timing and supply needs such as load growth, the Board views such plans as customer-driven, where a capital contribution would be required.”

cases, a distributor is responsible for the costs associated with line connection assets that perform functions beyond simply supplying the distributor.

However, stakeholders were divided on the scope of the proposed redefinition. Some stakeholders suggested that line connection assets be defined as network assets in all cases. Others proposed that line connections be so defined only in cases where such line connection assets provide other functions beyond supplying a distributor, citing the example of Dual Function Lines.<sup>15</sup>

It was also noted that line connection assets are not currently classified in a consistent manner. In particular, in about 50% of the cases 115/230 kV auto-transformers are currently classified as network assets (and the costs recovered from all Ontario ratepayers), while in the remaining 50% of the cases they are classified as line connection assets (and the costs recovered from only the triggering distributor and its customers). It was further noted that all distributors in a region benefit from a 115/230 kV auto-transformer, and that it is essentially impossible to determine the extent to which each transmission customer benefits from such an asset.

### ***The Board's Conclusions***

#### *Otherwise Planned and Refund Issue*

The Board concludes that a reconsideration of the TSC cost responsibility rules is desirable to facilitate the implementation of regional infrastructure planning and the execution of regional infrastructure plans. The Board believes that a shift in emphasis away from the 'trigger' pays principle to the 'beneficiary' pays principle is appropriate in that regard.

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<sup>15</sup> The definition of certain line connections as Dual Function Lines was approved by the Board in Hydro One's EB-2006-0501 transmission rate proceeding. It addressed the Board's concerns associated with the Line Connection pool in the RP-1999-0044 transmission rate proceeding, where the Board stated that it expected the definition of the Line Connection pool to be reconsidered in Hydro One's next cost allocation and rate design proceeding.

The reference to “otherwise planned” in section 6.3.6 of the TSC implies that a transmitter is expected to plan investments without the input of transmission customers, including distributors. This is incompatible with the Board’s approach to regional infrastructure planning set out above. The Board will therefore initiate a process to propose the removal of section 6.3.6 of the TSC.

The Board also concludes that the five year limit on the requirement to provide a refund to the initial transmission customer or customers that provided a capital contribution may be creating unintended effects. The Board will therefore also propose amendments to section 6.2.24 of the TSC regarding the five-year sunset provision.

These TSC amendments would apply on a go forward basis only (i.e., only to initial customers that make a capital contribution after the amendment comes into force).

#### *Transmission Asset Definition Issue*

The Board concludes that no redefinition is required in relation to transformation connection assets for the purpose of facilitating regional infrastructure planning. However, the Board also concludes that the redefinition of certain line connection assets in a manner that better reflects the function that each asset performs will facilitate the implementation of regional infrastructure planning, and should also place distributors (and therefore all Ontario customers) on a more level playing field in terms of cost responsibility. To the extent that line connection assets are defined based on function, distributors (and their customers) will be responsible only for the costs associated with upgrades to assets that are used solely to supply a distributor or group of distributors (i.e., where such distributors are the sole beneficiaries). The end result will be somewhat akin to ‘partial’ province-wide pooling with the uploading of some transmission assets from the line connection pool to the network pool. At the same time, all distributors will remain responsible for the costs associated with some line connection assets. This approach should maintain cost discipline.

The Board has concluded that all 115/230 kV auto-transformers and the associated switchgear should consistently be defined as network assets. The rationale for classifying this subset of transmission assets as network assets was previously explained by the Board as follows:

These unique system elements in some instances accommodate loads that are beyond a customer's requirement (e.g., autotransformers connecting the 230 kV transmission system to the 115 kV transmission system) .... In particular, use of autotransformers is seen as a means to optimize use of the transmission system as a whole in accommodating new loads safely and reliably and, most of all, in a timely manner.<sup>16</sup>

The Board will further engage stakeholders in the identification of all line connection assets that perform one or more functions beyond supplying the distributor and in developing criteria to be used to assess new assets and future upgrades to existing assets for redefinition purposes. That consultation will take into account the function the asset performs, reflect the 'beneficiary' pays principle and consider the frequency with which line connection assets should be reviewed to ascertain the function they provide for the purpose of future transmission rate proceedings.

Once the stakeholder consultation has been completed, the Board expects to propose amendments to the relevant provisions of the TSC with a view to integrating the new treatment of all applicable line connection assets, and will proceed with any other changes to its regulatory instruments as may be required to give effect to those amendments.

These changes are expected to apply on a go forward basis only (i.e., to new line connection assets or to upgrades to existing line connection assets that are built after the amendment comes into force). This approach will avoid retroactive changes in cost allocation and the associated rates. As a consequence, the Board notes, only future

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<sup>16</sup> September 7, 2007 Decision and Order issued in respect of a combined proceeding regarding the connection procedures of two transmitters (EB-2006-0189/EB-2006-0200), pages 24-25.



line connection upgrades have the potential to affect the execution of regional infrastructure plans.

### *Pooling*

During the consultation process, stakeholders provided insight into the relative merits of implementing changes to the Board's cost responsibility regime that are of a more transformative nature than those discussed above. Specifically, stakeholders commented on the potential to move to the regional or province-wide pooling of transmission connection facility costs, in whole or in part. The Board has concluded that a shift to province-wide pooling carries with it the risk of cross-subsidization, the potential for transmission overbuild and an inappropriate cost shifting between regions in the province. Regional pooling would only address those risks to some extent, and would be too complex to implement as regions may change over time and a number of distributors would be included in more than one regional pool. Moreover, the Board is satisfied that a move to any form of pooling of costs is neither necessary nor desirable at this time for the purpose of facilitating regional infrastructure planning and the execution of regional plans, given how the Board is addressing the cost responsibility issues discussed above.

## **3.3 Development of the Smart Grid**

### **3.3.1 Background**

With the coming into force of the *Green Energy and Green Economy Act, 2009*, several provisions were added to the OEB Act in relation to the development and implementation of a smart grid in Ontario. The Board now has a statutory objective to facilitate the implementation of a smart grid on Ontario, and it is a deemed condition of

license for all licensed electricity distributors and transmitters to plan for and make smart grid investments as directed by the Board.<sup>17</sup>

On November 23, 2010, the Minister of Energy issued a Directive to the Board requiring it to provide guidance to licensed electricity distributors and transmitters (among possible others) regarding the Board's expectations in relation to smart grid activities. In developing that guidance, the Board is to be guided by certain parameters for three objectives for the smart grid, namely, customer control objectives, power system flexibility objectives and adaptive infrastructure objectives. The Board is also to be guided by 10 policy objectives of the government, including policy objectives pertaining to efficiency, customer value, interoperability, and privacy.

### 3.3.2 Smart Grid Planning and Innovation

Planning for smart grid development and implementation by electricity distributors and transmitters will be an integral part of the broader network investment planning exercise, and the Board's guidance with respect to smart grid activities will be provided in a Supplemental Report of the Board. Moreover, the Board expects that smart grid development will be coordinated on a regional basis in furtherance of the government policy objective set out in the Minister's Directive to the effect that smart grid implementation efforts should involve regional coordination in order to achieve economies of scope and scale.

Smart grid investments are eligible for the application of the "alternative" mechanisms identified in the *"Report of the Board on the Regulatory Treatment of Infrastructure Investment for Ontario's Electricity Transmitters and Distributors (EB-2009-0152)"*. As noted in Chapter 4, the Board intends to explore further opportunities to embed the

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<sup>17</sup> Paragraph 4 of section 1(1) and section 70(2.1) of the OEB Act, respectively. The *Filing Requirements: Distribution System Plans – Filing under Deemed Conditions of Licence* referred to earlier in this Chapter speak to electricity distributor planning activities in respect of smart grid demonstration projects, studies, planning exercises, education or training, and establish deferral accounts for costs associated with these activities.

facilitation and recognition of technological innovation in the renewed regulatory framework. Smart grid development and implementation activities will be a central focus of that effort, given that grid-enhancing advanced technology systems and equipment are at the heart of the smart grid.

### **3.3.3 Treatment of Smart Grid Investments for Rate-setting**

Under the integrated approach to planning described in this Report grid-enhancing advanced information and exchange systems and equipment (which are commonly referred to as smart grid) are considered integral to all utility investment. Under this approach, no distinction is made for regulatory purposes between “smart grid” and more traditional investments undertaken by distributors and transmitters – more advanced technologies are so integrated with other activities that such distinctions are not productive.

This approach to smart grid investments and activities will best support the achievement of the objectives of the renewed regulatory framework. It facilitates more fully integrated planning, and will promote economic efficiency and the better alignment of expenditures with cost recovery so as to minimize ‘total bill’ impacts. It is also more efficient from a regulatory perspective.

### **3.3.4 Demarcation of Utility Role: “Behind the Meter” Activities**

One of the objectives of the smart grid set out in the Minister’s Directive is customer control. Parameters for that objective include enabling access to data by authorized parties, enabling consumers to better control their consumption and providing consumers with opportunities to participate in small-scale renewable generation. The Board considers that the achievement of this customer control objective will require that “behind the meter” services and applications be available to customers. The issue of behind the meter services is closely linked to that of access to meter data. Access to

meter data is key in facilitating the provision of behind the meter services and applications. The Board's regulatory framework for smart grid development and implementation should therefore facilitate data access and the implementation of behind the meter services and applications.

The question that arises is the role of distributors in the provision of behind the meter services and applications. Currently, there are private (i.e., unregulated) businesses that provide these services and applications, and that do so without Board oversight. Some distributors also provide such services on a non-utility basis as part of a CDM program. One example is the Peaksaver program offered on behalf of the OPA.

### ***Stakeholder Views***

Few stakeholders commented on this issue. One stakeholder proposed that there should be no restrictions on the provision of behind the meter services. Another maintained that distributors should be allowed to provide behind the meter CDM services, but also stated that the "demarcation should be the meter". Input was also received from the Smart Grid Working Group.

### ***The Board's Conclusions***

The Board anticipates that distributors will continue to be engaged in the provision of behind the meter services and applications that fall within the parameters set out in section 71(2) or section 71(3) of the OEB Act. In so doing, they are engaging in a non-utility activity. That activity must be accounted for separately from utility activities and be undertaken on a full cost recovery basis (in other words, not covered in rates).

There is no element of natural monopoly in the market for behind the meter services and, therefore, the Board has concluded that customer control would be best served by the forces of market competition. The Board expects that this policy conclusion will assist distributors in planning and organizing their and their affiliate's activities.

### **3.3.5 Other Issues**

Following the receipt of the Minister's Directive, Board staff consulted with the Smart Grid Working Group to produce a Staff Discussion Paper, which was issued in November 2011, and in that paper identified a number of key issues, including cyber-security, privacy, interoperability, customer access and the recognition of types of benefits flowing from smart grid in applications. Issues not addressed in this Report will be addressed in the Supplemental Report of the Board on Smart Grid.

## **3.4 Implementation**

The Board will establish two new stakeholder working groups to accomplish activities dealing with distribution network planning and regional infrastructure planning. The Board will also reconvene its previously established smart grid working group. The principal tasks of these working groups will be:

- **An Integrated Approach to Network Planning:** To revise the Board's filing requirements for distributors and transmitters and issue guidance in accordance with the Board's conclusions in the Report. The development of an integrated set of revised filing requirements will include those related to distribution network planning, smart grid planning and regional planning.
- **Regional Infrastructure Planning:** To develop guidance regarding the implementation of the Board's conclusions in the Report related to moving to a more structured approach to regional infrastructure planning, as well as the appropriate redefinition of certain line connection assets and TSC cost responsibility rule changes to remove barriers related to regional plan execution.
- **Development of the Smart Grid:** To develop the regulatory documents to implement the Minister's Directive and the Board's conclusions in the Report.

The main products and timelines for these working groups are outlined in the table below. Further detail is provided in the remaining sections of this chapter.

	<b>Product</b>	<b>Planned issuance</b>	<b>Process</b>
<b>Network Planning</b>	Consolidated capital plan filing requirements	February 2013	Staff proposal on asset management and capital planning filing requirements  Working group meetings  Staff proposal on integrated filing requirements  Working group meetings
<b>Integrating Regional Planning</b>	Consolidated capital plan filing requirements	February 2013	Working group meetings  Working group report to Board (regional infrastructure planning process, filing requirements)  Working group input related to filing requirements incorporated into Staff proposal on integrated filing requirements
	Amendments as necessary to TSC and DSC	April 2013	Working group meetings  Working group reports to Board (asset redefinition, regional infrastructure planning process)  Notice of proposed code amendments
<b>Smart Grid</b>	Supplemental Report of the Board	January 2013	Working group meetings  Working group input related to filing requirements incorporated into Staff proposal on integrated filing requirements

### **3.4.1 Distribution network investment planning**

The Board's filing requirements in relation to distributor asset management and investment planning information will be enhanced, and the Board will release Consolidated Capital Plan Filing Requirements in February 2013.

In order to implement the Board's requirements for integrated infrastructure planning, the Board will identify tools and methods to support proposed infrastructure investments in distributor applications, including the demonstration of how the distributor has optimized, prioritized and paced investments to take into consideration the total bill impact on customers.

### **3.4.2 Facilitating effective regional infrastructure planning**

The Board will determine the regional infrastructure planning related information needed to support rate and leave to construct applications, and this will be incorporated into the Board's Consolidated Capital Plan Filing Requirements.

Key elements that need to be addressed in order to facilitate the move to a more structured regional infrastructure planning process include the following:

- The information a distributor should be required to provide to the transmitter for regional infrastructure planning purposes and the frequency at which it should be updated;
- The appropriate evaluative criteria to compare potential solutions;
- The circumstances under which the OPA should participate;
- The form in which broader consultation should take place before a regional plan is finalized; and
- Appropriate regional boundaries and the criteria to be used to establish them.

A Working Group Report to the Board will be produced, as well as a staff proposal for consolidated filing requirements. The Board expects that the section of the Report

addressing regional infrastructure planning process matters will also provide input for the Board's consideration in relation to any other key elements that the working group believes should be addressed in order to facilitate the move to a more structured regional infrastructure planning process.

### **3.4.3 Facilitating the implementation of regional infrastructure planning**

As noted in this Report, the Board believes that changes to the cost responsibility regime necessary to facilitate regional infrastructure planning will require the development of a set of criteria based on the function(s) that line connection assets perform. These changes will be effected through a notice and comment process to amend the relevant TSC sections.<sup>18</sup> Given the interconnected nature of these cost responsibility changes related to the redefinition of line connection assets and those involving TSC cost responsibility rule changes discussed above (i.e., "Otherwise Planned and Refund Issue"), the Board will address all of the proposed amendments in one notice and will propose the same implementation date for all amendments. This code amendment process will also address amendments to the TSC that may be required in relation to the regional infrastructure planning process matters discussed above.

The proposal for Code amendments will also be informed by a Working Group Report to the Board in relation to criteria for line connection asset redefinition and identifying the assets that meet those criteria. The Board expects any amendments made to the Codes will come into force in mid-2013.

### **3.4.4 Smart grid guidance**

The Board will issue a Supplemental Report providing the Board's guidance on smart grid, including the integration of smart grid development into the overall regional and

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<sup>18</sup> The redefinition of certain line connection assets may also require proposed amendments to other regulatory instruments of the Board.



network planning filing requirements. The Board expects to issue the Supplemental Report on smart grid policy in January 2013, and to integrate the smart grid work into the Consolidated Capital Plan Filing Requirements.

## 4 Performance Measurement and Continuous Improvement

The renewed regulatory framework is a comprehensive performance-based approach to regulation that promotes the achievement of performance outcomes that will benefit existing and future customers. The framework will align customer and utility interests, continue to support the achievement of important public policy objectives, and place a greater focus on delivering value for money.

The achievement of the performance outcomes will be supported by specific measures and targets and annual reporting. Distributor performance will be compared year over year, both to prior performance and to the performance of other distributors. To facilitate performance monitoring and distributor benchmarking, the Board will use a scorecard approach to link directly to the performance outcomes.

Under the renewed regulatory framework a distributor will be expected to continuously improve its understanding of the needs and expectations of its customers and its delivery of services, which in turn can lead to reduced costs for customers.

### 4.1 Monitoring Distributor Performance

Under the rate-setting approach described in Chapter 2, the Board will be setting rates under longer-term plans and allowing distributors to select the rate-setting method that best meets their needs and circumstances. Distributors will be required to undertake longer-term integrated planning that captures all categories of network planning, including those reflecting regional needs, as discussed in Chapter 3.

The Board has standards and measures for performance in place today;<sup>19</sup> however, the Board needs to assess whether these continue to be appropriate in light of the performance outcomes defined by the Board and the new rate setting methods. The Board also needs to consider the consequences that might flow from performance that does not meet the standards.

Benchmarking will become increasingly important, as comparison among distributors is one means of analyzing whether a given distributor is as efficient as possible.

### ***Stakeholder Views***

There was general stakeholder support for meaningful, empirically-based standards, performance measures and regulatory mechanisms, provided that the implementation costs do not outweigh the value for customers. Desirable characteristics that were identified included: focus on what customers value; promoting alignment of distributor and customer interests; and ability to accommodate differences within the distribution sector.

Stakeholder suggestions for objectives to underpin the development of distributor customer service and cost performance standards and measures included furthering market development; revealing infrastructure investment planning effectiveness or cost performance; facilitating price transparency for customers; and improving existing customer service standards.

A number of stakeholders acknowledged the cost performance incentives that are inherent in incentive regulation. Caution was expressed about implementing direct financial incentives until Board-approved measures are in place. Stakeholders were divided on process incentives; some were supportive of streamlined regulatory processes for high-performing distributors while others were opposed to limits being

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<sup>19</sup> These are identified in the *Staff Discussion Paper on Defining & Measuring Performance of Electricity Transmitters & Distributors*.

placed on the review of applications based on the quality of evidence or the applicant's past performance.

### ***The Board's Conclusions***

#### **Performance Outcomes and the Electricity Distributor Scorecard**

The Board is establishing performance outcomes that it expects distributors to achieve in four distinct areas:

*Customer Focus:* services are provided in a manner that responds to identified customer preferences;

*Operational Effectiveness:* continuous improvement in productivity and cost performance is achieved; and utilities deliver on system reliability and quality objectives;

*Public Policy Responsiveness:* utilities deliver on obligations mandated by government (e.g., in legislation and in regulatory requirements imposed further to Ministerial directives to the Board); and

*Financial Performance:* financial viability is maintained; and savings from operational effectiveness are sustainable.

The Board concludes that a scorecard will be used to monitor individual distributor performance and to compare performance across the distribution sector. The scorecard effectively organizes performance information in a manner that facilitates evaluations and meaningful comparisons, which are critical to the Board's rate-setting approach under the renewed regulatory framework. Distributors will be required to report their progress against the scorecard on an annual basis.

A sample of a possible scorecard based on a simple sub-set of the Board's current standards and measures (such as the service quality requirements in the *Distribution System Code*) is provided below. The sample is provided for illustrative purposes only, as the Board has not yet determined content of the scorecard to be used. The Board expects that the scorecard will evolve as appropriate standards and measures are developed to assess distributor performance against the identified outcomes.

**Figure 3: Sample Scorecard**

<b>Customer Focus</b>	<b>Operational Effectiveness</b>	<b>Public Policy Responsiveness</b>	<b>Financial Performance</b>
<i>services provided in a manner that responds to identified customer preferences</i>	<i>continuous improvement in productivity and cost performance; and delivery on system reliability and quality objectives</i>	<i>delivery on obligations mandated by government (specific legislation or via directives to the Board)</i>	<i>financial viability maintained; and savings from operational effectiveness are sustainable</i>
<ul style="list-style-type: none"> <li>• Customer complaints</li> <li>• Connection statistics</li> <li>• Connection of New Service</li> <li>• Reconnection</li> <li>• Telephone Accessibility</li> <li>• Appointments Met</li> <li>• Written Response to Enquiries</li> <li>• Emergency Response</li> <li>• Telephone Call Abandon Rate</li> <li>• Appointments Scheduling</li> <li>• Rescheduling a Missed Appointment</li> </ul>	<ul style="list-style-type: none"> <li>• Distribution Losses</li> <li>• System Average Interruption Frequency Index (SAIFI)</li> <li>• System Average Interruption Duration Index (SAIDI)</li> <li>• Customer Average Interruption Duration Index (CAIDI)</li> <li>• Momentary Average Interruption Frequency Index (MAIFI)</li> </ul>	<ul style="list-style-type: none"> <li>• Electricity Conservation (Kwh)</li> <li>• Peak Demand Reductions (kW)</li> </ul>	<ul style="list-style-type: none"> <li>• Current Ratio</li> <li>• Debt Service Capability</li> <li>• Interest Coverage</li> <li>• OM&amp;A Cost per Customer</li> <li>• Return on Equity</li> </ul>

## Standards and Measures

The Board will engage stakeholders in further consultation on the standards and measures to be included in the distributor scorecard. The standards and measures must be suitable for use by the Board in monitoring and assessing distributor performance against expected performance outcomes, in monitoring and assessing distributor progress towards the goals and objectives in the distributor's network investment plan, in comparing distributor performance across the sector and identifying trends, and in supporting rate-setting.

The Board has established a set of objectives to guide the consultation. Standards and measures should:

- be aligned with, and reflect a distributor's effectiveness in achieving, the performance outcomes listed in Chapter 1;
- be reflective of customer needs and expectations;
- encourage year-over-year performance gains;
- reveal current performance and signal future performance;
- reflect a distributor's effectiveness in prioritizing and pacing investment (with regard to total bill impacts) and implementing its capital plan;
- be measureable by each distributor, and be aligned with their reporting for their own internal purposes to the extent possible;
- consider the characteristics of a distributor's service territory; and
- be practical.

## **4.2 The Role of Benchmarking**

The Board's regulatory oversight of electricity distributors is supported by benchmarking. Expanded use of benchmarking will be necessary to support the Board's renewed regulatory framework policies.

### ***Stakeholder Views***

There was general support for the continued development and use of benchmarking tools, with further empirical work on the distribution sector identified as a priority. It was noted that the cost of this exercise should not exceed its value, recognizing that there may be limits to the practical use of cost comparison and benchmarking information. Among suggestions offered for the further use and development of benchmarking tools were the use of external data, benchmarks and productivity trends to establish

boundaries within which distributors should operate; the more rigorous implementation of benchmarking in rate proceedings; and the adoption of a “balanced scorecard” approach to benchmarking to reflect customer and distributor diversity.

### ***The Board’s Conclusions***

The Board concludes that benchmarking models will continue to be used to inform rate setting. The Board will continue to build on its approach to benchmarking with further empirical work on the electricity distribution sector in relation to the distributor customer service and cost performance outcomes, including: total cost benchmarking; an Ontario TFP study; and input price trend research. The Board will engage stakeholders in this effort.

The empirical work on the electricity distribution sector will inform the rate-adjustment mechanisms under 4<sup>th</sup> Generation IR and the Annual IR Index, and will inform the Board’s review and approval of applications under the Custom IR method.

Consequently, regardless of the rate-setting plan under which a distributor’s rates are set, the distributor will continue to be included in the Board’s benchmarking analyses.

Benchmarking will also continue to be used to assess distributor performance. The results of further statistical methods for evaluating distributor performance will also assist the Board in assessing distributor infrastructure investment plans and in determining appropriate cost levels in rates associated with those plans. The publication of benchmark results will also continue to inform the public about distributor performance and facilitate comparisons among distributors.

## **4.3 Regulatory Mechanisms**

The Board is committed to ensuring optimal performance and value for customers, and will continue to enhance its regulatory mechanisms where necessary to achieve this goal. In initiating the performance-based approach, the Board will maintain its existing

regulatory mechanisms, subject to certain refinements. Specifically, the X-factor will be refined as discussed in Chapter 2 and the “publication of distributor results” mechanisms referred to above (among possible others) will be integrated into the electricity distributor scorecard.

The Board’s incentive regulation approach to rate-setting creates incentives for distributors to innovate in order to operate within the price cap while continuing to meet the needs and expectations of their customers. The Board will further consider incentives directed at innovation to address system and customer requirements. While this work should consider the Board’s current policies as set out in the *Report of the Board on the Regulatory Treatment of Infrastructure Investment for Ontario’s Electricity Transmitters and Distributors*, the Board expects that new approaches may be required.

In addition, appropriate consequences should flow from unsatisfactory performance against the Board’s standards, in order to maintain the integrity of the Board’s outcome-based approach and its approach to rate-setting.

Additional regulatory mechanisms may be necessary to achieve the objectives of the renewed regulatory framework. The Board will engage stakeholders in further consultation on the following in due course:

- The establishment of an “efficiency carry-over” mechanism;
- Development of incentives to;
  - reward superior performance;
  - encourage innovation;
  - encourage asset optimization; and
- Potential consequences for inferior performance.

The development of these regulatory mechanisms will be aligned with the standards and measures referred to above.



## 4.4 Implementation

To establish the outcome based framework and provide for effective monitoring of distributor performance, the Board will:

- define the standards and measures that will be applicable to distributors;
- establish benchmarking models (through further empirical work);
- establish the reporting requirements applicable to distributors, including the format of the performance scorecard; and
- determine the regulatory mechanisms that will be used in conjunction with those standards and measures (in due course).

A stakeholder working group will be established to provide staff with expert assistance and to help staff review and evaluate proposals regarding performance standards, measures, and the development of benchmarking. This will also include consideration of rate adjustment indices (i.e., inflation and X factors). Staff and consultant reports will be issued for comment.

With respect to benchmarking, the objective is to establish total cost benchmarking for the 2014 rate year. Further work will involve comprehensive benchmarking (i.e., model(s) that combine standards for utility customer service and cost performance) to be applied in subsequent rate years.

The end result of this work will be a Supplemental Report of the Board expected to be issued in mid-2013. Regulatory instruments such as the Reporting and Record Keeping Requirements will be amended as necessary to implement the Supplemental Report.

Work carried out in this consultation to develop total cost benchmarking will provide the foundation for the development of the Board's approach to comprehensive benchmarking. The overall approach and timeline for such additional work will be issued after the substantial completion of work planned for implementation for the 2014 rate year.

	<b>Product</b>	<b>Expected issuance</b>	<b>Process</b>
<b>Standards and measures</b>	Supplemental Report of the Board, including distributor scorecard	June 2013	Staff proposal  Stakeholder meeting  Working group meetings  Board staff report to the Board (for comment)  Stakeholder meeting  Written comments
	Amendments to RRR if needed	July 2013	Notice and comment
<b>Benchmarking</b>	Supplemental Report of the Board (same document as above), plus consultant report on approach to total cost benchmarking	June 2013	Validation of data by distributors  Consultant Concept paper  Stakeholder meeting  Working group meetings  Consultant report (for comment)  Stakeholder meeting  Written comments

#### **4.4.1 Issues to be addressed in relation to standards, measures and regulatory mechanisms**

Working with stakeholders, the Board will consider the following areas in the context of developing a scorecard and performance standards, and measures to facilitate annual monitoring of distributor performance.

Assessing performance outcomes:

- confirm the standards and measures that best reflect a utility's effectiveness and/or continuous improvement in achieving the performance outcomes.

Effective planning & implementation:

- establish measures that best reflect a distributor's effectiveness with respect to:
  - planning - prioritizing and pacing investment with regard to total bill increases to consumers;
  - plan implementation – progress in achieving targets against the capital plan; and
  - plan achievement – achievement of the goal(s)/outcome(s) originally committed to in an approved capital plan

Regulatory reporting:

- establish the electricity distributor scorecard to effectively organize how utilities report on their performance to the Board.

Regulatory Mechanisms:

In due course, the Board will further engage stakeholders to consider the appropriate form and implementation of:

- an “efficiency carry-over” mechanism; and
- performance incentives to reward achievement of utility plan objectives, and/or encourage and reward implementation of truly innovative technologies to address system and customer requirements.

#### **4.4.2 Issues to be addressed in relation to benchmarking**

The use of OM&A data to benchmark distributors for stretch factor assignment purposes in the 3<sup>rd</sup> Generation IR plan is the foundation for a more comprehensive (e.g., total cost) benchmarking approach. Work to develop the more comprehensive benchmarking model(s) will also create the dataset necessary to estimate Ontario TFP trends.

The Board will continue to build on its approach to benchmarking with further empirical work on the electricity distribution sector in relation to the utility customer service and cost performance outcomes, including total cost benchmarking and an Ontario TFP study. This work will inform the Board determination on inflation and X factors for rate-setting.

The Board will also determine how to make expanded use of benchmarking for assessing distributor performance as well as to inform rate setting. In particular, the Board will establish how its standards for utility service and cost performance and various empirical tools and benchmarking will further inform (a) utility planning processes, (b) utility applications to the Board, and (c) the Board's review processes.

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## 5 Implementation and Transition

### 5.1 Implementation

As noted throughout the Report, additional work is required in each of the three policy areas to implement the Board's renewed regulatory framework. The policies set out in this Report are integrated and therefore will be implemented in a coherent sequence and in a manner that allows them to interact effectively. The complete listing of activities planned over the next several months is included in Appendix B.

As outlined in the implementation section of previous chapters, the Board will establish three stakeholder working groups to provide staff with expert assistance and to review and advise staff on proposals regarding the implementation tasks. The first working group will focus on performance, benchmarking and rate adjustment indices. The second group will address outstanding matters with respect to network investment planning, and the third will work on development of regional infrastructure planning processes. In addition, the Smart Grid Working Group will be reconvened. The stakeholder members of the working groups will be selected by the Board. By sharing certain members in common, working group efforts will be coordinated and mutually informed on an on-going basis.

Consultations will conclude with the issuance of filing requirements and guidance, code amendments, and/or supplemental Board policies. The Board expects that the policies in relation to the conclusions set out in this Report will be largely implemented in time for the 2014 rate year.

## 5.2 Transition

The Board expects that the three new rate setting methods will be available for the 2014 rate year. At that time, distributors may select the appropriate rate setting method for their utility.

The Board has established a transition plan to facilitate the early adoption of the three new rate-setting methods. The Board is aware that the preparation of a rate application can be a lengthy and resource-intensive effort. In devising the implementation and transitional measures described in this Report, the Board is attempting to balance the interest in having the new rate-setting methods available to most distributors for the 2014 rate year with the recognition of the time needed to prepare applications under the new methods. A set of tables have been provided below that represent the transition options that distributors have based on their current status in the 3<sup>rd</sup> Generation IR plan, and the timing of their rate year.

### Option 1 – 4<sup>th</sup> Generation IR

Transition to full 4<sup>th</sup> Generation IR will depend on when a distributor is next scheduled to rebase under cost of service.

#### Option 1a – Distributor completes remaining term of 3rd Generation IR

Those distributors who are within the term of their current 3<sup>rd</sup> Generation IR (in other words are scheduled to rebase for January 1, 2015 rates or later) will continue to have their rates adjusted annually for the remaining years of their 3<sup>rd</sup> Generation IR term. The adjustment mechanism will be the same as that used for 4<sup>th</sup> Generation IR. Filing requirements for these annual adjustment applications will be available for January 1, 2014 rates.

The Board discourages distributors who are not currently scheduled to be rebased for 2014 rates from filing applications for early rebasing under the 4<sup>th</sup> Generation IR method. The Board will continue to apply the criterion regarding early rebasing enunciated in its letter of April 20, 2010: that is, that a distributor must clearly demonstrate why and how it cannot adequately manage its resources and financial needs during the remainder of its IRM period.

#### Option 1b – Distributor Rebases under 4th Generation IR

Complete filing requirements (including Cost of Service Filing Requirements and Consolidated Capital Plan Filing Requirements) will be available for rebasing applications under 4th Generation IR for May 1, 2014 rates. In order to provide some additional time to prepare applications, these rebasing applications may be filed by October 1, 2013. When a distributor rebases using the 4<sup>th</sup> Generation filing requirements, the total term will be 5 years.

For distributors scheduled to rebase for 2014 and planning to seek the Board's approval for January 1 rates, there will be two options available:

- 1) Rebase under 3rd Generation IR filing requirements (in other words, without the 5 year capital plan) and remain under IR for 4 years total (rebasing plus 3 years) with rates adjusted annually using the 4<sup>th</sup> Generation IR annual adjustment
- 2) Delay rebasing by one year - rebase for January 1, 2015 rates, in which case the application will be filed using the Cost of Service Filing Requirements and Consolidated Capital Plan Filing Requirements, and the total term will be 5 years.

#### Option 2 - Move to the Annual IR Index

Distributors may file for rates under the Annual IR Index at any time. Filing requirements for the Annual IR Index will be available for January 1, 2014 rates. Distributors on the



Annual IR Index method will be required to file five-year capital plans in accordance with the Consolidated Capital Plan Filing Requirements on a periodic basis, and perhaps as soon as with applications for May 1, 2014 rates. This timing will be confirmed when the Board issues the Consolidated Capital Plan Filing Requirements.

Option 3 - File a Custom IR application.

Distributors may file for a Custom IR as soon as the Consolidated Capital Plan Filing Requirements are available. This option will not be available for January 1, 2014 rates, but will be available for purposes of setting May 1, 2014 rates or later.

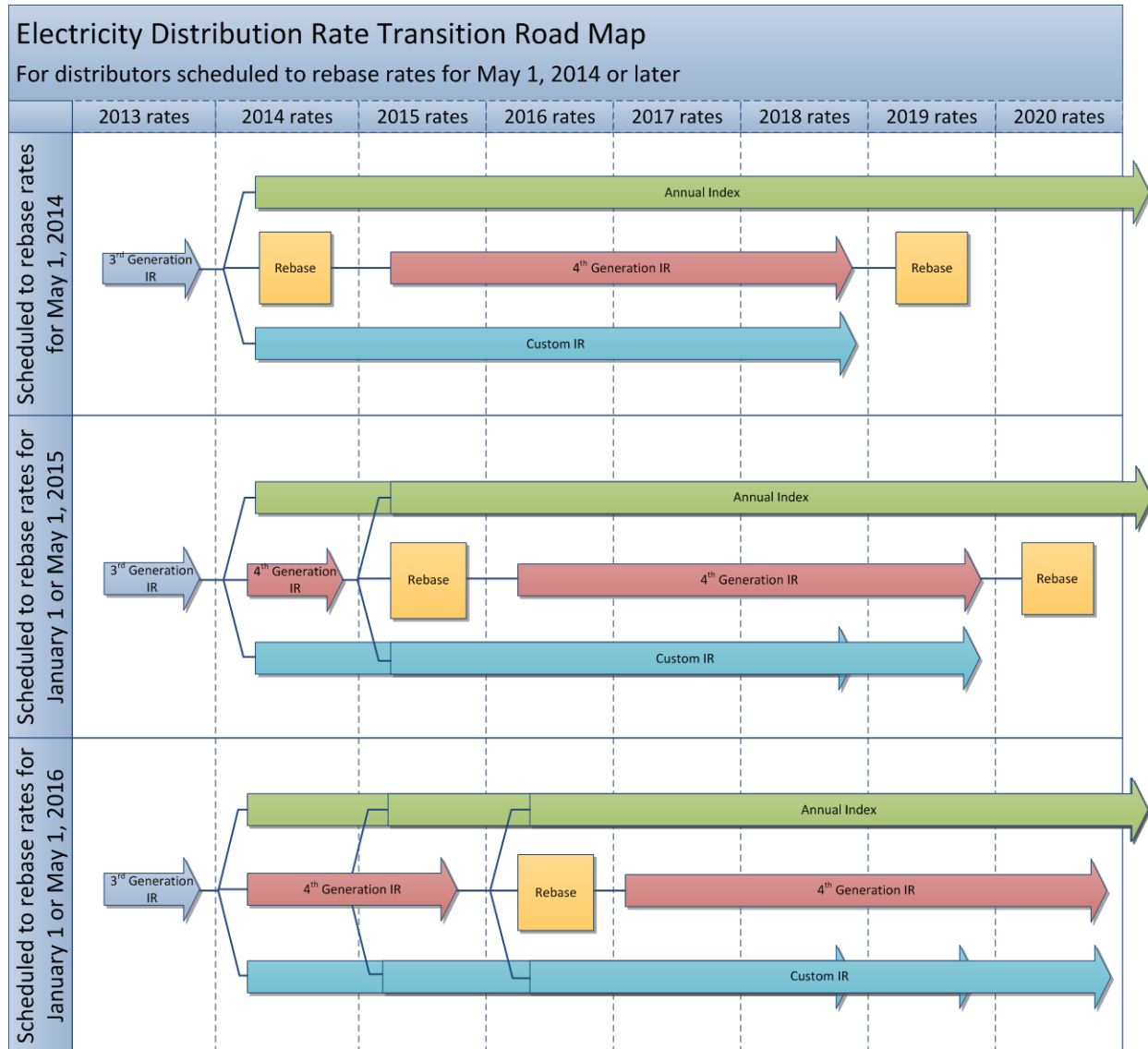
Distributors may make a Custom IR application any time within a 3<sup>rd</sup> or 4<sup>th</sup> Generation IR or Annual IR Index term. The Board will permit an exception to the early rebasing test for distributors applying under the Custom IR method in advance of their normal rebasing date. The Board's view is that the Custom IR method should be available as soon as possible for distributors with prolonged elevated investment needs. One of the Board's main concerns with early rebasing is the opportunity it affords distributors to avoid the efficiency incentives in the annual adjustment mechanism. The Board is satisfied that the Custom IR process will be sufficiently rigorous that an assessment of the adequacy of past and future productivity levels can be made and the results of that assessment can be incorporated into the distributor's future rates.

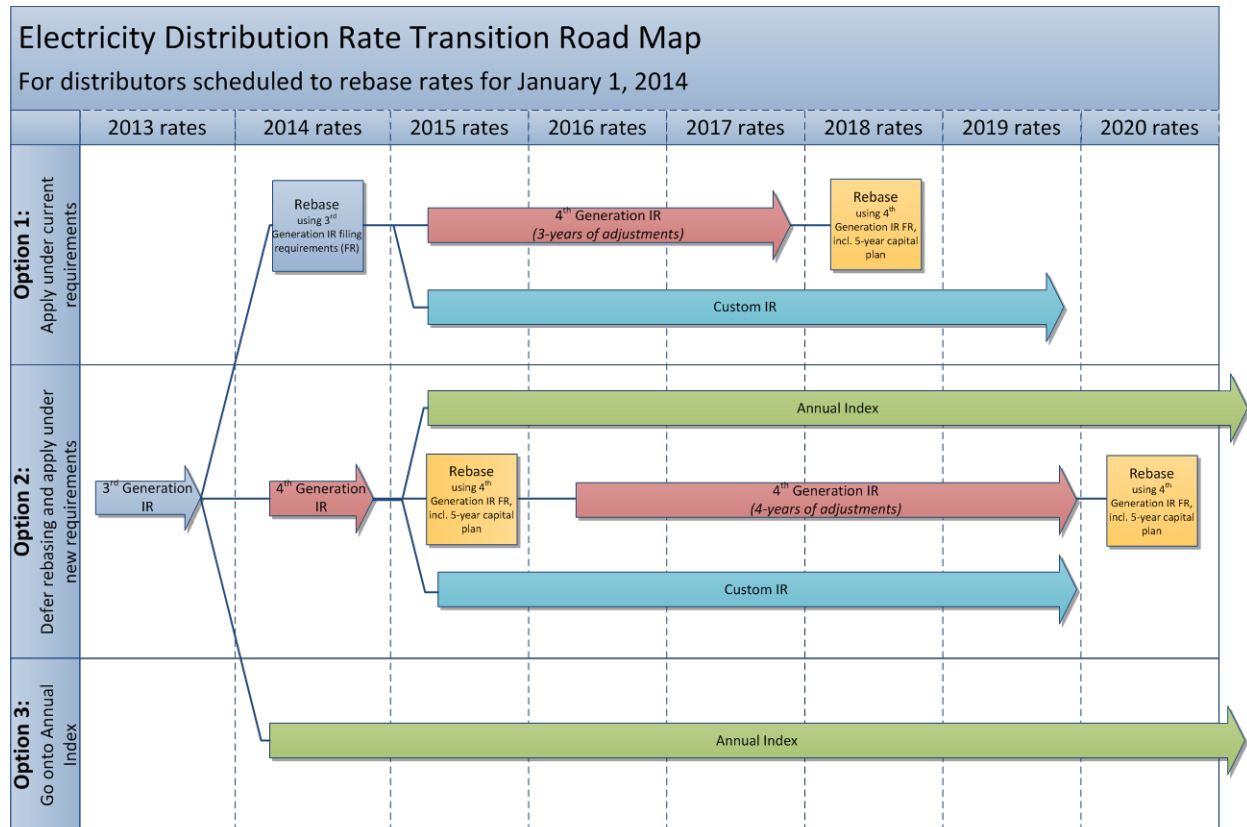
The Board anticipates that there could be a significant case load for the determination of 2014 rates as a consequence of the implementation of the new framework. Delays may occur. Any distributor intending to apply under the Custom IR method for 2014 rates is encouraged to speak with Board staff at an early point to discuss scheduling.

The Board does not intend to publish filing requirements for the Custom IR method (other than the Consolidated Capital Plan Filing Requirements) at this time, although much of the material in Cost of Service Filing Requirements will be relevant for Custom IR filers. Consistent with the conclusions set out in this Report in relation to the Custom

IR method, the onus will be on the applicant to specify and substantiate its preferred approach to multi-year rate-setting. After the Board has gained some experience with these types of applications it may publish filing requirements for Custom IR applicants.

**Figure 4: Transitional Measures for Rates for May 1, 2014 or Later**



**Figure 5: Transitional Measures for Rates for January 1, 2014**

## Appendix A: Summary of Consultation Activities to Date

Unless otherwise indicated by a prefacing identifier, all five inter-related initiatives were addressed in coordinated consultation activities.

Date	Issue / Document
Oct 27-10	<p>The Board issued a letter announcing its intention to develop a Renewed Regulatory Framework for Electricity.</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>
Dec 17-10	<p>The Board issued a letter a letter initiating a consultation process to develop three key elements to a Renewed Regulatory Framework for Electricity.</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>
Jan 13-11	<p>Developing Guidance for the Implementation of Smart Grid in Ontario (EB-2011-0004): The Ontario Energy Board is initiating a consultation with stakeholders on the implementation of Smart Grid. The Board invites all interested parties to participate in this consultation - a Smart Grid Working Group (SGWG). Nomination to participate in the working groups is due January 24, 2011.</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>
Jan 27-11	<p>Board staff has posted material for the Stakeholder Conference to be held on February 2nd.</p> <ul style="list-style-type: none"> <li>• <a href="#">Instructions on How to Join the Stakeholder Conference via WebCast</a> (for those not attending in person)</li> <li>• <a href="#">Draft Agenda</a></li> <li>• Presentations <ul style="list-style-type: none"> <li>○ <a href="#">Overview</a></li> <li>○ <a href="#">Distribution Network Investment Planning</a> (EB-2010-0377)</li> <li>○ <a href="#">Rate Mitigation</a> (EB-2010-0378)</li> <li>○ <a href="#">Defining and Measuring Performance of Electricity Distributors and Transmitters</a> (EB-2010-0379)</li> </ul> </li> </ul>
Jan 31-11	<p>Developing Guidance for the Implementation of Smart Grid in Ontario (EB-2011-0004): The Board received the following Smart Grid Working Group Submissions:</p> <ul style="list-style-type: none"> <li>• <a href="#">Accenture</a></li> <li>• <a href="#">Association of Major Power Consumers in Ontario</a></li> <li>• <a href="#">Bell Canada</a></li> <li>• <a href="#">Bluewater Power Distribution Corporation</a></li> <li>• <a href="#">Building Operators and Managers Association</a></li> <li>• <a href="#">Cambridge and North Dumfries Hydro Inc.</a></li> <li>• <a href="#">Capgemini</a></li> </ul>

Date	Issue / Document
	<ul style="list-style-type: none"> <li>• <a href="#">Certicom Corp.</a></li> <li>• <a href="#">Chatham-Kent Hydro</a></li> <li>• <a href="#">Cornerstone Hydro-Electric Concepts</a></li> <li>• <a href="#">David O'Brien</a></li> <li>• <a href="#">Direct Energy Marketing Ltd.</a></li> <li>• <a href="#">Electrical Safety Authority</a></li> <li>• <a href="#">Electricity Distributors Association</a></li> <li>• <a href="#">Elenchus Research Associates</a></li> <li>• <a href="#">Elster Metering</a></li> <li>• <a href="#">Enbala Power Networks</a></li> <li>• <a href="#">Enbridge Gas Distribution Inc.</a></li> <li>• <a href="#">Energate - 1</a> <ul style="list-style-type: none"> <li>○ <a href="#">Energate - 2</a></li> <li>○ <a href="#">Energate - bio</a></li> </ul> </li> <li>• <a href="#">Energent Inc.</a></li> <li>• <a href="#">Energy Aware Technology Inc.</a></li> <li>• <a href="#">Enersource</a></li> <li>• <a href="#">Erie Thames Powerlines</a></li> <li>• <a href="#">Festival Hydro Inc.</a></li> <li>• <a href="#">GE Digital</a></li> <li>• <a href="#">General Motors of Canada</a></li> <li>• <a href="#">Honeywell</a></li> <li>• <a href="#">Horizon Utilities</a></li> <li>• <a href="#">Hydro One Networks Inc.</a></li> <li>• <a href="#">Hydro Ottawa Ltd.</a></li> <li>• <a href="#">IBM</a></li> <li>• <a href="#">Independent Electricity System Operator</a></li> <li>• <a href="#">Just Energy</a></li> <li>• <a href="#">Kinectrics Inc.</a></li> <li>• <a href="#">London Property Management Association</a></li> <li>• <a href="#">Measurement Canada</a></li> <li>• <a href="#">Metering Support Services Canada Inc.</a></li> <li>• <a href="#">Milton Hydro Distribution Inc.</a></li> <li>• <a href="#">Oakville Hydro Electricity Distribution Inc.</a></li> <li>• <a href="#">Ontario Sustainable Energy Association</a></li> <li>• <a href="#">PowerStream Inc.</a></li> <li>• <a href="#">Regen Energy - 1</a></li> <li>• <a href="#">Simpleafy</a></li> <li>• <a href="#">Society of Energy Professionals</a></li> <li>• <a href="#">Telvent</a></li> <li>• <a href="#">Thunder Bay Hydro Electricity Distribution Inc.</a></li> <li>• <a href="#">Toronto Hydro-Electric System Ltd.</a></li> <li>• <a href="#">Utilismart Corporation</a></li> <li>• <a href="#">Utilities Kingston</a></li> <li>• <a href="#">Veridian Connections Inc.</a></li> </ul>
Feb 14-11	<p>Developing Guidance for the Implementation of Smart Grid in Ontario (EB-2011-0004): Board staff today issued a letter on the selection of Smart Grid Working Group members</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>

Date	Issue / Document
Apr 1-11	<p>Regional Planning for Electricity Infrastructure (EB-2011-0043): The Board initiated a consultation aimed at promoting the cost-effective development of electricity infrastructure through coordinated planning on a regional basis between licensed distributors and transmitters.</p> <ul style="list-style-type: none"> <li>• <a href="#">Board letter on Regional Planning and participation</a></li> </ul>
May 4-11	<p>Regional Planning for Electricity Infrastructure (EB-2011-0043): Stakeholder Meeting</p> <ul style="list-style-type: none"> <li>• <a href="#">Agenda</a></li> </ul>
Jun 3-11	<p>Regional Planning for Electricity Infrastructure (EB-2011-0043): The Board has issued Meeting Notes from the Stakeholder Meeting on Regional Planning.</p> <ul style="list-style-type: none"> <li>• <a href="#">Meeting Notes</a></li> </ul>
Nov 8-11	<p>The Board has issued a set of staff discussion papers and supporting consultant reports for the initiatives set out below. Details on the consultation process are set out in the cover letter.</p> <ul style="list-style-type: none"> <li>• <a href="#">Cover Letter</a></li> <li>• <a href="#">Distribution Network Investment Planning</a></li> <li>• <a href="#">Approaches to Mitigation for Electricity Transmitters and Distributors</a></li> <li>• <a href="#">Defining and Measuring Performance of Electricity Transmitters and Distributors</a></li> <li>• <a href="#">Developing Guidance for the Implementation of Smart Grid in Ontario</a></li> <li>• <a href="#">Regional Planning for Electricity Infrastructure</a></li> <li>• <a href="#">FAQs: Renewed Regulatory Framework for Electricity</a></li> </ul>
Nov 8-11	<p>Developing Guidance for the Implementation of Smart Grid in Ontario (EB-2011-0004): The Board has posted a Staff Discussion Paper.</p> <ul style="list-style-type: none"> <li>• <a href="#">Staff Discussion Paper</a></li> </ul>
Nov 8-11	<p>Regional Planning for Electricity Infrastructure (EB-2011-0043): The Board has posted a Staff Discussion Paper.</p> <ul style="list-style-type: none"> <li>• <a href="#">Staff Discussion Paper</a></li> </ul>

Date	Issue / Document
Nov 23-11	<p>The Board's letter dated November 8, 2011, invited interested stakeholders to participate in a two-day Information Session on the staff discussion papers and consultant reports issued that day. The session will be held on December 8 and 9, 2011. The purpose of this informal session is to give participants an opportunity to ask clarifying questions to better understand the documents. Today, Board Staff posted details regarding stakeholder participation at that session.</p> <ul style="list-style-type: none"> <li>• <a href="#">Details on Staff Information Session</a></li> </ul> <p><b>Questions in Advance Encouraged</b> To facilitate an efficient and useful session, participants are encouraged to send written questions in advance to Board staff at <a href="mailto:RRF@OntarioEnergyBoard.ca">RRF@OntarioEnergyBoard.ca</a>. Please provide document references, if any, with your questions. Questions provided in advance will be used by staff to help kick off the session.</p>
Dec 6-11	<p>Board staff posted a draft agenda for the two-day Information Session planned for December 8 and 9, 2011.</p> <ul style="list-style-type: none"> <li>• <a href="#">Draft Agenda</a></li> </ul>
Dec 9-11	<p>Board staff posted the questions that participants of the two-day Information Session provided in writing.</p> <ul style="list-style-type: none"> <li>• Canadian Manufacturers &amp; Exporters <ul style="list-style-type: none"> <li>◦ <a href="#">December 2, 2011 Letter</a></li> <li>◦ <a href="#">Questions</a></li> <li>◦ <a href="#">Brief</a></li> </ul> </li> <li>• <a href="#">Consumers Council of Canada</a></li> <li>• <a href="#">Electrical Contractors Association of Ontario</a></li> <li>• <a href="#">Just Energy Ontario LP</a></li> <li>• <a href="#">Low-Income Energy Network</a></li> <li>• <a href="#">Ontario Power Authority</a></li> <li>• <a href="#">Pollution Probe</a></li> <li>• <a href="#">Power Workers' Union</a></li> <li>• <a href="#">School Energy Coalition</a></li> </ul>
Dec 12-11	<p>Board staff posted material shown at the December 8 – 9 Information Session.</p> <ul style="list-style-type: none"> <li>• <a href="#">Power Advisory 'Bill Impact Estimation Model' presentation</a></li> </ul>
Feb 6-12	<p>The Board has issued a letter providing an update to interested stakeholders on the consultation process for its initiative to develop a renewed regulatory framework for electricity distributors and transmitters.</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> <li>• <a href="#">Attachment A - "straw man" model Regulatory Framework</a></li> </ul>

Date	Issue / Document
Feb 22-12	<p>The Board has issued a letter inviting interested stakeholders to a Stakeholder Conference, scheduled for <b>March 28 – 30, 2012</b>, as part of the Board’s consultation process to develop a renewed regulatory framework for electricity distributors and transmitters. <b>Please note, participants are asked to register in advance by e-mail to <a href="mailto:RRF@ontarioenergyboard.ca">RRF@ontarioenergyboard.ca</a> by 4:30 p.m. on March 9, 2012.</b></p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>
Mar 2-12	<p>Regional Planning for Electricity Infrastructure (EB-2011-0043): In the Board staff information session on the Renewed Regulatory Framework for Electricity held on December 8/9, 2011, clarification of the Ontario Power Authority’s (“OPA”) current regional planning process was requested. In response, the OPA provided a description of their regional planning process.</p> <ul style="list-style-type: none"> <li>• <a href="#">Description of the OPA's regional planning process</a></li> </ul>
Mar 20-12	<p>Board staff posted a draft agenda for the two and a half-day Stakeholder Conference planned for March 28, 29, and 30, 2012.</p> <ul style="list-style-type: none"> <li>• <a href="#">Draft Agenda</a></li> </ul>
Mar 21-12	<p>Board Staff has posted materials from a series of Executive Roundtable Meetings held by the Chair during February and March 2012.</p> <ul style="list-style-type: none"> <li>• <a href="#">Presentation</a></li> <li>• <a href="#">List of Attendees</a></li> <li>• Meeting Notes: <ul style="list-style-type: none"> <li>○ <a href="#">Consolidated Notes from Executive Roundtables with Distributor</a></li> <li>○ <a href="#">Consolidated Notes from Executive Roundtables with Consumer Groups</a></li> <li>○ <a href="#">Notes from Executive Roundtable with Agencies &amp; Transmitters</a></li> <li>○ <a href="#">Notes from Executive Roundtable with Academics, Finance Industry, Consultants &amp; PWU</a></li> </ul> </li> </ul>
Mar 23-12	<p>Board Staff has posted the presentations filed by participants for the Stakeholder Conference to be held March 28-30.</p> <ul style="list-style-type: none"> <li>• <a href="#">Travis Allan, Counsel for Retail Council of Canada</a></li> <li>• <a href="#">Tom Brett, Counsel for Building and Office Managers Association</a></li> <li>• <a href="#">Jake Brooks, Executive Director, the Association of Power Producers of Ontario</a></li> <li>• <a href="#">Bob Chow, Director – Transmission Integration, Ontario Power Authority</a></li> <li>• <a href="#">Frank Cronin, Consultant to Power Workers Union</a></li> <li>• <a href="#">John Cyr, Counsel for Northwestern Ontario Associated Chambers of Commerce &amp; Northwestern Ontario Municipal Association</a> <ul style="list-style-type: none"> <li>○ <a href="#">Presentation</a></li> </ul> </li> <li>• Susan Frank, VP &amp; Chief Regulatory Officer of Regulatory Affairs, Hydro One Networks <ul style="list-style-type: none"> <li>○ <a href="#">Regional Planning</a></li> <li>○ <a href="#">Investment Recovery</a></li> </ul> </li> <li>• <a href="#">Robert Frank, Counsel for Electrical Contractor Association of Ontario</a></li> <li>• <a href="#">Marion Fraser, Director, Ontario Sustainable Energy Association</a></li> <li>• <a href="#">Rene Gatien, President &amp; CEO, Waterloo North Hydro Inc.</a></li> </ul>



Date	Issue / Document
	<ul style="list-style-type: none"> <li>• <a href="#">Jack Gibbons, Consultant to Pollution Probe</a></li> <li>• <a href="#">Elise Herzig, President &amp; CEO, Ontario Energy Association</a></li> <li>• Brennain Lloyd, Coordinator for Northwatch</li> <li>• Colin McLorg, Manager – Regulatory Policy &amp; Relations, Toronto Hydro</li> <li>• <a href="#">Jack Robertson, Vice President &amp; General Manager, Elster Metering</a></li> <li>• <a href="#">Andrew Roman, Counsel for Medium Size Distributors Group</a></li> <li>• <a href="#">Bruce Sharp, Consultant to Canadian Manufacturers &amp; Exporters and co-sponsored by Consumers Council of Canada, Vulnerable Energy Consumers Coalition, School Energy Coalition, and Federation of Rental-housing Providers of Ontario</a> <ul style="list-style-type: none"> <li>◦ <a href="#">Aegent OEPIF: unit price increase details</a></li> <li>◦ <a href="#">Aegent OEPIF: unit price increase pie charts</a></li> <li>◦ <a href="#">Aegent OEPIF: residential increases</a></li> </ul> </li> <li>• <a href="#">Jay Shepherd, Counsel for School Energy Coalition</a></li> <li>• <a href="#">John Loucks, Vice-President - Corporate and Member Affairs, Electricity Distributors Association</a></li> <li>• <a href="#">George Vegh, Chair, Distribution Regulation Review Task-Force</a></li> <li>• Adonis Yatchew, Consultant to Electricity Distributors Association</li> </ul>
Mar 27-12	<p>Board staff posted an updated draft agenda for the two and a half-day Stakeholder Conference planned for March 28, 29, and 30, 2012.</p> <ul style="list-style-type: none"> <li>• <a href="#">Updated Draft Agenda</a></li> <li>• <a href="#">Attachment to Draft Agenda</a></li> </ul>
Apr 5-12	<p>The Board has issued guidance to stakeholders on issues where comments would be particularly helpful to the Board in developing a renewed regulatory framework for electricity distributors and transmitters. <b>Interested stakeholders are invited to file written comments by April 20, 2012</b> in accordance with the filing instructions set out in the letter below.</p> <ul style="list-style-type: none"> <li>• <a href="#">Letter</a></li> </ul>
Apr 9-12	<p>Board staff posted transcripts from the March 28-30 Stakeholder Conference.</p> <ul style="list-style-type: none"> <li>• <a href="#">Transcripts</a></li> </ul>
Apr 24-12	<p>Board staff has posted the written comments received by the Board by April 20, 2012.</p> <ul style="list-style-type: none"> <li>• <a href="#">View Comments (+)</a></li> </ul>

## Appendix B: Summary of Planned Consultation Activities

Target	Infrastructure investment planning			The outcome based framework		Electricity distribution rate-setting
	Distribution Network Investment	Smart Grid	Regional	Performance	Benchmarking and Rate Adjustment Indices	
2012						
October	Stakeholder working groups established to address distribution network investment planning, smart grid, and regional planning issues			Stakeholder working group established to address both performance- and benchmarking-related issues		
	A web-cast on the “Report of the Board: A Renewed Regulatory Framework for Electricity” and next steps will be held					
November	Staff proposal issued in relation to asset management and capital planning filing requirements	Working group meetings			Summary of data points and time series needed for empirical analysis issued for distributor validation	
				Staff proposal on standards, measures, and scorecard issued	Consultant concept paper on empirical analyses (including consideration for inflation and productivity) and benchmarking issued	
December	Working group meetings		Working Group Reports to the Board issued: (1) Asset Redefinition; (2) Regional Planning Process	A stakeholder meeting to inform and generate ideas prior to convening the working group		
				Working group meetings on standards, measures and scorecard		
2013						
January		Supplementary report of the Board issued: Smart grid policy		Working group meetings (continued)	Distributor validation of data points and time series due	
	Staff proposal for consolidated capital planning filing requirements issued					
	Working group meetings					

Target	Infrastructure investment planning			The outcome based framework		Electricity distribution rate-setting
	Distribution Network Investment	Smart Grid	Regional	Performance	Benchmarking and Rate Adjustment Indices	
February	Working group meetings (continued)		<b>Proposed amendments to the Transmission System Code</b> issued  <b>If needed, proposed amendments to the Distribution System Code</b> issued		Working group meetings on empirical analyses <i>(including consideration for inflation and productivity)</i> and benchmarking	
	<b>Application filing requirements and guidelines</b> issued setting out consolidated capital planning provisions					
March				<b>A Board Staff Report to the Board</b> on standards, measures and scorecard issued for comment	<b>Consultant report</b> on methodology, data analysis, calculations, and results in relation to the preferred approach to benchmarking issued <i>(consideration for inflation and productivity will inform a Stakeholder Conference in April)</i>	
April			<b>Amendments to the Transmission System Code</b> issued	Stakeholder meeting on performance and benchmarking related issues		Stakeholder conference on appropriate values for inflation and productivity factors
May				Written <i>comments due on staff report and the preferred approach to benchmarking and results</i>		
June				<b>Supplemental Report of the Board</b> issued describing the standards, measures and scorecard reporting associated with utility outcomes for customer service and cost performance		<b>Board determination</b> on inflation, productivity factor, and stretch factors issued
				<b>Consultant final report</b> setting out the approach to total cost benchmarking that will be used by the Board issued		<b>Application filing guidelines</b> issued setting rate application provisions
July				<b>If needed, proposed amendments to the Electricity Reporting &amp; Record Keeping Requirements</b> issued		<b>Board determination on stretch factor assignments</b> issued



# Ontario Energy Board Commission de l'énergie de l'Ontario



## Orientation Session Electricity Distributors Rebasing for 2014 Rates Customer Focus

Alan Findlay, Managing Director (A) - Communications & Stakeholder Relations  
Kristi Sebalj, Counsel - Legal Services  
July 23, 2013

# Overview

- Customer focus - How did we get here?
  - Additional to Customer Engagement expected from distributors
- New Notice of Application
- Implications for Letter of Direction
- Letters of Comment

# What are the OEB's Responsibilities to Consumers?

- Legislatively mandated to protect consumer's interests regarding prices, adequacy, reliability and the quality of electricity/gas service.
- The Auditor General summarized OEB's responsibilities:
  - Ensure consumer interests are protected, that they have the information they need to understand their electricity bills
  - Increase consumer understanding of the nature of electricity charges
  - Improve reporting of the effectiveness and costs of its communication activities

# OEB's Consumer Touchpoints

- Community Presentations and Events
- Social Media
- Regulatory Hearings
- Bill Inserts/Newsletters/Brochures
- OEB Website
- Consumer Relations Centre
- Traditional Media
- Multilingual Street Teams (“Knock Knock” campaign)
- Consumer Focus Groups

# Scope of OEB Consumer Touchpoint Review

- Research conducted August to December 2012
- Focus on residential and small business
- Public Opinion Research -- Identified current consumer attitudes with respect to energy system and OEB
- Review of Board Communications -- Identified current consumer touchpoints and OEB communication processes



# Evaluation Criteria

- What is OEB doing at each touchpoint?
- Are all touchpoints speaking with the same tone & message?
- Is OEB's role being communicated effectively and clearly?
- Is the touchpoint being optimized to reach the general public?
- What is the level and quality of feedback from each touchpoint?

# Key Findings

- Low consumer understanding, low interest and low desire to understand or engage further
- Specific value to the individual must be self-evident for initial and continued engagement
- LDCs are first point of contact with the electricity system

# Consumers engage when it impacts them directly

- Consumers engage at three main points:
  - Change in prices or billing issues
  - Issues or failures of the system
  - Current affairs focused on energy

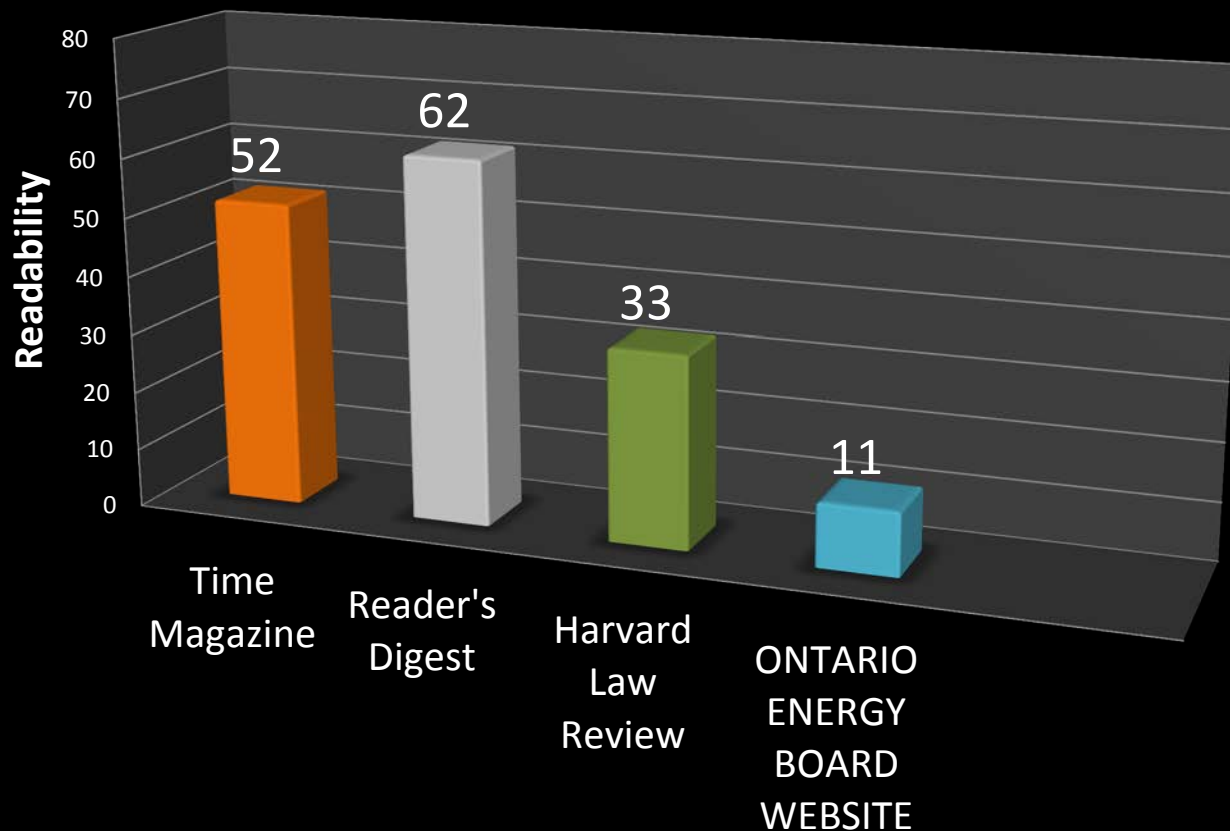


# Applications Process

- Several common issues identified
  - Public notices
    - Language used in notice, hearings, decision and news releases not understandable for average consumer
- Letters of comment
  - Complexity of topic and processes are barriers for engagement

# Plain Language (Flesch-Kincaid Test)

***100 is easiest to read***



# Website

The screenshot displays the Ontario Energy Board (OEB) website. At the top, the OEB logo and name are visible, along with navigation links for Sitemap, Links, Careers, Français, and Industry Site. A prominent banner for "KNOCK KNOCK" advises consumers that energy company salespeople must wear an ID badge and provide a business card. Below this, the website is organized into several sections: "CONSUMER PROTECTION" (including links for Protecting Consumers, Consumer Reports, and Energy Contracts), "BILL CALCULATORS" (for Residential & Small Business), "HAVE A QUESTION OR COMPLAINT?" (with contact information for the OEB Consumer Relations Centre), "UNDERSTANDING YOUR BILL" (with links for Your Electricity Bill, Global Adjustment, and Your Natural Gas Bill), "PRICES & RATES" (featuring a "Time-of-use Prices for Smart Meters" chart and "RPP - Tiered Prices" table), and "ELECTRICITY DEMAND" (showing a current demand of 17,070 MW). A footer section provides "CONSUMER INFORMATION IN OTHER LANGUAGES" with links to Arabic, Chinese, and other languages.

Ontario Energy Board

Sitemap Links Careers Français Industry Site

HAVE A QUESTION OR COMPLAINT?  
Contact: OEB Consumer Relations

Electricity Natural Gas Energy Contracts Consumer Protection OEB and You

**KNOCK KNOCK**

If you are approached to sign or renew a gas or electricity contract for your home or small business, it's important to know who you're dealing with. Energy company salespeople must wear an ID badge and give you a business card.

► READ MORE IN OUR ENERGY CONTRACTS SECTION

HOME

font-size

**CONSUMER PROTECTION**  
The Board has initiated regulatory changes to ensure consistent and fair treatment of energy consumers.

- Protecting Consumers
- Consumer Reports
- Energy Contracts

**BILL CALCULATORS**  
(Residential & Small Business)  
Use our calculators to estimate your bill or to see how your bill might look based on a contract with an energy retailer.

- Your Electricity Utility
- Your Natural Gas Utility

**HAVE A QUESTION OR COMPLAINT?**  
Contact the OEB Consumer Relations Centre.

- Steps for Making a Complaint
- Contact Information

**UNDERSTANDING YOUR BILL**  
Have questions about your electricity or natural gas bill?

- Your Electricity Bill
- Global Adjustment
- Your Natural Gas Bill

**PRICES & RATES**

Electricity Natural Gas

**Time-of-use Prices for Smart Meters**

Time is 5:30 PM EST  
Period - mid-peak  
(10 p/kWh)  
(view TOU price chart)

Weekends and holidays are off-peak during Winter and Summer periods.  
- view the 2012 Holiday Schedule

**RPP - Tiered Prices**

up to 600 kWh:	7.5 p/kWh
above 600 kWh:	8.8 p/kWh

Learn more about electricity prices

**ELECTRICITY DEMAND**

17,070 MW  
At 5:00 PM EDT October 23, 2012

**CONSUMER INFORMATION IN OTHER LANGUAGES**

العربية 繁體中文 Italiano Polski Português বাংলা Español Tagalog বাংলা Tâmp'Vik

The website offers the greatest opportunity to reach the low-volume consumer at the point they are ready to know more or engage with the OEB

# Notice - Customer Focus

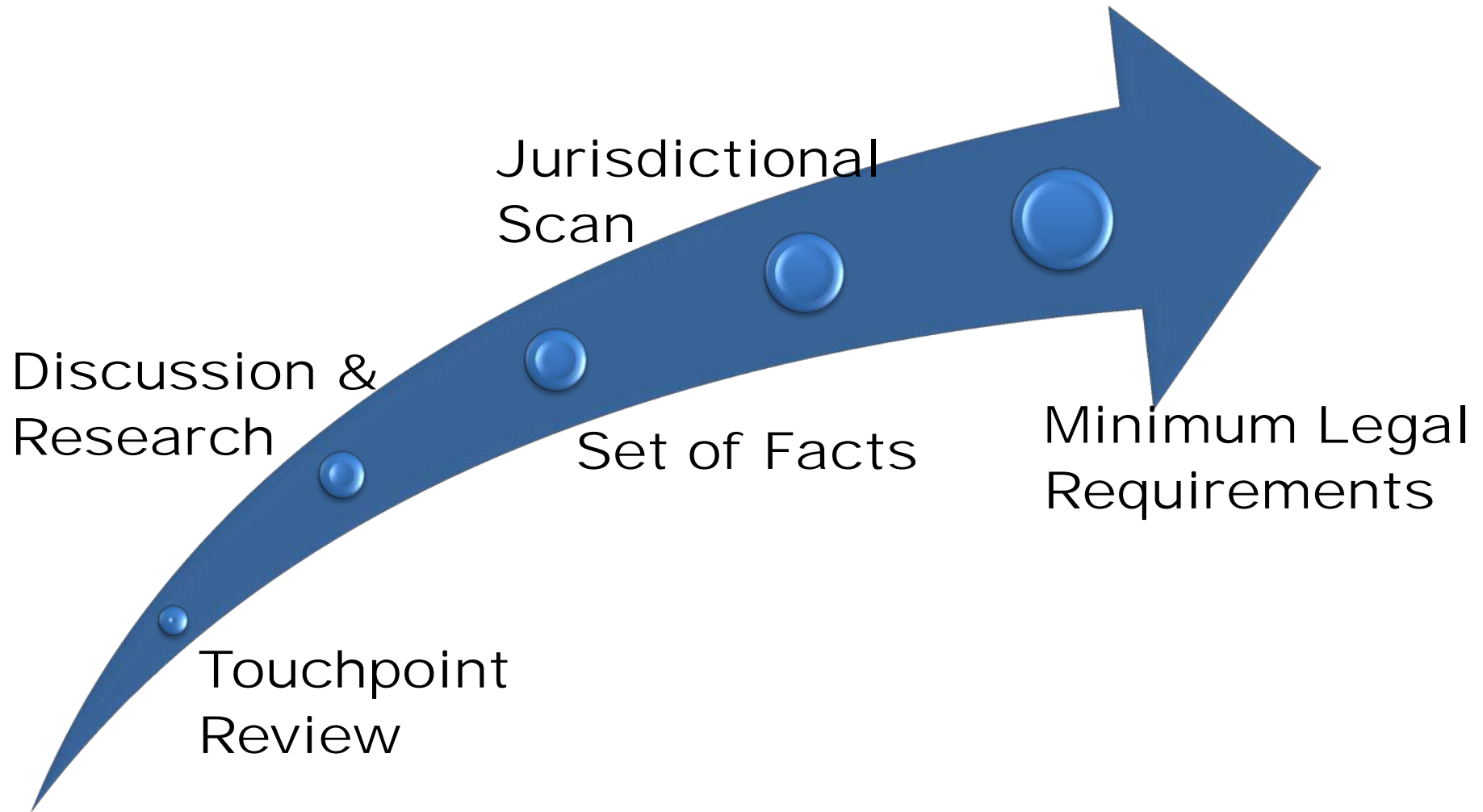
- Issues:
  - OEB language is too complex - barrier to communications
  - Readability of notice poor
  - Difficult for average customer to understand
- Solution:
  - Simplify the language of Notice of Application

# Notice - Project Overview

- Goals:
  - Improve readability for all parties, particularly ratepayers
  - Improve consistency of notices
  - Increase knowledge and understanding of the Board and its processes
  - Increase engagement of the public



# New Notice - Process



# New Notice - Features

- Shorter
- Headings
- Clear, simple but prescriptive language
- More breaks, shorter paragraphs, less clutter
- Participation options brief
- Direction to website for more information
- Details less prominent

# New Notice – OEB

- Banner
- Explains OEBs role
- Positions OEB as the regulator
- Explains the nature of a public hearing
- Provides statutory underpinning

# New Notice - Implications

- More reliance on website and Call Centre
- Onus on LDC to input dates
- Ability to file online Letter of Comment
- Letter of Direction changed

# New Notice - Next Steps

- Re-Engineering publication
- Observer status eliminated
  - but people can register interest and receive Board documents
- Roll-out to other types of OEB applications
- Feedback/review process

# Letters of Comment

- Still sought as part of the Notice process
- Board will issue standard acknowledgement
- Board expectation that LDC will address matters raised in the letters in their evidence
- Filing requirements
- LDC may choose to respond to authors of letters, but no expectation by the Board



# Questions

follow us  @OntEnergyBoard

# ONTARIO ENERGY BOARD NOTICE TO CUSTOMERS OF COOPERATIVE HYDRO EMBRUN INC.

**Cooperative Hydro Embrun Inc. has applied to raise its electricity distribution rates.**

**Learn more. Have your say.**

**Cooperative Hydro Embrun Inc. has applied to the Ontario Energy Board to increase the amount it charges by \$3.03 each month for the typical residential customer beginning on January 1, 2014. Other customers, including businesses, may be affected as well.**

## **THE ONTARIO ENERGY BOARD IS HOLDING A PUBLIC HEARING**

The Ontario Energy Board (OEB) will hold a public hearing to consider Cooperative Hydro Embrun Inc.'s request. We will question the company on its case for a rate increase. We will also hear arguments from individuals and from groups that represent Cooperative Hydro Embrun Inc. customers. At the end of this hearing, the OEB will decide what, if any, increase will be allowed.

Distributors typically apply for a full review of their rates every five years. Any rate changes for the years in between are automatically tied to inflation (and other factors intended to promote efficiency).

The OEB is an independent and impartial public agency. We make decisions that serve the public interest. Our goal is to promote a financially viable and efficient energy sector that provides you with reliable energy services at a reasonable cost.

## **BE INFORMED AND HAVE YOUR SAY**

You have the right to information regarding this application and to be involved in the process. You can:

- review Cooperative Hydro Embrun Inc.'s application on the OEB's website now.
- sign up to observe the proceeding by receiving OEB documents related to the hearing.
- file a letter with your comments, which will be considered during the hearing.
- become an active participant (called an intervenor). Apply by **[insert actual date 10 calendar days from publication]** or the hearing will go ahead without you and you will not receive any further notice of the proceeding.
- at the end of the process, review the OEB's decision and its reasons on our website.

## **LEARN MORE**

These proposed charges relate to Cooperative Hydro Embrun Inc.'s distribution services. They make up part of the Delivery line -- one of the five line items on your bill. Our file number for this case is EB-2013-0122. To learn more about this hearing, find instructions on how to file letters or become an intervenor, or to access any document related to this case please enter that file number at the OEB website:

[www.ontarioenergyboard.ca/notice](http://www.ontarioenergyboard.ca/notice). You can also phone our Consumer Relations Centre at 1-877-632-2727 with any questions.

## **ORAL VS. WRITTEN HEARINGS**

There are two types of OEB hearings – oral and written. Cooperative Hydro Embrun Inc. has applied for a written hearing. The OEB is considering this request. If you think an oral hearing is needed, you can write to the OEB to explain why.

## **PRIVACY**

*If you write a letter of comment or sign up to observe the hearing, your name and the content of your letter or the documents you file with the OEB will be put on the public record and the OEB website. However, your personal telephone number, home address and email address will be removed. If you are a business, all your information will remain public. If you apply to become an intervenor, all information will be public.*

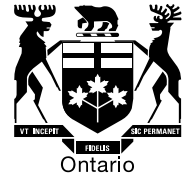
*This rate hearing will be held under section 78 of the Ontario Energy Board Act, 1998, S.O. 1998 c.15 (Schedule B).*





**Ontario Energy Board**  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto ON M4P 1E4  
Telephone: 416-481-1967  
Facsimile: 416-440-7656  
Toll free: 1-888-632-6273

**Commission de l'énergie  
de l'Ontario**  
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Toronto ON M4P 1E4  
Téléphone: 416-481-1967  
Télécopieur: 416-440-7656  
Numéro sans frais: 1-888-632-6273



**BY E-MAIL**

June 28, 2013

Benoit Larmarche  
General Manager  
Cooperative Hydro Embrun Inc.  
821 Notre Dame Street  
Embrun ON K0A 1W1

**LETTER OF DIRECTION**

Dear Mr. Larmarche:

**Re: Cooperative Hydro Embrun Inc.  
Application for 2014 Distribution Rates  
Board File Number: EB-2013-0122**

The Ontario Energy Board has now issued its Notice of Application and Hearing relating to your 2014 cost of service distribution rates application (the "Notice"). Please note that you must publish the Notice within **fourteen days** of the date of this letter. If publication is not possible within fourteen days, you must inform the Board Secretary immediately.

You are directed:

1. To arrange immediately for the publication of the of the Notice, in the exact form accompanying this letter, except, under the fourth bullet of the section entitled **"BE INFORMED AND HAVE YOUR SAY"**,
  - a. remove the bold and bracketed words **"[insert actual date 10 calendar days from publication]"**; and
  - b. insert the actual date, using the following format **"January 1, 2014"**, which date shall be determined by adding 10 calendar days to the date of publication of the newspaper in which the Notice appears.

Publication must be made in one issue of the English language newspaper having the highest circulation, according to the best information available, in Cooperative Hydro Embrun Inc.'s service area.

Please note that invoices regarding publication are not to be sent to the Board.

2. To arrange immediately for the publication of the French version of the Notice, in the exact form accompanying this letter, except, under the fourth bullet of the section entitled "**SOYEZ RENSEIGNÉ ET DONNEZ VOTRE OPINION**".
  - a. remove the bold and bracketed words "[insérer la date, 10 jours suivant la date de publication]"; and
  - b. insert the actual date, using the following format "**1 janvier 2014**", which date shall be determined by adding 10 calendar days to the date of publication of the newspaper in which the Notice appears, excluding the date of publication.

Publication must be made in one issue of the French language newspaper having the highest circulation, according to the best information available, in Cooperative Hydro Embrun Inc.'s service area.

Please note that invoices regarding publication are not to be sent to the Board.

3. To immediately contact Daniel Kim at Daniel.Kim@ontarioenergyboard.ca to provide him with the date as specified in paragraph 1b. and 2b. of the Notice as soon as it is known and to file with the Board a pdf version of the completed Notice immediately thereafter.
4. To immediately, and no later than the date of publication of the Notice, serve a copy of the Notice directly on all intervenors of record in Cooperative Hydro Embrun Inc.'s previous cost of service rate application proceeding EB-2009-0132, namely:

School Energy Coalition  
Vulnerable Energy Consumers Coalition

5. If Cooperative Hydro Embrun Inc. is a Host Distributor, to immediately, and no later than the date of publication of the Notice, serve a copy of the Notice directly on its Embedded Distributor(s).
6. To file with the Board an affidavit proving publication and service of the Notice immediately thereafter.

7. To make a copy of the application and evidence, and any amendments thereto, available for public review at Cooperative Hydro Embrun Inc.'s office and on its website.
8. To make a copy of the Notice available for public review at Cooperative Hydro Embrun Inc.'s office and on its website.
9. To provide a copy of the application and evidence, and any amendments thereto, to anyone requesting the material.

You are further directed not to include any documents or materials when serving the Notice other than documents or materials expressly required by this Letter of Direction to be served.

Yours truly,

*Original Signed By*

Kirsten Walli  
Board Secretary

Encl.



# Ontario Energy Board Commission de l'énergie de l'Ontario



## Orientation Session Electricity Distributors Rebasing for 2014 Rates

### The Applications Process – Part 1

Jennifer Lea, Counsel, Special Project

Silvan Cheung, Advisor, Electricity Rates

July 23, 2013

# Applications and Hearing Process Review

- In 2012, the Board initiated a review of its applications and hearing process, and engaged Optimus|SBR to assist.
  - *Some changes already implemented (new notice, checklists, technology in hearing room, protocols for testing models, orientation sessions for applicants, pilots)*
  - *Some changes reflected in filing requirements (materiality , executive summary, clarifying language)*
  - *Some changes may be reflected in the process for reviewing and hearing an application*
- A number of pilots were completed for 2013 applications
  - *Untranscribed teleconference before interrogatories*
  - *Staff interrogatories first, then intervenors*
  - *Intervenor interrogatories first, then staff*
- While there is a “typical” process, the Board may undertake further pilots and select a particular process depending on the application
- The Board has concluded there should be greater use of pre-hearing conferences before oral hearings

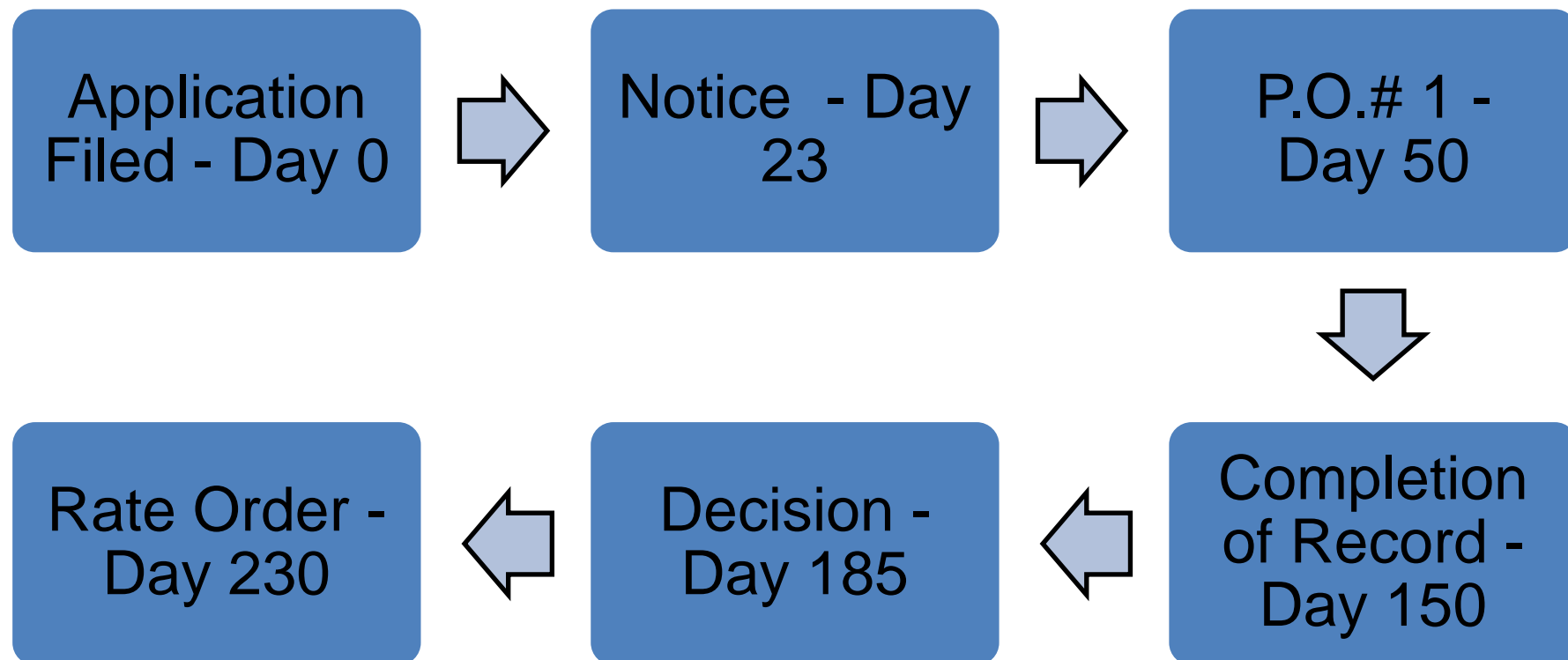
# Steps in a written hearing

Cost of service written hearings include:

- Notice
- Filing and testing evidence
- Settlement conference
- Submissions (if needed)
- Decision
- Rate Order

*OEB Act requires a hearing unless no-one is materially affected by the application.*

# Typical timeline for written hearing



# Application filed

Application  
Filed - Day 0

**October 1**

Check for completeness



If application doesn't meet filing requirements, application cannot be processed without further evidence – we will specify

*Note: letter of acknowledgement does not mean application is accepted as complete.*



# Notice issued

Notice -  
Day 23

**October 24**

If application is complete, notice is issued with directions for service



Typical requirements: newspaper publication, service on previous intervenors, post on website

*If application not complete, process clock stops until necessary evidence filed.*

# Notice period

Notice -  
Day 23

**October 24 – November 14**

Intervention and letters of comment are received  
Once publication is complete:



File affidavit of service to prove notice  
given as directed

*OEB has to wait for intervention period to expire before  
taking the next step.*

# Creating a record

P.O.# 1 -  
Day 50

**November 20**

Several options for creating an evidentiary record

- Process set out in Procedural Order #1

Options include:

- Interrogatories
- Technical conference

*Choice determined by nature of application.*

# Testing evidence – typical steps

Two rounds of discovery are usually needed

Typical timelines:

Timelines	
Interrogatories issued:	November 26
Responses to IRs due:	December 17
2nd round of IRs or Technical Conference:	January 7
Response to 2nd round of IRs or undertakings received	January 17

# Testing evidence - options

- Pre or post IR discussion or untranscribed technical conference (live or by phone)
  - *Useful for clarifying understanding of evidence – may need filings to follow up*
- Sequential IRs: Board staff (or intervenors) ask IRs, answers received, then intervenors (or Board staff) ask IRs
  - *Useful for specific technical areas, but may take extra time*

# ADR – Settlement proposal

Nearly all cost of service hearings include ADR – many have reached full settlements

- Board may exclude certain issues from settlement
- ADR: ~1 week after the second round of discovery complete (e.g. IR answers)
- Proposed settlement filed: ~2 weeks later
- Board's rules allow for Board staff to be party to a settlement
- Board acceptance / rejection or questions in considering the public interest: ~2 weeks after settlement proposal filed

*If no ADR – go to submissions.*

# Submissions

Submissions necessary if no full settlement achieved

Typical order of submissions:

- Board staff submission
- Intervenors' submissions: ~3 days to 1 week after Board staff
- Applicant's reply ~2 weeks later

*Can have argument in chief by applicant before Board staff if evidence has changed significantly during hearing or requests need clarification.*

# Hearing complete

Completion  
of Record -  
Day 150

**February 28**

The record (including the settlement proposal and any submissions) should be completed.

Depends on:

- were both ADR & submissions necessary (timeline allows for one but not both)
- were any other extra steps needed



# Decision

Decision -  
Day 185

**April 4**

Written decision scheduled to be issued – this is the date on the metric on the OEB website.

# Draft rate order

A draft rate order must be prepared in accordance with the decision

## Steps in review:

- Draft rate order filed ~2 weeks after decision
- Board staff and intervenor comment ~1 week after draft order filed
- Reply to comments ~1 week later

# Rate order

Rate Order -  
Day 230

**May 19**

Rate Order with the Tariff of Rates and Charges scheduled to be issued.

# Oral hearing – additional steps

The following steps may be added in an oral hearing:

- Issues conference
- Procedural and motions day
- Pre-hearing conference
- Oral cross-examination
- Oral submissions
- Standard timeline: 280 days

# Oral hearing protocol

- Board members hear the testimony of witnesses in the formal hearing room
- Parties cross-examine the witnesses
- Hearings are public (rare exceptions) and recorded by a court reporter, who must hear everything a witness says
- Applicants are required to provide a person to display their Exhibits on the hearing room monitors (training will be available)

## Tips:

- Business attire
- Stand when Board panel enters or exits
- No food (coffee OK, but not when testifying!)
- No cell phones

# Questions?





# Ontario Energy Board Commission de l'énergie de l'Ontario



## Orientation Session Electricity Distributors Rebasing for 2014 Rates

### The Applications Process - Part 2

Maureen Helt, Legal Counsel  
July 23, 2013

- The following Board Rules, Guidelines, and Practice Direction are applicable to Board proceedings:
  - Rules of Practice and Procedure
  - Settlement Conference Guidelines
  - Practice Direction on Confidential Filings
  - Practice Direction on Cost Awards



# Rules of Practice and Procedure



# Introduction

- The Rules apply to all proceedings of the Board
- The Rules deal with the following:
  - Evidentiary Matters, Pre-Hearing Procedures (motions), Hearings, Expert Evidence, Costs and Review of Board Decisions
- The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time
  - If it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so

# Rule 11- Amendments to the Evidentiary Record and New Information

- While the Board may permit amendments to the evidentiary record the Board has often refused to do so when the new evidence has not been tested on the record
- The Board has cautioned parties about introducing new evidence at the submission phase of the proceeding

# Rule 13A - Expert Conference

- Parties may engage experts to give evidence in a proceeding
- In a proceeding where two or more parties have engaged experts, the Board may require that the experts confer in advance of the hearing
- Purpose: to narrow issues, and to identify the points on which their view differ or agree
- Following the expert conference, a joint written statement is prepared and is filed as evidence in the proceeding.
- The experts may be required to appear together as a concurrent expert panel (hot tubbing) at the hearing

# Expert Conference (Cont'd)

- An expert conference may be scheduled after a failed attempt at settlement, and before the oral hearing
- Expert conferences are facilitated by external facilitator
- The Board may direct attendance or non-attendance of counsel for the parties
- Purpose of the expert conference is to make the hearing more efficient and have the experts provide assistance to the Board in understanding the issue
  - not only to advocate for their respective client's side

# Rule 28 - Interrogatories

- Rules 28 – the purpose of Interrogatories is to:
  - To clarify the evidence
  - simplify the issues
  - Expedite the proceeding
  - Permit a full understanding of the matters in issue in the proceeding

# Rule 29 - Responses to Interrogatories

- Sets out the requirements for responses
- Provides for a refusal to answer an interrogatory in circumstances where the response cannot be provided with reasonable effort or where the question is not relevant to the issues in the case

# Interrogatories (cont'd)

- Parties may refuse to answer interrogatories for many reasons including lack of relevance/information is beyond the scope of the proceeding
- Parties may file a motion with the Board requesting an order for better information provided in response to an interrogatory



# **Practice Direction on Confidential Filings**

# Introduction

- Purpose:
  - To establish uniform procedures for the filing of confidential materials in relation to all matters that come before the Board
  - Intended to assist participants in the Board's processes in understanding how the Board will deal with such filings
- Principles:
  - All records should be open for inspection by any person
  - The placing of materials on the public record is the rule, and confidentiality is the exception
  - Seeks to strike a balance between the objectives of transparency and openness and the need to protect confidential information in appropriate cases

# The Public Record

- The Board generally places materials it receives on the public record so that all interested parties can have equal access to those materials
- The Board relies on full and complete disclosure of all relevant information to ensure that its decisions are well-informed and recognizes that some of that information may be of a confidential nature and should be protected as such
- The Board has implemented internal procedures that are designed to ensure that confidential information is segregated from other information and is made available within the Board on a limited basis

# Confidentiality

- The Board expects parties to:
  - Make every effort to limit the scope of their requests for confidentiality
  - Prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record
- Redacted Documents vs Summaries
  - A redacted version is required when parts of a document require confidential treatment
  - A summary of the subject document is required when it is necessary to retain the entire document in confidence

# Process for Confidentiality Requests

- Rule 5 of the Practice Direction sets out the process for confidentiality in matters before the Board:
  - 5.1.1. All filings must be made in accordance with the Board's *Rules of Practice and Procedure*, specifically, Rule 10 of the *Rules of Practice and Procedure*, which deals with confidential documents before the Board
  - 5.1.2. A party may request that all or part of a document be held confidential
  - 5.1.3. A request for confidentiality must be addressed to the Board Secretary.

# Process (Cont'd)

- Rule 5.1.4 sets out what must be filed with a request for confidentiality:
  - (a) a cover letter indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental
  - (b) a confidential, un-redacted version of the document containing all of the information for which confidentiality is requested
    - This version of the document should be marked “confidential” and should identify all portions of document for which confidentiality is claimed
  - (c) either a non-confidential, redacted version of the document or a non-confidential description or summary of the document

# Declaration and Undertaking

- Parties wishing access to confidential information are to file a Declaration and Undertaking with the Board
- Board notifies parties when it has accepted a Declaration and Undertaking from a person
- Parties should NOT independently serve a Declaration and Undertaking on other parties
- Board considers violations of a Declaration and Undertaking as very serious matters

# Objections

- Those objecting must address the following:
  - the reason why the party believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part, by reference to the grounds for confidentiality expressed by the party making the request for confidentiality
  - the reason why the party requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case
  - in the event that the Board were to order the disclosure of confidential information under suitable arrangements as to confidentiality, the name of each representative of the party that would provide any necessary Declaration and Undertaking (see section 6.1)
- The party requesting confidentiality will have an opportunity to reply to the objection



# Settlement Conference Guidelines



# Introduction

- Purpose:
  - To set out the process as well as the duties and obligations of the various parties in order to assist in the settlement of as many issues as possible
- Scope:
  - Confidential nature of the settlement conference
  - Description of the role of the facilitator – to attempt to achieve settlement on all issues
  - Description of the role of staff - Staff ensure that all relevant information is brought forward and considered in the negotiations
  - The procedure to be followed if a party disagrees with an issue in the settlement or wants to withdraw
  - The practice of the Board in accepting or rejecting an agreement

# Settlement Conference

- Process:
  - If required by the Board, a Settlement Conference would be specified in a Procedural Order
  - Takes place only after all the evidence of the applicant and intervenors is filed and the interrogatory process is completed
  - The Board generally appoints an external facilitator to manage the session and encourage settlement
  - In some facilities cases, only landowners affected by the application may be involved in the negotiations
  - Held at the Board's offices, and are not transcribed

# Settlement Conference (Cont'd)

- Principles:
  - Everyone (including the facilitator) who attends a settlement conference must treat offers to settle and related discussions as confidential
  - Board members do not participate in the conference and will not be advised of the discussions
  - The Board can exclude certain issues from a settlement when it would prefer to hear full argument

# The Rules of Practice and Procedure

- Rule 31:
  - Only the parties to an application (including staff) may attend a settlement conference
  - All offers and related discussions in the settlement conference must be kept confidential
  - If an agreement is reached, a settlement proposal will be drafted by the applicant and filed with the Board
    - The structure of the settlement agreement will be based on the final issues list or the exhibits in an application in the absence of an issues list
- The Board requires that the parties file a settlement proposal that cites supporting evidence to support the proposal

# The Settlement Proposal

- Most settlement proposals are reviewed by the Board in writing
- In certain cases the applicant and parties to the agreement may be asked to appear at a hearing before the Board to:
  - present and explain the proposed settlement agreement
  - answer questions
- The settlement proposal can reflect:
  - Complete settlement (i.e. all issues settled)
  - Partial settlement where certain issues remain unsettled or partially settled
  - Partial settlement where certain intervenors have not agreed to settle particular issues

# The Settlement Hearing

- The Board panel can choose to accept or reject the proposed settlement, or part of the settlement
  - Where the settlement proposal is accepted, the Board does not hear evidence on the settled issues, and renders its decision on those issues on the basis of the settlement
- Board staff participates in settlements and may advise parties of concerns with a settlement; may file a submission highlighting certain parts of a settlement; and in certain circumstances staff may also be a party to the settlement
- Where no agreement results from a settlement conference, or there is only a partial settlement, the Board will hear evidence on unsettled issues
  - Similarly, if the Board rejects the agreement, it will hear evidence on those issues

# Practice Direction on Cost Awards



# Eligibility

- Section 3.04 sets out the factors considered by the Board in relation to eligibility
- Section 3.05 sets out a list of parties that are not eligible for a cost award
  - In 2012 the Practice Direction was amended to add to the list of parties that are NOT eligible:
    - all levels of government
    - government agencies
    - corporations

# The Rules of Practice and Procedure

- Rule 41: **Cost Eligibility and Awards**
  - 41.01 Any person may apply to the Board for eligibility to receive cost awards in Board proceedings in accordance with the Practice Directions
  - 41.02 Any person in a proceeding whom the Board has determined to be eligible for cost awards under Rule 41.01 may apply for costs in the proceeding in accordance with the Practice Directions

# Cost Award Tariff

- Board has a “Cost Award Tariff” appended to the Practice Direction on Cost Awards
- The tariff provides the fees available to be claimed by counsel, analysts and consulting fees
- In addition to fees reasonable disbursements can be claimed by parties such as postage, photocopying, transcript costs, travel and accommodation as long as it is directly related to the party’s participation in the process

# Board Decisions on Costs

- In EB 2011-0053 the Board noted the following:
  - In appropriate cases the Board may deny a party its own costs, or require it to pay the costs of other parties or the Board, or both
  - Where the moving party is a regulated entity, the Board may order that the shareholder pay such costs, without recourse to the ratepayer
  - The Board expects the incidence of such orders to be infrequent
    - The standard for qualification is high
    - But the Board considers the possibility of such orders to be a necessary element of its governance of its own processes
- In EB 2012-0064 the Board stated that “the applicant should generally only be responsible for paying the costs of one representative at the Settlement conference”

# Questions



# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

**(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)**

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# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

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# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

**(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)**

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# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

**(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)**

### **PART I - GENERAL**

#### **1. Application and Availability of Rules**

- 1.01 These Rules apply to all proceedings of the Board. These Rules, other than the Rules set out in Part VII, also apply, with such modifications as the context may require, to all proceedings to be determined by an employee acting under delegated authority.
- 1.02 These Rules, in English and in French, are available for examination on the Board's website, or upon request from the Board Secretary.
- 1.03 The Board may dispense with, amend, vary or supplement, with or without a hearing, all or part of any Rule at any time, if it is satisfied that the circumstances of the proceeding so require, or it is in the public interest to do so.

#### **2. Interpretation of Rules**

- 2.01 These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board.
- 2.02 Where procedures are not provided for in these Rules, the Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- 2.03 These Rules shall be interpreted in a manner that facilitates the introduction and use of electronic regulatory filing and, for greater certainty, the introduction and use of digital communication and storage media.
- 2.04 Unless the Board otherwise directs, any amendment to these Rules comes into force upon publication on the Board's website.

#### **3. Definitions**

- 3.01 In these Rules,

**"affidavit"** means written evidence under oath or affirmation;

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

**“appeal”** has the meaning given to it in **Rule 17.01**;

**"appellant"** means a person who brings an appeal;

**"applicant"** means a person who makes an application;

**"application"** when used in connection with a proceeding commenced by an application to the Board, or transferred to the Board by the management committee under section 6(7) of the *OEB Act*, means the commencement by a party of a proceeding other than an appeal;

**"Board"** means the Ontario Energy Board;

**"Board Secretary"** means the Secretary and any assistant Secretary appointed by the Board under the *OEB Act*;

**"Board's website"** means the website maintained by the Board at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca);

**"document"** includes written documentation, films, photographs, charts, maps, graphs, plans, surveys, books of account, transcripts, videotapes, audio tapes, and information stored by means of an electronic storage and retrieval system;

**"Electricity Act"** means the *Electricity Act*, 1998, S.O. 1998, c.15, Schedule A, as amended from time to time;

**"electronic hearing"** means a hearing held by conference telephone or some other form of electronic technology allowing persons to communicate with one another;

**“employee acting under delegated authority”** means an employee to whom a power or duty of the Board has been delegated under section 6 of the *OEB Act*;

**"fax"** means the transmission of a facsimile of a document by telephone, computer network or other electronic means;

**"file"** means to file with the Board Secretary in compliance with these Rules;

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

**"form"** means a template for a document intended to demonstrate required content;

**"hearing"** means a hearing in any proceeding before the Board, and includes an electronic hearing, an oral hearing, and a written hearing;

**"interrogatory"** means a request in writing for information or particulars made to a party in a proceeding;

**"intervenor"** means a person who has been granted intervenor status by the Board;

**"management committee"** means the management committee of the Board established under section 4.2 of the *OEB Act*;

**"market rules"** means the rules made under section 32 of the *Electricity Act*;

**"Minister"** means the Minister as defined in the *OEB Act*;

**"motion"** means a request for an order or decision of the Board made in a proceeding;

**"observer"** means a person who has filed for observer status in compliance with these Rules;

**"OEB Act"** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B, as amended from time to time;

**"oral hearing"** means a hearing at which the parties or their representatives attend before the Board in person;

**"party"** includes an applicant, an appellant, an employee acting under delegated authority where applicable, and any person granted intervenor status by the Board;

**"Practice Directions"** means practice directions issued by the Board from time to time;

**"proceeding"** means a process to decide a matter brought before the Board, including a matter commenced by application, notice of appeal,

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

transfer by or direction from the management committee, reference, request or directive of the Minister, or on the Board's own motion;

**"reference"** means any reference made to the Board by the Minister;

**"reliability standard"** has the meaning given to it in the *Electricity Act*;

**"serve"** means to effectively deliver, in compliance with these Rules or as the Board may direct;

**"statement"** means any unsworn information provided to the Board;

**"writing"** includes electronic media, formed and secured as directed by the Board;

**"written"** includes electronic media, formed and secured as directed by the Board; and

**"written hearing"** means a hearing held by means of the exchange of documents.

### 4. Procedural Orders and Practice Directions

- 4.01 The Board may at any time in a proceeding make orders with respect to the procedure and practices that apply in the proceeding. Every party shall comply with all applicable procedural orders.
- 4.02 The Board may set time limits for doing anything provided in these Rules.
- 4.03 The Board may at any time amend any procedural order.
- 4.04 Where a provision of these Rules is inconsistent with a provision of a procedural order, the procedural order shall prevail to the extent of the inconsistency.
- 4.05 The Board may from time to time issue *Practice Directions* in relation to the preparation, filing and service of documents or in relation to participation in a proceeding. Every party shall comply with all applicable *Practice Directions*, whether or not specifically referred to in these Rules.

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

### 5. Failure to Comply

- 5.01 Where a party to a proceeding has not complied with a requirement of these Rules or a procedural order, the Board may:
- (a) grant all necessary relief, including amending the procedural order, on such conditions as the Board considers appropriate;
  - (b) adjourn the proceeding until it is satisfied that there is compliance;  
or
  - (c) order the party to pay costs.
- 5.02 Where a party fails to comply with a time period for filing evidence or other material, the Board may, in addition to its powers set out in **Rule 5.01**, decide to disregard the evidence or other material that was filed late.
- 5.03 No proceeding is invalid by reason alone of an irregularity in form.

### 6. Computation of Time

- 6.01 In the computation of time under these Rules or an order:
- (a) where there is reference to a number of days between two events, the days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens; and
  - (b) where the time for doing an act under these Rules expires on a holiday, as defined under **Rule 6.02**, the act may be done on the next day that is not a holiday.
- 6.02 A holiday means a Saturday, Sunday, statutory holiday, and any day that the Board's offices are closed.

### 7. Extending or Abridging Time

- 7.01 The Board may on its own motion or upon a motion by a party extend or abridge a time limit directed by these Rules, *Practice Directions* or by the Board, on such conditions the Board considers appropriate.

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- 7.02 The Board may exercise its discretion under this Rule before or after the expiration of a time limit, with or without a hearing.
- 7.03 Where a party cannot meet a time limit directed by the Rules, *Practice Directions* or the Board, the party shall notify the Board Secretary as soon as possible before the time limit has expired.

### **8. Motions**

- 8.01 Unless the Board directs otherwise, any party requiring a decision or order of the Board on any matter arising during a proceeding shall do so by serving and filing a notice of motion.
- 8.02 The notice of motion and any supporting documents shall be filed and served within such a time period as the Board shall direct.
- 8.03 Unless the Board directs otherwise, a party who wishes to respond to the notice of motion shall file and serve, at least two calendar days prior to the motion's hearing date, a written response, an indication of any oral evidence the party seeks to present, and any evidence the party relies on, in appropriate affidavit form.
- 8.04 The Board, in hearing a motion, may permit oral or other evidence in addition to the supporting documents accompanying the notice, response or reply.

## **PART II - DOCUMENTS, FILING, SERVICE**

### **9. Filing and Service of Documents**

- 9.01 All documents filed with the Board shall be directed to the Board Secretary. Documents, including applications and notices of appeal, shall be filed in such quantity and in such manner as may be specified by the Board.
- 9.02 Any person wishing to access the public record of any proceeding may make arrangements to do so with the Board Secretary.

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### 9A Filing of Documents that Contain Personal Information

9A.01 Any person filing a document that contains personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, of another person who is not a party to the proceeding shall file two versions of the document as follows:

- (a) one version of the document must be a non-confidential, redacted version of the document from which the personal information has been deleted or stricken; and
- (b) the second version of the document must be a confidential, un-redacted version of the document that includes the personal information and should be marked "Confidential—Personal Information".

9A.02 The non-confidential, redacted version of the document from which the personal information has been deleted or stricken will be placed on the public record. The confidential, un-redacted version of the document will be held in confidence and will not be placed on the public record. Neither the confidential, un-redacted version of the document nor the personal information contained in it will be provided to any other party, including a person from whom the Board has accepted a Declaration and Undertaking under the *Practice Directions*, unless the Board determines that either (a) the redacted information is not personal information, as that phrase is defined in the *Freedom of Information and Protection of Privacy Act*, or (b) the disclosure of the personal information would be in accordance with the *Freedom of Information and Protection of Privacy Act*.

### 10. Confidential Filings

10.01 A party may request that all or any part of a document, including a response to an interrogatory, be held in confidence by the Board.

10.02 Any request for confidentiality made under **Rule 10.01** shall be made in accordance with the *Practice Directions*.

10.03 A party may object to a request for confidentiality by filing and serving an objection in accordance with the *Practice Directions* and within the time specified by the Board.

10.04 After giving the party claiming confidentiality an opportunity to reply to any objection made under **Rule 10.03**, the Board may:

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- (a) order the document be placed on the public record, in whole or in part;
  - (b) order the document be kept confidential, in whole or in part;
  - (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document prepared by the party claiming confidentiality be revised;
  - (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality; or
  - (e) make any other order the Board finds to be in the public interest.
- 10.05 Where the Board makes an order under **Rule 10.04** to place on the public record any part of a document that was filed in confidence, the party who filed the document may, subject to **Rule 10.06** and in accordance with and within the time specified in the *Practice Directions*, request that it be withdrawn prior to its placement on the public record.
- 10.06 The ability to request the withdrawal of information under **Rule 10.05** does not apply to information that was required to be produced by an order of the Board.
- 10.07 Where a party wishes to have access to a document that, in accordance with the *Practice Directions*, will be held in confidence by the Board without the need for a request under **Rule 10.01**, the party shall make a request for access in accordance with the *Practice Directions*.
- 10.08 Requests for access to confidential information made at times other than during the proceeding in which the confidential information was filed shall be made in accordance with the *Practice Directions*.
- 10.09 The party who filed the information to which a request for access under **Rule 10.07** or **Rule 10.08** relates may object to the request for access by filing and serving an objection within the time specified by the Board.
- 10.10 The Board may, further to a request for access under **Rule 10.07** or **Rule 10.08**, make any order referred to in **Rule 10.04**.



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### **11. Amendments to the Evidentiary Record and New Information**

11.01 The Board may, on conditions the Board considers appropriate:

- (a) permit an amendment to the evidentiary record; or
- (b) order an amendment to the evidentiary record that may be necessary for the purpose of a complete record.

11.02 Where a party becomes aware of new information that constitutes a material change to evidence already before the Board before the decision or order is issued, the party shall serve and file appropriate amendments to the evidentiary record, or serve and file the new information.

11.03 Where all or any part of a document that forms part of the evidentiary record is revised, each revised part shall clearly indicate:

- (a) the date of revision; and
- (b) the part revised.

11.04 A party shall comply with any direction from the Board to provide such further information, particulars or documents as the Board considers necessary to enable the Board to obtain a full and satisfactory understanding of an issue in the proceeding.

### **12. Affidavits**

12.01 An affidavit shall be confined to the statement of facts within the personal knowledge of the person making the affidavit unless the facts are clearly stated to be based on the information and belief of the person making the affidavit.

12.02 Where a statement is made on information and belief, the source of the information and the grounds on which the belief is based shall be set out in the affidavit.

12.03 An exhibit that is referred to in an affidavit shall be marked as such by the person taking the affidavit, and the exhibit shall be attached to and filed with the affidavit.

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12.04 The Board may require the whole or any part of a document filed to be verified by affidavit.

### **13. Written Evidence**

13.01 Other than oral evidence given at the hearing, where a party intends to submit evidence, or is required to do so by the Board, the evidence shall be in writing and in a form approved by the Board.

13.02 The written evidence shall include a statement of the qualifications of the person who prepared the evidence or under whose direction or control the evidence was prepared.

13.03 Where a party is unable to submit written evidence as directed by the Board, the party shall:

- (a) file such written evidence as is available at that time;
- (b) identify the balance of the evidence to be filed; and
- (c) state when the balance of the evidence will be filed.

### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;

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- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence; and
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;
- (d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and
- (e) any issues in relation to confidentiality.

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13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A**.

### 14. Disclosure

14.01 A party who intends to rely on or refer to any document that has not already been filed in a proceeding shall file and serve the document in accordance with the Board's directions.

14.02 Any party who fails to comply with **Rule 14.01** shall not put the document in evidence or use it in the cross-examination of a witness, unless the Board otherwise directs.

14.03 Where the good character, propriety of conduct or competence of a party is an issue in the proceeding, the party is entitled to be furnished with reasonable information of any allegations at least 15 calendar days prior to the hearing.

## PART III - PROCEEDINGS

### 15. Commencement of Proceedings

15.01 Unless commenced by the Board, a proceeding shall be commenced by filing an application or a notice of appeal in compliance with these Rules, and within such a time period as may be prescribed by statute or the Board.

15.02 A person appealing an order made under the market rules shall file a notice of appeal within 15 calendar days after being served with a copy of the order, or within 15 calendar days of having completed making use of any provisions relating to dispute resolution set out in the market rules, whichever is later.

15.03 An appeal of an order, finding or remedial action made or taken by a standards authority referred to in section 36.3 of the *Electricity Act* shall be commenced by the Independent Electricity System Operator by notice of appeal filed within 15 calendar days after being served with a copy of the order or finding or of notice of the remedial action, or within 15 calendar days of receipt of notice of the final determination of any other reviews and

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appeals referred to in section 36.3(2) of the *Electricity Act*, whichever is later.

### 16. Applications

16.01 An application shall contain:

- (a) a clear and concise statement of the facts;
- (b) the grounds for the application;
- (c) the statutory provision under which it is made; and
- (d) the nature of the order or decision applied for.

16.02 An application shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.

### 17. Appeals

17.01 An “appeal” means:

- (a) an appeal under section 7 of the *OEB Act*;
- (b) a review under section 59(6) of the *OEB Act*;
- (c) a review of an amendment to the market rules under section 33 or section 34 of the *Electricity Act*;
- (d) a review of a provision of the market rules under section 35 of the *Electricity Act*;
- (e) an appeal under section 36, 36.1 or 36.3 of the *Electricity Act*;
- (f) a review of a reliability standard under section 36.2 of the *Electricity Act*; and
- (g) an appeal under section 7(4) of the *Toronto District Heating Corporation Act, 1998*.

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17.02 A notice of appeal shall contain:

- (a) the portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed;
- (b) the statutory provision under which the appeal is made;
- (c) the nature of the relief sought, and the grounds on which the appellant shall rely;
- (d) if an appeal of an order made under the market rules under section 36 of the *Electricity Act*, a statement confirming that the appellant has made use of any dispute resolution provisions of the market rules;
- (e) if an application by a market participant for review of a provision of the market rules under section 35 of the *Electricity Act*, a statement confirming that the market participant has made use of any review provisions of the market rules; and
- (f) if an appeal of an order, finding or remedial action under section 36.3 of the *Electricity Act*, a statement confirming that the Independent Electricity System Operator has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined.

17.03 A notice of appeal shall be in such form as may be approved or specified by the Board and shall be accompanied by such fee as may be set for that purpose by the management committee under section 12.1(2) of the *OEB Act*.

17.04 At a hearing of an appeal, an appellant shall not seek to appeal a portion of the order, decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** or rely on any ground, that is not stated in the appellant's notice of appeal, except with leave of the Board.

17.05 In addition to those persons on whom service is required by statute, the Board may direct an appellant to serve the notice of appeal on such persons as it considers appropriate.

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- 17.06 The Board may require an appellant to file an affidavit of service indicating how and on whom service of the notice of appeal was made.
- 17.07 Subject to **Rule 17.08**, a request by a party to stay part or all of the order, Decision, market rules, reliability standard or finding or remedial action referred to in **Rule 15.03** being appealed pending the determination of the appeal shall be made by motion to the Board.
- 17.08 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 17.09 In respect of a motion brought under **Rule 17.07**, the Board may order that implementation or operation of the order, decision, market rules or reliability standard be delayed or stayed, on conditions as it considers appropriate.

## 18. Dismissal Without a Hearing

- 18.01 The Board may propose to dismiss a proceeding without a hearing on the grounds that:
- (a) the proceeding is frivolous, vexatious or is commenced in bad faith;
  - (b) the proceeding relates to matters that are outside the jurisdiction of the tribunal; or
  - (c) some aspect of the statutory requirements for bringing the proceeding has not been met.
- 18.02 Where the Board proposes to dismiss a proceeding under **Rule 18.01**, it shall give notice of the proposed dismissal in accordance with the *Statutory Powers Procedure Act*.
- 18.03 A party wishing to make written submissions on the proposed dismissal shall do so within 10 calendar days of receiving the Board's notice under **Rule 18.02**.
- 18.04 Where a party who commenced a proceeding has not taken any steps with respect to the proceeding for more than one year from the date of filing, the Board may notify the party that the proceeding shall be dismissed unless the person, within 10 calendar days of receiving the

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Board's notice, shows cause why it should not be dismissed or advises the Board that the application or appeal is withdrawn.

- 18.05 Where the Board dismisses a proceeding, or is advised that the application or appeal is withdrawn, any fee paid to commence the proceeding shall not be refunded.

### 19. Decision Not to Process

- 19.01 The Board or Board staff may decide not to process documents relating to the commencement of a proceeding if:

- (a) the documents are incomplete;
- (b) the documents were filed without the required fee for commencing the proceeding;
- (c) the documents were filed after the prescribed time period for commencing the proceeding has elapsed; or
- (d) there is some other technical defect in the commencement of the proceeding.

- 19.02 The Board or Board staff shall give the party who commenced the proceeding notice of a decision made under **Rule 19.01** that shall include:

- (a) reasons for the decision; and
- (b) requirements for resuming processing of the documents, if applicable.

- 19.03 Where requirements for resuming processing of the documents apply, processing shall be resumed where the party complies with the requirements set out in the notice given under **Rule 19.02** within:

- (a) subject to **Rule 19.03(b)**, 30 calendar days from the date of the notice; or
- (b) 10 calendar days from the date of the notice, where the proceeding commenced is an appeal.



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19.04 After the expiry of the applicable time period under **Rule 19.03**, the Board may close its file for the proceeding without refunding any fee that may already have been paid.

19.05 Where the Board has closed its file for a proceeding under **Rule 19.04**, a person wishing to refile the related documents shall:

- (a) in the case of an application, refile the documents as a fresh application, and pay any fee required to do so; or
- (b) in the case of an appeal, refile the documents as a fresh notice of appeal, except where the time period for filing the appeal has elapsed, in which case the documents cannot be refiled.

## 20. Withdrawal

20.01 An applicant or appellant may withdraw an application or appeal:

- (a) at any time prior to the hearing, by filing and serving a notice of withdrawal signed by the applicant or the appellant, or his or her representative; or
- (b) at the hearing with the permission of the Board.

20.02 A party may by motion seek leave to discontinue participation in a proceeding at any time before a final decision.

20.03 The Board may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

20.04 Any fee paid to commence the proceeding by an applicant seeking to withdraw under **Rule 20.01** shall not be refunded.

20.05 If the Board has reason to believe that a withdrawal or discontinuance may adversely affect the interests of any party or may be contrary to the public interest, the Board may hold or continue the hearing, or may issue a decision or order based upon proceedings to date.

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### 21. Notice

- 21.01 Any notices required by these Rules or a Board order shall be given in writing, unless the Board directs otherwise.
- 21.02 The Board may direct a party to give notice of a proceeding or hearing to any person or class of persons, and the Board may direct the method of providing the notice.
- 21.03 Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit or statement of service that indicates how, when, and to whom service was made.

### 22. Levels of Participation

- 22.01 A person who wishes to participate in a proceeding, shall comply with the Rules applicable to the intended level of participation:
- (a) To actively participate in the proceeding as a party, the person shall comply with **Rule 23**.
  - (b) To provide comments in writing or through an oral presentation, the person shall comply with **Rule 24**.
  - (c) To participate as an observer, the person shall comply with **Rule 25**.
- 22.02 The manner in which persons may participate in a proceeding as identified in **Rule 22.01** is subject to any provision to the contrary in a notice or procedural order issued by the Board.

### 23. Intervenor Status

- 23.01 Subject to **Rule 23.05** and except as otherwise provided in a notice or procedural order issued by the Board, a person who wishes to actively participate in the proceeding shall apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding.
- 23.02 The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and

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responsibly in the proceeding by submitting evidence, argument or interrogatories, or by crossexamining a witness.

23.03 Every letter of intervention shall contain the following information:

- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention;
- (b) subject to **Rule 23.04**, a concise statement of the nature and scope of the intervenor's intended participation;
- (c) a request for the written evidence, if it is desired;
- (d) an indication as to whether the intervenor intends to seek an award of costs;
- (e) if applicable, the intervenor's intention to participate in the hearing using the French language; and
- (f) the full name, address, telephone number, and fax number, if any, of no more than two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding.

23.04 Where, by reason of an inability or insufficient time to study the document initiating the proceeding, a person is unable to include any of the information required in the letter of intervention under **Rule 23.03(b)**, the person shall:

- (a) state this fact in the letter of intervention initially filed; and
- (b) refile and serve the letter of intervention with the information required under **Rule 23.03(b)** within 15 calendar days of receipt of a copy of any written evidence, or within 15 calendar days of the filing of the letter of intervention, or within 3 calendar days after a proposed issues list has been filed under **Rule 30**, whichever is later.

23.05 A person may apply for intervenor status after the time limit directed by the Board by filing and serving a notice of motion and a letter of intervention

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that, in addition to the information required under **Rule 23.03**, shall include reasons for the late application.

- 23.06 The Board may dispose of a motion under **Rule 23.05** with or without a hearing.
- 23.07 A party may object to a person applying for intervenor status by filing and serving written submissions within 10 calendar days of being served with a letter of intervention.
- 23.08 The person applying for intervenor status may make written submissions in response to any submissions filed under **Rule 23.07**.
- 23.09 The Board may grant intervenor status on conditions it considers appropriate.

## **24. Public Comment**

- 24.01 Except as otherwise provided in a notice or procedural order issued by the Board, a person who does not wish to be a party in a proceeding, but who wishes to communicate views to the Board, shall file a letter of comment.
- 24.02 The letter of comment shall include the nature of the person's interest, the person's full name, address and telephone number, as well as any request to make an oral presentation to the Board in respect of the proceeding.
- 24.03 The Board shall serve a letter of comment filed under **Rule 24.01** on the party who commenced the proceeding and on any other party who requests a copy.
- 24.04 Any party may file a reply to the letter of comment, and shall serve it on the person who filed the letter and such other persons as directed by the Board.
- 24.05 Where the Board has permitted a person to make an oral presentation, that person shall contact the Board Secretary to arrange a time to be heard by the Board.
- 24.06 A person who makes an oral presentation shall not do so under oath or affirmation and shall not be subject to cross-examination, unless the Board directs otherwise.

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### **25. Observer Status**

- 25.01 Except as otherwise provided in a notice or procedural order issued by the Board, a person who is interested in being served with documents issued by the Board in a proceeding shall file a request for the documents desired.
- 25.02 A person who is interested in being served with documents filed by a party in respect of a proceeding shall file and serve a request for documents on that party.
- 25.03 A party who has been served with a request under **Rule 25.02** is entitled to be reimbursed by the observer for expenses actually incurred in serving the documents on the observer, unless the Board directs otherwise.
- 25.04 Upon being reimbursed, if applicable, under **Rule 25.03**, the party shall serve the requested documents on the observer.
- 25.05 All documents filed in a proceeding may be examined free of charge at the Board's offices.

### **26. Adjournments**

- 26.01 The Board may adjourn a hearing on its own initiative, or upon motion by a party, and on conditions the Board considers appropriate.
- 26.02 Parties shall file and serve a motion to adjourn at least 10 calendar days in advance of the scheduled date of the hearing.

## **PART IV - PRE-HEARING PROCEDURES**

### **27. Technical Conferences**

- 27.01 The Board may direct the parties to participate in technical conferences for the purposes of reviewing and clarifying an application, an intervention, a reply, the evidence of a party, or matters connected with interrogatories.

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27.02 The technical conferences may be transcribed, and the transcription, if any, shall be filed and form part of the record of the proceedings.

## 28. Interrogatories

28.01 In any proceeding, the Board may establish an interrogatory procedure to:

- (a) clarify evidence filed by a party;
- (b) simplify the issues;
- (c) permit a full and satisfactory understanding of the matters to be considered; or
- (d) expedite the proceeding.

28.02 Interrogatories shall:

- (a) be directed to the party from whom the response is sought;
- (b) be numbered consecutively, or as otherwise directed by the Board, in respect of each item of information requested, and should contain a specific reference to the evidence;
- (c) be grouped together according to the issues to which they relate;
- (d) contain specific requests for clarification of a party's evidence, documents or other information in the possession of the party and relevant to the proceeding;
- (e) be filed and served as directed by the Board; and
- (f) set out the date on which they are filed and served.

## 29. Responses to Interrogatories

29.01 Subject to **Rule 29.02**, where interrogatories have been directed and served on a party, that party shall:

- (a) provide a full and adequate response to each interrogatory;

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- (b) group the responses together according to the issue to which they relate;
- (c) repeat the question at the beginning of its response;
- (d) respond to each interrogatory on a separate page or pages;
- (e) number each response to correspond with each item of information requested or with the relevant exhibit or evidence;
- (f) specify the intended witness, witnesses or witness panel who prepared the response, if applicable;
- (g) file and serve the response as directed by the Board; and
- (h) set out the date on which the response is filed and served.

29.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:

- (a) where the party contends that the interrogatory is not relevant, setting out specific reasons in support of that contention;
- (b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response; or
- (c) otherwise explaining why such a response cannot be given.

A party may request that all or any part of a response to an interrogatory be held in confidence by the Board in accordance with **Rule 10**.

29.03 Where a party is not satisfied with the response provided, the party may bring a motion seeking direction from the Board.

29.04 Where a party fails to respond to an interrogatory made by Board staff, the matter may be referred to the Board.

# **ONTARIO ENERGY BOARD**

## **Rules of Practice and Procedure**

**(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)**

### **30. Identification of Issues**

30.01 The Board may identify issues that it will consider in a proceeding if, in the opinion of the Board:

- (a) the identification of issues would assist the Board in the conduct of the proceeding;
- (b) the documents filed do not sufficiently set out the matters in issue at the hearing; or
- (c) the identification of issues would assist the parties to participate more effectively in the hearing.

30.02 The Board may direct the parties to participate in issues conferences for the purposes of identifying issues, and formulating a proposed issues list that shall be filed within such a time period as the Board may direct.

30.03 A proposed issues list shall set out any issues that:

- (a) the parties have agreed should be contained on the list;
- (b) are contested; and
- (c) the parties agree should not be considered by the Board.

30.04 Where the Board has issued a procedural order for a list of issues to be determined in the proceeding, a party seeking to amend the list of issues shall do so by way of motion.

### **31. Alternative Dispute Resolution**

31.01 The Board may direct that participation in alternative dispute resolution (“ADR”) be mandatory.

31.02 An ADR conference shall be open only to parties and their representatives, unless the Board directs or the parties agree otherwise.

31.03 A Board member shall not participate in an ADR conference, and the conference shall not be transcribed or form part of the record of a proceeding.



# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- 31.04 The Board may appoint a person to chair an ADR conference.
- 31.05 The chair of an ADR conference may enquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.
- 31.06 The chair of an ADR conference may attempt to effect a settlement of issues by any reasonable means including:
- (a) clarifying and assessing a party's position or interests;
  - (b) clarifying differences in the positions or interests taken by the respective parties;
  - (c) encouraging a party to evaluate its own position or interests in relation to other parties by introducing objective standards; and
  - (d) identifying settlement options or approaches that have not yet been considered.
- 31.07 Subject to **Rule 31.08**, where a representative attends an ADR conference without the party, the representative shall be authorized to settle issues.
- 31.08 Any limitations on a representative's authority shall be disclosed at the outset of the ADR conference.
- 31.09 All persons attending an ADR conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference, except as may be agreed.
- 31.10 Admissions, concessions, offers to settle and related discussions in **Rule 31.09** shall not be admissible in any proceeding without the consent of the affected parties.

## 32. Settlement Proposal

- 32.01 Where some or all of the parties reach an agreement, the parties shall make and file a settlement proposal describing the agreement in order to allow the Board to review and consider the settlement.

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- 32.02 The settlement proposal shall identify for each issue those parties who agree with the settlement of the issue and any parties who disagree.
- 32.03 The parties shall ensure that the settlement proposal contains or identifies evidence sufficient to support the settlement proposal and shall provide such additional evidence as the Board may require.
- 32.04 A party who does not agree with the settlement of an issue will be entitled to offer evidence in opposition to the settlement proposal and to cross-examine on the issue at the hearing.
- 32.05 Where evidence is introduced at the hearing that may affect the settlement proposal, any party may, with leave of the Board, withdraw from the proposal upon giving notice and reasons to the other parties, and **Rule 32.04** applies.
- 32.06 Where the Board accepts a settlement proposal as a basis for making a decision in the proceeding, the Board may base its findings on the settlement proposal, and on any additional evidence that the Board may have required.

### 33. Pre-Hearing Conference

- 33.01 In addition to technical, issues and ADR conferences, the Board may, on its own motion or at the request of any party, direct the parties to make submissions in writing or to participate in pre-hearing conferences for the purposes of:
- (a) admitting certain facts or proof of them by affidavit;
  - (b) permitting the use of documents by any party;
  - (c) recommending the procedures to be adopted;
  - (d) setting the date and place for the commencement of the hearing;
  - (e) considering the dates by which any steps in the proceeding are to be taken or begun;
  - (f) considering the estimated duration of the hearing; or

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- (g) deciding any other matter that may aid in the simplification or the just and most expeditious disposition of the proceeding.

33.02 The Board Chair may designate one member of the Board or any other person to preside at a pre-hearing conference.

33.03 A member of the Board who presides at a pre-hearing conference may make such orders as he or she considers advisable with respect to the conduct of the proceeding, including adding parties.

## PART V - HEARINGS

### 34. Hearing Format and Notice

34.01 In any proceeding, the Board may hold an oral, electronic or written hearing, subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises.

34.02 The format, date and location of a hearing shall be determined by the Board.

34.03 Subject to **Rule 21.02**, the Board shall provide written notice of a hearing to the parties, and to such other persons or class of persons as the Board considers necessary.

### 35. Hearing Procedure

35.01 Parties to a hearing shall comply with any directions issued by the Board in the course of the proceeding.

### 36. Summons

36.01 A party who requires the attendance of a witness or production of a document or thing at an oral or electronic hearing may obtain a Summons from the Board Secretary.

36.02 Unless the Board directs otherwise, the Summons shall be served personally and at least 48 hours before the time fixed for the attendance of the witness or production of the document or thing.

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- 36.03 The issuance of a Summons by the Board Secretary, or the refusal of the Board Secretary to issue a Summons, may be brought before the Board for review by way of a motion.

### 37. Hearings in the Absence of the Public

- 37.01 Subject to the *Statutory Powers Procedure Act* and the statute under which the proceeding arises, the Board may hold an oral or electronic hearing or part of the hearing in the absence of the public, with such persons in attendance as the Board may permit and on such conditions as the Board may impose.

### 38. Constitutional Questions

- 38.01 Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be filed and served on the other parties and the Attorneys General of Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is argued.
- 38.02 Where the Attorneys General of Canada and Ontario receive notice, they are entitled to adduce evidence and make submissions to the Board regarding the constitutional question.
- 38.03 The notice filed and served under **Rule 38.01** shall be in substantially the same form as that required under the Rules of Civil Procedure for notice of a constitutional question.

### 39. Hearings in French

- 39.01 Subject to this Rule, evidence or submissions may be presented in either English or French.
- 39.02 The Board may conduct all or part of a hearing in French when a request is made:
- (a) by a party;

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- (b) by a person seeking intervenor status at the time the application for intervenor status is made; or
- (c) by a person making an oral presentation under **Rule 24** who indicates to the Board Secretary the desire to make the presentation in French.

39.03 Where all or part of a hearing is to be conducted in French, the notice of the hearing shall specify in English and French that the hearing is to be so conducted, and shall further specify that English may also be used.

39.04 Where a written submission or written evidence is provided in either English or French, the Board may order any person presenting such written submission or written evidence to provide it in the other language if the Board considers it necessary for the fair disposition of the matter.

## 40. Media Coverage

40.01 Radio and television recording of an oral or electronic hearing which is open to the public may be permitted on conditions the Board considers appropriate, and as directed by the Board.

40.02 The Board may refuse to permit the recording of all or any part of an oral or electronic hearing if, in the opinion of the Board, such coverage would inhibit specific witnesses or disrupt the proceeding in any way.

## PART VI - COSTS

### 41. Cost Eligibility and Awards

41.01 Any person may apply to the Board for eligibility to receive cost awards in Board proceedings in accordance with the *Practice Directions*.

41.02 Any person in a proceeding whom the Board has determined to be eligible for cost awards under **Rule 41.01** may apply for costs in the proceeding in accordance with the *Practice Directions*.

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

### PART VII - REVIEW

#### 42. Request

- 42.01 Subject to **Rule 42.02**, any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.
- 42.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under **Rule 42.01**.
- 42.03 The notice of motion for a motion under **Rule 42.01** shall include the information required under **Rule 44**, and shall be filed and served within 20 calendar days of the date of the order or decision.
- 42.04 Subject to **Rule 42.05**, a motion brought under **Rule 42.01** may also include a request to stay the order or decision pending the determination of the motion.
- 42.05 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.
- 42.06 In respect of a request to stay made in accordance with **Rule 42.04**, the Board may order that the implementation of the order or decision be delayed, on conditions as it considers appropriate.

#### 43. Board Powers

- 43.01 The Board may at any time indicate its intention to review all or part of any order or decision and may confirm, vary, suspend or cancel the order or decision by serving a letter on all parties to the proceeding.
- 43.02 The Board may at any time, without notice or a hearing of any kind, correct a typographical error, error of calculation or similar error made in its orders or decisions.

#### 44. Motion to Review

- 44.01 Every notice of a motion made under **Rule 42.01**, in addition to the requirements under **Rule 8.02**, shall:

# ONTARIO ENERGY BOARD

## Rules of Practice and Procedure

(Revised November 16, 2006, July 14, 2008, October 13, 2011, January 9, 2012 and January 17, 2013)

- (a) set out the grounds for the motion that raise a question as to the correctness of the order or decision, which grounds may include:
  - (i) error in fact;
  - (ii) change in circumstances;
  - (iii) new facts that have arisen;
  - (iv) facts that were not previously placed in evidence in the proceeding and could not have been discovered by reasonable diligence at the time; and
- (b) if required, and subject to **Rule 42**, request a stay of the implementation of the order or decision or any part pending the determination of the motion.

### 45. Determinations

- 45.01 In respect of a motion brought under **Rule 42.01**, the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits.



# **ONTARIO ENERGY BOARD**

## **SETTLEMENT CONFERENCE GUIDELINES**



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## **Introduction**

The Ontario Energy Board is committed to the settlement conference process as part of its objective of achieving greater regulatory efficiency and effectiveness. A successful settlement conference process will result in Board decisions that are in the public interest and are accepted by the parties while at the same time achieving savings in time and money to all participants.

## **Purpose of these Guidelines**

The purpose of these Guidelines is to provide guidance on the Board's settlement conference process, including the rights and obligations of all participants, the role of the facilitator and the role of Board staff. These Guidelines also set out how the Board will deal with a settlement proposal that is filed with the Board.

This Guideline describes and supplements Rules 38 to 41 of the Board's *Rules of Practice and Procedure*. Rules 38 to 41 are attached for convenience.

## **Overview of Settlement Conference Process**

The purpose of a settlement conference is to settle all the issues referred to the settlement conference in a proceeding or, at least, to settle as many issues as possible. The Board may exclude certain issues from a settlement conference where it is of the view that those issues should be heard in full.

Board members will not participate in a settlement conference and they will not be advised of the admissions, concessions, offers to settle and related discussions that take place in the settlement conference.

A facilitator will be appointed by the Board to chair the settlement conference and the

facilitator will attempt to achieve a settlement of all issues or a settlement of as many issues as possible.

All parties to a proceeding and their representatives are entitled to participate in a settlement conference. Settlement conferences are not open to the public unless the Board directs otherwise. In addition, settlement conferences are not transcribed and do not form part of the record of the proceeding.

Where a settlement is reached, the parties, with the assistance of the facilitator, will prepare and file with the Board a settlement proposal describing the agreement.

### **Applicability**

The Board may direct a settlement conference to be held in any proceeding. Parties to a proceeding may also request that the Board direct the holding of a settlement conference in the proceeding and the Board will give consideration to the request.

### **Timing**

To help ensure that there is an adequate information base for the settlement of issues, the settlement conference will usually take place only after all the evidence of the applicant and intervenors is filed and the interrogatory process has been completed. Where an issues list for a proceeding is fixed by the Board, the settlement conference will be held after the issues to be considered have been determined by the Board and the issues list has been provided to all parties.

The Board may require parties to submit a position paper prior to the holding of the settlement conference. Position papers will not form part of the public record and will, therefore, not be provided to Board members.

## **Issues for Settlement and Hearing**

In fixing an issues list, the Board may indicate those issues which the Board considers are issues for the settlement conference and those issues which the Board regards as issues which must be heard in full in order to develop a complete evidentiary record on which the Board can base its findings.

Participants in a settlement conference should bear in mind that where an issue that may be affected by external factors remains on the list of issues for settlement, they must consider whether, in the settlement proposal filed with the Board, an appropriate adjustment mechanism should be included in relation to the settlement of that issue.

## **Material Changes in Prefiled Evidence**

Where a participant in a settlement conference becomes aware of a material change in its prefiled evidence prior to or during a settlement conference, that participant must disclose that material change as soon as possible.

## **Authority To Enter Into a Settlement Proposal**

A party's representative at a settlement conference must have authority to settle issues on behalf of the party at the settlement conference and must have authority to enter into a settlement proposal. If there are any limitations on the representative's authority, they must be disclosed at the outset of the settlement conference.

## **Role of the Facilitator**

The facilitator at a settlement conference has the authority to bring about a settlement of issues by any reasonable means and, in particular:

- by clarifying and assessing a party's position;
- by clarifying differences in the positions taken by the respective parties;
- by encouraging a party to evaluate its own position in relation to other parties by introducing objective standards; and
- by identifying settlement options or approaches that have not yet been considered.

In carrying out his or her responsibilities, the facilitator will:

- help to foster an environment of cooperation and trust among participants;
- ensure that all participants have an opportunity to present their views on each issue;
- facilitate the preparation of a settlement proposal which contains all the required components; and
- facilitate the preparation of a list of outstanding issues.

The facilitator is responsible only for the settlement conference process. Parties making the settlement proposal are responsible for the appropriateness of the agreement and the adequacy of the evidence and rationale to support it. Parties are likewise responsible for the appropriateness and completeness of the list of outstanding issues referred to the settlement conference but not dealt with in the settlement proposal.

### **Confidentiality**

Everyone who attends a settlement conference must treat admissions, concessions, offers to settle and related discussions as confidential and must not reveal any such information outside the conference. In addition, admissions, concessions, offers to settle and related discussions will not be admitted in any Board proceeding without the

consent of parties who are affected. Where necessary to support a settlement proposal, factual information and evidence should be disclosed to the Board.

### **Role of Board Staff**

Board staff will attend the settlement conference to ensure that all relevant information is brought forward and considered in negotiations. They will present options for the consideration of the parties and will offer advice on the strengths and weaknesses of the parties' proposals. Staff will endeavour to help the parties to reach a settlement but will not sign the settlement proposal.

Board staff who participate in the settlement conference are bound by the same confidentiality standards that apply to parties to the proceeding. Staff will accordingly only be available to the Board panel hearing the case to provide factual information and to analyze certain components of the settlement proposal but will not disclose any positions, admissions, concessions or offers made during the settlement conference or any related discussions.

Board staff may, at the direction of the Board, examine on a settled issue at the hearing to provide information necessary to complete the public record.

In proceedings in which there are no or very few intervenors, the holding of a settlement conference may not be appropriate. However, in such circumstances Board staff may negotiate with the applicant on the issues.

## **Rights of Parties Who Disagree with the Settlement of an Issue**

A party who has been identified in the settlement proposal as a party who does not agree with the settlement of an issue is entitled to offer evidence in opposition to the settlement proposal and to cross-examine the applicant on that issue at the hearing.

Where the hearing is a written hearing, the Board may give directions as to how the right of such cross-examination is to be exercised.

## **Withdrawal from a Settlement Proposal**

If evidence is introduced at the hearing which affects the settlement proposal or the settlement of one or more issues in it, a party may, with permission of the Board, withdraw from the proposal or from its agreement to the settlement of specified issues. The withdrawing party must give notice to the Board and to the other parties of its intention to withdraw and the reasons for withdrawing. Once a party has withdrawn from a settlement proposal or from its agreement to the settlement of specified issues, it is entitled to offer evidence in opposition to the settlement proposal and to cross-examine on an issue where it does not agree with the settlement of that issue.

## **Filing of the Settlement Proposal**

Where agreement is reached at the settlement conference on all or some of the issues, a settlement proposal describing the agreement shall be filed with the Board Secretary. The settlement proposal must identify those participants who disagree with the settlement of a particular issue and those participants who have taken no position on an issue.

It is the responsibility of the participants to ensure that the settlement proposal contains sufficient evidence to support the proposal and that the quality and detail of the

evidence and the rationale for the settlement of issues will allow the Board to make findings on the issues. To assist the Board, parties are expected to prepare a proposal that:

- presents the settled issues in an organized, concise and understandable manner;
- demonstrates a well-referenced, direct and transparent link between each settled issue and the evidence; and
- provides clear reasons to support the acceptance of each settled issue.

Parties to the settlement proposal should make it clear in the proposal whether or not they expect the Board to accept the proposal as a package, and should outline the rationale for the position taken.

Once a settlement proposal is filed, it is binding on all the parties who have agreed to it (subject to the right to withdraw described above).

Following the filing of a settlement proposal, the Board may, at the request of the parties, modify the issues list for the proceeding.

### **Acceptance of a Settlement Proposal**

After considering the settlement proposal, the Board may, in some cases, determine that the rationale for the settlement of issues in the proposal is inadequate or that the quality and detail of the evidence in the proposal will not allow the Board to make findings on the issues. In these cases, the Board may direct the parties to make reasonable efforts to revise the settlement proposal. Where the Board gives this direction, the settlement conference will be reconvened in order to address the Board's concerns. All the provisions of a settlement conference apply to such a reconvened conference.



Where, despite any efforts to revise the settlement proposal, the Board is of the view that the quality and detail of the evidence in the proposal or the rationale for the settlement of issues will not allow the Board to make findings on one or more settled issues, or where the Board is of the view that the public interest requires a hearing of certain issues, the Board will hear evidence on those issues even if they were dealt with in the settlement proposal as well as on any issues excluded from the settlement conference. The Board may give directions as to the issues on which it requires evidence at the hearing.

Where the Board does not accept a settlement agreement that the parties have specifically requested be accepted as a package, the Board will reject the settlement proposal as a whole and will proceed to a hearing of all the issues on the issues list.

Where the Board accepts a settlement proposal, it may adopt as its findings the settlement of issues in the settlement proposal. The Board may accept a settlement proposal as a package provided that the Board is satisfied that the evidence supports the settlement proposal, the settlement proposal is in the public interest, and all evidence relevant to the issues in the proceeding is available to all parties and to the Board both in the settlement proposal itself and as part of the public record.

Parties will be informed of the Board's acceptance or partial acceptance of a settlement proposal prior to the hearing.

Acceptance of a settlement proposal by the Board is subject to reconsideration where significant new evidence or information emerges in the hearing or where the effect of external factors has not been sufficiently accounted for in the settlement proposal.

## **Costs**

The settlement conference is part of the Board's proceedings and the Board may award costs in relation to a party's participation in it. Where the Board determines that an intervenor is eligible for costs, the Board may award costs on the basis of a fixed amount per day for participation in a settlement conference. A fixed daily amount would replace any other cost award that might be made in the proceeding in relation to participation in the settlement conference with the exception of reasonable disbursements.

**Appendix A: Rules 38 to 41 of the *Rules of Practice and Procedure* of the  
Ontario Energy Board**

**38. Settlement Conferences**

38.01 The Board may direct the parties to participate in conferences for the purpose of settling the issues in a proceeding.

38.02 Board members shall not participate in a settlement conference and a settlement conference shall not be transcribed or form part of the record of a proceeding.

38.03 A settlement conference may be held in person or electronically.

38.04 A settlement conference shall only be open to parties and their representatives unless the Board directs otherwise.

38.05 The Board may appoint a person to chair and facilitate a settlement conference.

38.06 The facilitator may inquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.

38.07 The facilitator may attempt to effect a settlement of issues by any reasonable means including:

- (a) clarifying and assessing a party's position;
- (b) clarifying differences in the positions taken by the respective parties;

- (c) encouraging a party to evaluate its own position in relation to other parties by introducing objective standards; and
- (d) identifying settlement options or approaches that have not yet been considered.

38.08 A party represented at a settlement conference must authorize a representative to settle issues at the conference and that representative must have authority to enter into a settlement proposal.

38.09 Any limitations on a representative's authority shall be disclosed at the outset of the conference.

38.10 Parties, their representatives and other persons attending a settlement conference shall treat admissions, concessions, offers to settle and related discussions as confidential and shall not disclose them outside the conference.

38.11 Admissions, concessions, offers to settle and related discussions in **Rule 38.10** shall not be admissible in any proceeding without the consent of the affected parties.

## **39. Settlement Proposal**

39.01 Where some or all of the parties reach an agreement, the parties shall make and file a settlement proposal describing the agreement.

39.02 The settlement proposal shall identify for each issue those parties who agree with the settlement of the issue and those parties who disagree.

39.03 The parties shall ensure that the settlement proposal contains or identifies sufficient evidence to support the settlement proposal and that the quality and detail of the evidence will allow the Board to make findings on the issues.

39.04 Where the Board is of the view,

- (a) that the rationale for the settlement of issues in the settlement proposal is inadequate; or
- (b) that the quality and detail of the evidence in the settlement proposal will not allow the Board to make findings on the issues,

the Board may direct the parties to make reasonable efforts to revise the settlement proposal.

39.05 Where the Board is of the view,

- (a) that, despite any efforts to revise the settlement proposal under **Rule 39.04**, the quality and detail of the evidence in the settlement proposal will not allow the Board to make findings on the issues; or
- (b) that the public interest requires a hearing,

the Board may hear evidence on the issues.

#### **40. Parties who do not Agree with the Settlement of an Issue**

40.01 A party who does not agree with the settlement of an issue will be entitled to offer evidence in opposition to the settlement proposal and to cross-examine on the issue at the hearing.

40.02 Where evidence is introduced at the hearing that may affect the settlement proposal, any party may, with leave of the Board, withdraw from the proposal upon giving notice to the other parties of its intention to do so, and its reasons, and **Rule 40.01** applies.

#### **41. Effect of Settlement Proposal**

41.01 Where the Board accepts a settlement proposal, the Board may base its findings on the settlement proposal and the evidence supporting it.



# **ONTARIO ENERGY BOARD**

## **Practice Direction**

### **On**

## **Confidential Filings**

Revised October 13, 2011

# ONTARIO ENERGY BOARD

## PRACTICE DIRECTION ON CONFIDENTIAL FILINGS

### 1. INTRODUCTION AND PURPOSE

The purpose of this Practice Direction on Confidential Filings is to establish uniform procedures for the filing of confidential materials in relation to all proceedings that come before the Ontario Energy Board. This Practice Direction is also intended to assist participants in the Board's proceedings in understanding how the Board will deal with such filings.

The Board's general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. This reflects the Board's view that its proceedings should be open, transparent, and accessible. The Board therefore generally places materials it receives in the course of the exercise of its authority under the *Ontario Energy Board Act, 1998* and other legislation on the public record so that all interested parties can have equal access to those materials. That being said, the Board relies on full and complete disclosure of all relevant information in order to ensure that its decisions are well-informed, and recognizes that some of that information may be of a confidential nature and should be protected as such.

This Practice Direction seeks to strike a balance between the objectives of transparency and openness and the need to protect information that has been properly designated as confidential. The approach that underlies this Practice Direction is that the placing of materials on the public record is the rule, and confidentiality is the exception. The onus is on the person requesting confidentiality to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

The Board and parties to a proceeding are required to devote additional resources to the administration, management and adjudication of confidentiality requests and confidential filings. In this context, it is particularly important that all parties remain mindful that only materials that are clearly relevant to the proceeding should be filed, whether the party is filing materials at its own instance, is requesting information by way of interrogatory or is responding to an interrogatory. Parties are reminded that, under the Board's *Rules of Practice and Procedure*, a party that is in receipt of an interrogatory that it believes is not relevant to the proceeding may file and serve a response to the interrogatory that sets out the reasons for the party's belief that the requested information is not relevant. This process applies to all interrogatories, and is of particular significance in relation to confidential filings given the administrative issues associated with the management of those filings.

The Board's *Rules of Practice and Procedure* govern the conduct of all proceedings before the Board. Those *Rules* require compliance with this Practice Direction.



The Board will continue to monitor the effectiveness of its approach to confidential filings and will revise this Practice Direction on an as-needed basis.

## **2. APPLICATION**

The procedures set out in this Practice Direction are to be followed by all participants in a proceeding before the Board, unless otherwise directed by the Board. This includes proceedings to be determined under delegated authority (see section 3.3) and proceedings commenced on the Board's own motion.

This Practice Direction is subordinate to existing law and regulations, including the *Freedom of Information and Protection of Privacy Act*, the *Ontario Energy Board Act, 1998*, and the *Statutory Powers Procedures Act*, Board instruments (i.e., licences, codes, rules and Board orders) and the Board's *Rules of Practice and Procedure*.

This Practice Direction does not address the manner in which Board members and Board staff will handle confidential information, which is an issue of the Board's internal processes. The Board has implemented internal procedures that are designed to ensure that confidential information is segregated from other information and is made available within the Board on a limited basis.

## **3. DEFINITIONS AND INTERPRETATION**

### **3.1. Definitions**

#### **3.1.1. In this Practice Direction:**

**"Act"** means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15 (Sched. B);

**"ADR"** means alternative dispute resolution;

**"applicant"** means a person who makes an application to the Board, and includes a person that is filing a notice under section 80 or 81 of the Act;

**"application"** when used in connection with a proceeding commenced by an application to the Board, means the commencement by a party of a proceeding before the Board, and includes a notice filed under section 80 or 81 of the Act;

**"Board"** means the Ontario Energy Board and includes any panels or delegates thereof;

**"Board Secretary"** means the Secretary of the Board and any Assistant Secretary appointed by the Board under the Act;

**“business day”** means any day which is not a holiday;

**“document”** or **“record”** includes a written document, film, audio tape, videotape, file, photograph, chart, graph, map, plan, survey, book of account, transcript, and any information stored by means of an electronic storage and retrieval system;

**“FIPPA”** means the *Freedom of Information and Protection of Privacy Act* (Ontario);

**“hearing”** means a hearing in any proceeding before the Board, and includes an electronic hearing, an oral hearing, and a written hearing;

**“holiday”** means any Saturday, Sunday, statutory holiday, and any day that the Board’s offices are closed for observance of a holiday within the meaning of the *Interpretation Act* (Ontario);

**“party”** includes an applicant, an appellant, any person granted intervenor status by the Board and any person ordered to produce information in a proceeding before the Board; and

**“proceeding”** means a process to decide a matter brought before the Board, including a matter commenced by application, notice of motion, notice of appeal, reference, request of the Minister, Order in Council or on the Board’s own motion.

- 3.1.2. Except as otherwise defined in section 3.1.1, words and expressions used in this Practice Direction shall have the meaning ascribed to them in the Act and the Board’s *Rules of Practice and Procedure*.

### **3.2. Interpretation**

- 3.2.2. In this Practice Direction:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words importing a person include (i) an individual, (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) any government, government agency or body, regulatory agency or body or other body politic or collegiate;

- (d) where a word or phrase is defined in this Practice Direction, other parts of speech and grammatical forms of the word or phrase have a corresponding meaning;
- (e) a reference to a document (including a statutory instrument) or a provision of a document includes any amendment or supplement to, or any replacement of, that document or that provision; and
- (f) the expression “including” means including without limitation.

### **3.3. Matters Decided Under Delegated Authority**

- 3.3.1. Under the authority of section 6 of the Act, the management committee of the Board has delegated certain powers or duties to an employee of the Board. In such cases, the delegate is responsible for making determinations in relation to confidential filings. The provisions of this Practice Direction otherwise apply in relation to confidential filings made in the context of a proceeding to be decided under delegated authority.

## **4. WHEN REQUEST FOR CONFIDENTIALITY IS NOT REQUIRED**

### **4.1. Information Identified as Confidential in Board Templates and Filing Guidelines**

- 4.1.1. The Board has developed certain templates and filing guidelines to assist applicants in preparing licensing and other applications. Certain of these templates and filing guidelines, including licence application forms for electricity licences and gas marketing licences, identify predefined categories of information that will be considered confidential in the normal course. Where a Board template or filing guideline indicates that information will be treated in confidence, no formal request for confidentiality under Part 5 is required. However, to the extent practicable, any such information should be clearly marked “confidential”.
- 4.1.2. Where a Board template or filing guideline indicates that information will be treated in confidence, the information will not be placed on the public record nor provided to any other party unless another party requests access to that information under section 4.1.4 and the Board rules in favour of that request.
- 4.1.3. In the absence of a request for confidentiality, all information that is not indicated on a template or in a filing guideline as being confidential will be included on the public record. An applicant that wishes information that would normally be included on the public record to be held confidential must follow the procedure

set out in Part 5, and the Board will determine the request in accordance with Part 5.

- 4.1.4. Where a Board template or filing guideline indicates that information will be treated in confidence, a party may request access to that information by filing a request with the Board Secretary and serving a copy of the request on the applicant and each party. The request must address the matters identified in paragraph (b) of section 5.1.7. The applicant will have an opportunity to object to the request for access to confidential information. The applicant must file its objection with the Board Secretary and serve it on all parties within the time specified by the Board. The Board will determine the request for access to confidential information in accordance with Part 5.

#### **4.2. Information filed Under the Board's Reporting and Record Keeping Requirements ("RRR")**

- 4.2.1. The Board's *Natural Gas Reporting & Record Keeping Requirements: Rule for Natural Gas Utilities, Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements and Electricity Reporting and Record Keeping Requirements* require that licensees and natural gas utilities file certain information with the Board on a regular basis. Each of these RRR identify information that the Board intends to treat in confidence. No formal request for confidentiality is required in relation to such information when it is filed with the Board as part of a regular RRR filing. However, to the extent practicable, any such information should be clearly marked "confidential". Where such information is filed as part of a regular RRR filing and is subsequently filed in a proceeding, Parts 5 and 6 apply.

#### **4.3 Personal Information under FIPPA**

- 4.3.1 Subject to limited exceptions, the Board is prohibited from releasing personal information, as that phrase is defined in FIPPA. When a person files a document or record that contains the personal information of another person who is not a party to the proceeding, the person filing the document or record must file two versions of the document or record in accordance with Rule 9A.01 of the Board's *Rules of Practice and Procedure*. As indicated in Rule 9A.02, the confidential, un-redacted version of the document or record will be held in confidence and neither that version of the document or record nor the personal information contained in it will be placed on the public record or provided to any other party, including a person from whom the Board has accepted a Declaration and Undertaking under section 6.1, unless the Board determines that the information is not personal information or that the disclosure of the personal information would be in accordance with the requirements of FIPPA.

## **5. GENERAL PROCESS FOR CONFIDENTIALITY IN MATTERS BEFORE THE BOARD**

The processes set out in this Part and in Part 6 are intended to allow for the protection of information that has been properly designated as confidential. The onus is on the person requesting confidential treatment to demonstrate to the satisfaction of the Board that confidential treatment is warranted in any given case.

It is also the expectation of the Board that parties will make every effort to limit the scope of their requests for confidentiality to an extent commensurate with the commercial sensitivity of the information at issue or with any legislative obligations of confidentiality or non-disclosure, and to prepare meaningful redacted documents or summaries so as to maximize the information that is available on the public record. This will provide parties with a fair opportunity to present their cases and permit the Board to provide meaningful and well-documented reasons for its decisions.

The processes set out in this Part and in Part 6 contemplate that the Board will play a central role in directing and managing the exchange of confidential filings and related materials (such as the Declaration and Undertaking). A party that independently serves other parties with documents containing confidential information other than through or at the direction of the Board does so at its own risk.

### **5.1. Process for Confidentiality Requests**

5.1.1. All filings must be made in accordance with the Board's *Rules of Practice and Procedure*, specifically, Rule 10 of the *Rules of Practice and Procedure*, which deals with confidential documents before the Board.

5.1.2. In accordance with Rule 10.01 of the Board's *Rules of Practice and Procedure*, a party may request that all or part of a document be held confidential.

5.1.3. A request for confidentiality must be addressed to the Board Secretary.

5.1.4. A request for confidentiality must include the following items:

- (a) a cover letter indicating the reasons for the confidentiality request, including the reasons why the information at issue is considered confidential and the reasons why public disclosure of that information would be detrimental;
- (b) a confidential, un-redacted version of the document containing all of the information for which confidentiality is requested. This version of the document should be marked "confidential" and should identify all portions of document for which confidentiality is claimed by using shading, square brackets or other appropriate markings. If confidential treatment is

requested in relation to the entire document, the document should be printed on coloured paper; and

(c) either:

- i. a non-confidential, redacted version of the document from which the information that is the subject of the confidentiality request has been deleted or stricken; or
- ii. where the request for confidentiality relates to the entire document, a non-confidential description or summary of the document.

5.1.5. A copy of the cover letter requesting confidentiality, together with the non-confidential version or non-confidential description of the document (as applicable) must be served on all parties to the proceeding, and will be placed on the public record. The confidential, un-redacted version of the document will, subject to section 5.1.6, be kept confidential until the Board has made a determination on the confidentiality request.

5.1.6. A party to the proceeding may object to the request for confidentiality by filing an objection with the Board Secretary within the time specified by the Board. The objection must be served on all other parties to the proceeding, including the party that made the confidentiality request. Where the party requires access to the confidential version of the document in order to submit its objection, the party may request that the Board allow access for that purpose under suitable arrangements as to confidentiality. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board. The party that made the confidentiality request may object to the request for access within the time and in the manner specified by the Board.

5.1.7. An objection to a request for confidentiality must address the following:

- (a) the reason why the party believes that the information that is the subject of the request for confidentiality is not confidential, in whole or in part, by reference to the grounds for confidentiality expressed by the party making the request for confidentiality; and
- (b) the reason why the party requires disclosure of the information that is the subject of the request for confidentiality and why access to the non-confidential version or description of the document (as applicable) is insufficient to enable the party to present its case.

5.1.8. The party requesting confidentiality will have an opportunity to reply to the objection. The replying party must file its reply with Board Secretary and serve it on all parties to the proceeding within the time specified by the Board.

5.1.9. The Board will then assess whether the request for confidentiality should be granted, and may determine that a request for confidentiality is not warranted regardless of whether any party has objected to the request. Some of the factors that the Board may consider in making this assessment are listed in Appendix A, including whether the Board has in the past assessed or maintained the same type of information as confidential. An illustrative list of the types of information that the Board has previously assessed or maintained as confidential is set out in Appendix B, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course.

5.1.10. In determining the request for confidentiality, the Board may:

- (a) order the document placed on the public record, in whole or in part;
- (b) order the document be kept confidential, in whole or in part;
- (c) order that the non-confidential redacted version of the document or the non-confidential description or summary of the document (as applicable) be revised;
- (d) order that the confidential version of the document be disclosed under suitable arrangements as to confidentiality (see Part 6); or
- (e) make any other order that the Board finds to be in the public interest.

5.1.11. The Board will notify all parties of its decision in relation to a request for confidentiality.

5.1.12. Where the Board has ordered that information that is the subject of a confidentiality request be placed on the public record or disclosed to another party, in whole or in part, the person who filed the information will, subject to section 5.1.13, have a period of 5 business days in which it may request that the information be withdrawn. Such request shall be made in writing to the Board Secretary or, where the request is made during an oral hearing, directly to the Board.

5.1.13. The ability to request the withdrawal of information under section 5.1.12 does not apply to information that was required to be produced by an order of the Board.

5.1.14. If the party that made the request for confidentiality indicates, within five business days of the date of receipt of the Board's order, that it intends to appeal or seek review of the decision, the Board will not place the document on the public record until the appeal or review has been concluded or the time for filing an appeal or review has expired without an appeal or review having been commenced. In the

absence of such an indication, the Board will deal with the information in the manner set out in its order.

## **5.2. Confidentiality Requests Made Orally During an Oral Hearing**

5.2.1. The provisions of section 5.1 generally apply to requests for confidentiality made in the context of an oral hearing. However, the Panel presiding over the oral hearing may take such action as it considers appropriate to expedite the process when there is an immediate need for information that the Panel needs to hear.

## **5.3. Interrogatories**

5.3.1. A party may request that all or part of a response to an interrogatory be held confidential. The provisions of section 5.1 apply to requests for confidentiality made in relation to a response to an interrogatory, with such modifications as the context may require.

## **6. ARRANGEMENTS AS TO CONFIDENTIALITY**

Where the Board has agreed to a request for confidentiality, the confidential information will not be placed on the public record. Representatives of parties to the proceeding will generally be given access to the confidential information provided that suitable arrangements as to confidentiality are made, although the Board may limit access to confidential information to those parties that the Board has determined require access to the confidential information in order to present their cases. This Part sets out the principal arrangements that the Board will use in allowing limited and conditional access to confidential information by representatives of parties.

The processes set out in this Part require that parties file a Declaration and Undertaking with the Board. Parties to a proceeding will be notified when the Board has accepted a Declaration and Undertaking from a person. Parties should not independently serve a Declaration and Undertaking on other parties.

The Board considers violations of a Declaration and Undertaking given to the Board under this Part to be a matter of very serious concern. Such violations can be, and will continue to be, subject to sanctions imposed by the Board. In appropriate cases, the Board may also refuse to accept further Declaration and Undertakings from persons whose future compliance with a Declaration and Undertaking is in question.

### **6.1 Declaration and Undertaking**

6.1.1. The Board may determine that confidential information should, in whole or in part, be disclosed to one or more persons that have signed a Declaration and



Undertaking in the form set out in Appendix C. The Declaration and Undertaking is a binding commitment by the person: (i) not to disclose the confidential information except as permitted by the Board; (ii) to treat the confidential information in confidence; (iii) to return or destroy the confidential information following completion of the proceeding; and (iv) in the case of confidential information in electronic media, to expunge the confidential information from all electronic apparatus and data storage media under the person's direction or control, and to continue to abide by the terms of the Declaration and Undertaking in relation to such confidential information to the extent that it subsists in an electronic form and cannot reasonably be expunged in a manner that ensures that it cannot be retrieved. A signed Declaration and Undertaking must be filed with the Board and will be placed on the public record.

6.1.2. Subject to section 6.1.4, the Board will, except where there are compelling reasons for not doing so, accept a Declaration and Undertaking from the following:

- (a) counsel for a party; and
- (b) an expert or consultant for a party.

As a general rule, such counsel, expert or consultant cannot be a director or employee of a party.

6.1.3. Subject to section 6.1.4, the Board may accept a Declaration and Undertaking from other persons in appropriate cases. In such a case, a modified version of the form of Declaration and Undertaking will be made available to such person.

6.1.4. The Board shall notify the party that filed the confidential information that would be the subject-matter of a Declaration and Undertaking of the persons from whom a Declaration and Undertaking will be accepted. The party shall have an opportunity to object to the acceptance of a Declaration and Undertaking from such person in the manner and within the time specified by the Board. The person to whom the objection relates shall have an opportunity to reply to the objection in the manner and within the time specified by the Board. The Board will then decide whether it will accept a Declaration and Undertaking from such person and may, as a condition of acceptance of the Declaration and Undertaking, impose such further conditions in relation to that person's access to the confidential information as the Board considers appropriate. Where the Board accepts a Declaration and Undertaking from a person, the Board will notify the other parties to the proceeding or direct that the other parties be notified accordingly. A person should not serve a Declaration and Undertaking on other parties unless directed by the Board to do so. A party is not required to serve confidential information on a person until such time as the party has been notified that the Board has accepted a Declaration and Undertaking from that person.

- 6.1.5. Where the Board determines that confidential information should be disclosed to one or more persons that have signed a Declaration and Undertaking, the Board may act as the conduit for the service of confidential information on such persons. In such cases, the confidential information need only be filed with the Board Secretary (in the appropriate number of copies), and the Board Secretary will attend to the distribution of the confidential information to persons that have signed a Declaration and Undertaking.
- 6.1.6. In accordance with the terms of the Declaration and Undertaking, confidential information must either be destroyed or expunged (as applicable) or returned to the Board Secretary for destruction promptly following the end of the proceeding for destruction. A person that chooses to destroy or expunge confidential information must file with the Board Secretary a certification of destruction in the form set out in Appendix D.

## **6.2. Hearings in the Absence of the Public (*In Camera* Hearings)**

- 6.2.1. Under section 9 of the *Statutory Powers Procedure Act* (Ontario), oral hearings are required to be open to the public except where the Board is of the opinion that “intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public”, in which case the Board may hold the hearing in the absence of the public. It is therefore the Board’s normal practice is to hold oral hearings in public to comply with this obligation and to facilitate transparency, openness, and accessibility of the Board’s processes.
- 6.2.2. The Board recognizes that there may be some instances where the proceedings may need to be closed to the public. This situation could arise when there is a possibility that information that the Board has agreed is confidential will be disclosed during an oral hearing. When this occurs, the Board will exclude from the hearing room all persons other than the following:
- (a) representatives of the Board (i.e., Board staff, Board consultants, etc.);
  - (b) representatives of the party that filed the confidential information; and
  - (c) persons that have signed and returned to the Board a Declaration and Undertaking, provided that the confidential information at issue is covered by the Declaration and Undertaking and that the Board has determined that the persons require access to the confidential information in order to present their cases.

The hearing will then proceed *in camera* for such time as the confidential information is the subject of the hearing or is being referred to.

6.2.3. When part of a hearing is conducted *in camera*, transcripts of the *in camera* portion of the hearing will be dealt with in the same manner as the confidential information at issue. Subject to section 6.2.5, copies of the transcript of the *in camera* portion of the hearing will only be provided to the party that provided the confidential information and to applicable persons that have signed and returned to the Board a Declaration and Undertaking.

6.2.4. The party that filed the confidential information that is the subject of an *in camera* portion of a hearing shall, within five business days or such other time as the Board may direct, review the transcript of that portion of the hearing and shall file with the Board:

- (a) a redacted version of the transcript that identifies all portions of the transcript for which confidentiality is claimed, using shading, square brackets or other appropriate markings; or
- (b) where the party believes that the entire transcript should be treated as confidential, a letter identifying why the party believes that to be the case and a summary of the transcript for the public record.

6.2.5. The Board will assess the filing made under section 6.2.4 and may, among such other action as the Board may take, do one or more of the following:

- (a) provide a redacted version of a transcript prepared under section 6.2.4(a) or this section to all applicable persons that have signed and returned to the Board a Declaration and Undertaking, or direct that it be so provided;
- (b) direct that the party that filed a redacted version of a transcript under section 6.2.4(a) or this section prepare and file a revised redacted version of the transcript;
- (c) provide a summary of a transcript prepared under section 6.2.4(b) or this section to all parties to the proceeding, or direct that it be so provided;
- (d) direct that the party that filed a summary of a transcript under section 6.2.4(b) prepare and file a revised summary or a redacted version of the transcript;
- (e) direct that any public testimony that is given *in camera* be placed on the public record and provided to all parties to the proceeding; or

- (f) direct that a redacted version of the transcript suitable for being placed on the public record be prepared and provided to all parties to the proceeding.

### **6.3. Other**

- 6.3.1. Where the Board has made arrangements for the disclosure of confidential information, the Board may give further directions to the parties from time to time to protect the confidential information from disclosure to persons that are not entitled to such disclosure. These directions may include the process for the filing and exchange of interrogatories that contain the confidential information and the manner in which confidential information may be addressed as part of closing arguments or final submissions.
- 6.3.2. Parties should make every effort to prepare their written argument such that the entirety of the document can be placed on the public record. Where it is necessary to make specific reference to confidential information in a written argument, the party filing the argument should either:
  - (a) file a public version of the written argument together with a confidential appendix that contains the confidential information; or
  - (b) file both an un-redacted confidential version of the written argument and a public, redacted version of the written argument from which all confidential information has been deleted.
- 6.3.3. Where the Board considers that a confidential appendix to, or a redacted version of, a written argument contains information that has not been determined by the Board to be confidential, the Board may order the party filing the written argument to file a revised appendix or redacted version.

## **7. ADR CONFERENCES**

- 7.1.1. This Practice Direction does not apply to ADR conferences.<sup>1</sup> Confidentiality in the context of ADR conferences shall be governed by the Board's *Rules of Practice and Procedure*, Settlement Guidelines and any other applicable Practice Guidelines.

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<sup>1</sup> For clarity, an ADR conference does not include a technical conference. Any confidentiality issues arising in relation to a technical conference will be addressed in accordance with Parts 5 and 6 of this Practice Direction.

## **8. INSPECTIONS AND INVESTIGATIONS**

Sections 110 and 111 of the Act contain provisions that address the confidentiality of documents, records and information obtained by an inspector under Part VII of the Act. Sections 112.0.5 and 112.0.6 of the Act are to the same effect in relation to information obtained by an investigator under Part VII.0.1 of the Act.

8.1.1. All documents, records and information obtained by an inspector during the course of an inspection under section 107 or 108 of the Act or obtained by an investigator under Part VII.0.1 of the Act are confidential. Generally speaking, such documents, records and information will not be disclosed to anyone other than Board staff or Board members. By way of exception, documents, records and information obtained during an inspection or investigation may be disclosed:

- (a) to counsel for the Board;
- (b) as may be required in connection with the administration of the Act or any other Act that gives powers or duties to the Board;
- (c) in any proceeding under the Act or any other Act that gives powers or duties to the Board;
- (d) with the consent of the owner of the document or record or the person that provided the information; and
- (e) where required by law.

8.1.2. No document, record or information obtained by an inspector under section 107 or 108 of the Act or obtained by an investigator under Part VII.0.1 of the Act will be introduced in evidence in a Board proceeding unless the Board has given notice to the owner of the document or record or the person who provided the information, and has given that person an opportunity to make representations with respect to the intended introduction of that evidence.

8.1.3. If any document, record, or other information obtained by an inspector or investigator is admitted into evidence in a proceeding before the Board, the Board may determine whether the document, record, or information should be kept confidential and, if so, whether and the extent to which the document, record or information should be disclosed under suitable arrangements as to confidentiality (see Part 6). The Board will determine the matter in accordance with Parts 5 and 6.

## **9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT**

Participants in the Board's processes are reminded that the Board is subject to FIPPA. FIPPA addresses circumstances in which the Board may, upon request, be required to release information that is in its custody or under its control, and generally prohibits the Board from releasing personal information. Accordingly, the Board will have regard to its obligations under FIPPA when making determinations in relation to confidential filings (see section 4.3.1). A brief overview of the more relevant provisions of FIPPA is set out in Appendix E.

## **10. ELECTRONIC INFORMATION**

The Board will not, without the consent of the party that filed the confidential information, transmit materials containing confidential information by electronic mail. Materials containing confidential information, including transcripts of in camera proceedings, may be made available only in paper form or on diskette or other machine-readable media.

## **11. ACCESS TO CONFIDENTIAL INFORMATION OUTSIDE OF PROCEEDING**

Interested persons may wish to see confidential information at times other than during the proceeding in which the confidential information was filed. In such a case, the interested person may request access to that information by filing a request with the Board Secretary. The person that filed the confidential information will have an opportunity to object to the request for access to that information. The objection must be filed with the Board Secretary and served on the person requesting access. The Board will determine the request for access to confidential information in accordance with Part 5.

## **Appendix A**

### **Considerations in Determining Requests for Confidentiality**

The final determination of whether or not information will be kept confidential rests with the Board. The Board will strive to find a balance between the general public interest in transparency and openness and the need to protect confidential information. Some factors that the Board may consider in addressing confidentiality of filings made with the Board are:

- (a) the potential harm that could result from the disclosure of the information, including:
  - i. prejudice to any person's competitive position;
  - ii. whether the information could impede or diminish the capacity of a party to fulfill existing contractual obligations;
  - iii. whether the information could interfere significantly with negotiations being carried out by a party; and
  - iv. whether the disclosure would be likely to produce a significant loss or gain to any person;
- (b) whether the information consists of a trade secret or financial, commercial, scientific, or technical material that is consistently treated in a confidential manner by the person providing it to the Board;
- (c) whether the information pertains to public security;
- (d) whether the information is personal information;
- (e) whether the Information and Privacy Commissioner or a court of law has previously determined that a record should be publicly disclosed or kept confidential;
- (f) if an access request has previously been made for the information under FIPPA, whether the information was disclosed as a result of that request;
- (g) any other matters relating to FIPPA and FIPPA exemptions;
- (h) whether the type of information in question was previously held confidential by the Board; and

- (i) whether the information is required by legislation to be kept confidential.

Information that is in the public domain will not be considered confidential.



## **Appendix B**

### **Types of Information that Have Previously Been Held Confidential**

This Appendix contains an illustrative list of the types of information previously assessed or maintained by the Board as confidential, and parties may anticipate that the Board will accord confidential treatment to these types of information in the normal course.

#### **1. Individual Personal Records**

Personal records of employees or other members of entities seeking licenses that are either filed with the Board or otherwise obtained have previously been held confidential. Individual personal records include police, tax, CPIC, and other personal records.

#### **2. Credit Checks**

Personal credit checks. These are credit checks filed with the Board, or obtained by the Board, from a variety of commercial sources including Dunn & Bradstreet and Standard & Poor's.

#### **3. Information Covered by Solicitor-client Privilege or Litigation Privilege**

Advice with respect to litigation or other legal information protected by solicitor-client privilege or litigation privilege.

#### **4. Tax Related Information**

Information from a tax return or information gathered for the purpose of determining tax liability or collecting a tax.

#### **5. Third Party Information under FIPPA**

Third party information as described in section 17(1) of FIPPA, including vendor pricing information.

#### **6. "Forward Looking" Financial Information**

"Forward looking" financial information that has not been publicly disclosed and that Ontario securities law therefore requires be treated as confidential.

**7. Information Identified as Confidential in Board Templates and Filing Guidelines**

Information identified as being considered confidential in Board templates and filing guidelines, including licence application forms for electricity licences and gas marketing licences.

**8. Information Filed Under the RRR**

Information identified in the Board's *Natural Gas Reporting & Record Keeping Requirements: Rule for Natural Gas Utilities, Natural Gas Reporting and Record Keeping Requirements: Gas Marketer Licence Requirements and Electricity Reporting and Record Keeping Requirements* as being treated as confidential.

**Appendix C**  
**Form of Declaration and Undertaking**

EB-[•]

IN THE MATTER OF [•]

DECLARATION AND UNDERTAKING

I, \_\_\_\_\_, am counsel of record or a consultant for  
\_\_\_\_\_.

DECLARATION

I declare that:

1. I have read the *Rules of Practice and Procedure* of the Ontario Energy Board (the “Board”) and all Orders of the Board that relate to this proceeding.
2. I am not a director or employee of a party to this proceeding for which I act or of any other person known by me to be a party in this proceeding.
3. I understand that this Declaration and Undertaking applies to all information that I receive in this proceeding and that has been designated by the Board as confidential and to all documents that contain or refer to that confidential information (“Confidential Information”).
4. I understand that execution of this Declaration and Undertaking is a condition of an Order of the Board, that the Board may apply to the Superior Court of Justice to enforce it.

UNDERTAKING

I undertake that:

1. I will use Confidential Information exclusively for duties performed in respect of this proceeding.

2. I will not divulge Confidential Information except to a person granted access to such Confidential Information or to the Board.
3. I will not reproduce, in any manner, Confidential Information without the prior written approval of the Board. For this purpose, reproducing Confidential Information includes scanning paper copies of Confidential Information, copying the Confidential Information onto a diskette or other machine-readable media and saving the Confidential Information onto a computer system.
4. I will protect Confidential Information from unauthorized access.
5. With respect to Confidential Information other than in electronic media, I will, promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding:
  - (a) return to the Board Secretary, under the direction of the Board Secretary, all documents and materials in all media containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information; or
  - (b) destroy such documents and materials and file with the Board Secretary a certification of destruction in the form prescribed by the Board pertaining to the destroyed documents and materials.
6. With respect to Confidential Information in electronic media, I will:
  - (a) promptly following the end of this proceeding or within 10 days after the end of my participation in this proceeding, expunge all documents and materials containing Confidential Information, including notes, charts, memoranda, transcripts and submissions based on such Confidential Information, from all electronic apparatus and data storage media under my direction or control and file with the Board Secretary a certificate of destruction in the form prescribed by the Board pertaining to the expunged documents and materials; and
  - (b) continue to abide by the terms of this Declaration and Undertaking in relation to any such documents and materials to the extent that they subsist in any electronic apparatus and data storage media under my direction or control and cannot reasonably be expunged in a manner that ensures that they cannot be retrieved.
7. For the purposes of paragraphs 5 and 6, the end of this proceeding is the date on which the period for filing a review or appeal of the Board's final order in this

proceeding expires or, if a review or appeal is filed, upon issuance of a final decision on the review or appeal from which no further review or appeal can or has been taken.

8. I will inform the Board Secretary immediately of any changes in the facts referred to in this Declaration and Undertaking.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature:

Name:

Company/Firm:

Address:

Telephone:

Fax:

E-mail:

## Appendix D

### Form of Certification of Destruction

#### CERTIFICATION OF DESTRUCTION

TO: The Ontario Energy Board (the "Board")

RE: Confidential information received in proceeding [•] *[insert proceeding number]*  
("Confidential Information")

I hereby confirm that I have:

1. Destroyed all Confidential Information and all documents and materials in all non-electronic media containing Confidential Information governed by the Declaration and Undertaking signed by me in the above-referenced proceeding, including notes, memoranda, transcripts and written submissions.
2. Expunged all Confidential Information and all documents and materials in electronic media containing Confidential Information governed by the Declaration and Undertaking signed by me in the above-referenced proceeding, including notes, memoranda, transcripts and written submissions, from all electronic apparatus and data storage media under my direction or control.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature:

Name:

Company/Firm:

Address:

Telephone:

Fax:

E-mail:

## **Appendix E**

### **Summary of Pertinent FIPPA Provisions**

FIPPA allows any person to request access to records or information in the custody or under the control of the Board.

Subject to limited exceptions, the Board is prohibited from releasing personal information.

Following receipt of a request, the Board must release non-personal information that is in its custody or under its control unless the information falls within one of the exemptions listed in the legislation. Some of the exemptions are mandatory (in which case the information must be withheld) and others are discretionary (in which case the information may be withheld). For example, records do not need to be released if disclosure would:

- (a) reveal advice to the government from a public servant or a consultant;
- (b) interfere with law enforcement;
- (c) reveal confidential information received from another government;  
or
- (d) violate solicitor-client privilege.

The exemptions that are likely to be of most relevance in the context of confidential filings with the Board are those contained in section 17 of FIPPA, which relates to commercially sensitive third party information.

Under section 17(1), the Board must not, without the consent of the person to whom the information relates, disclose a record where:

- (a) the record reveals a trade secret or scientific, technical, commercial, financial or labour relations information;
- (b) the record was supplied in confidence implicitly or explicitly; and
- (c) disclosure of the record could reasonably be expected to have any of the following effects:
  - i. prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization;

- ii. result in similar information no longer being supplied to the Board where it is in the public interest that similar information continue to be so supplied;
- iii. result in undue loss or gain to any person, group, committee or financial institution or agency; or
- iv. reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

Before granting a FIPPA request for access to a record that the Board has reason to believe might contain information referred to in section 17(1) of FIPPA, the Board must give written notice to the person to whom the information relates. That person then has an opportunity to make written representations as to why the record (or a part of the record) should not be disclosed. Where the Board subsequently decides to disclose the record (or a part of the record), the Board must again give written notice to the person to whom the information relates. That person then has an opportunity to appeal the decision to the Information and Privacy Commissioner.

Under section 17(2) of FIPPA, the Board must not, without the consent of the person to whom the information relates, disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.



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March 19, 2012

**TO: All Regulated Entities  
All Other Interested Parties**

**RE: Amendments to the Board's Practice Direction on Cost Awards**

---

The Ontario Energy Board (the "Board") has revised its *Practice Direction on Cost Awards* (the "Practice Direction"). The revised Practice Direction is attached as Attachment A to this letter, and is available on the Board's website at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). For information purposes only, a comparison version of the Practice Direction showing all revisions relative to the previous version (other than in respect of the forms) is attached as Attachment B to this letter, and is also available on the Board's website.

### **Summary of Revisions**

The Practice Direction was last updated in a material respect in 2008. Since that time, Board practice regarding cost awards has developed, and certain changes external to the Board have occurred. The revisions to the Practice Direction that have now been made by the Board reflect those developments and changes, as well as addressing certain other matters.

The following is a summary of the more material revisions that have been made to the Practice Direction, grouped by category:

- i. *Changes to reflect recent Board decisions and practice:* These changes relate principally to eligibility for cost awards, and are found largely in sections 3.04 (factors considered by the Board in relation to eligibility) and 3.05 (parties that are *prima facie* not eligible for a cost award). With respect to the latter, the Board has extended the approach reflected in recent decisions to capture all levels of government, as well as government agencies and corporations. In addition, the standard period for filing objections to requests for cost eligibility has been reduced from 14 to 10 days, as has the period for filing objections to cost claims.
- ii. *Changes regarding cost claims for disbursements:* By letter dated June 24, 2012, the Board gave notice that it would only award reimbursement for the amounts

allowed under the government's *Travel, Meal and Hospitality Expenses Directive*, available on the Board's website and at the following link: <http://www.mgs.gov.on.ca/stdprodconsume/groups/content/@mgs/@home/documents/resources/276507.pdf>. The Practice Direction has been updated accordingly.

iii. *Changes resulting from the introduction of the HST*: The Practice Direction has been updated to remove references to the GST and to reflect the HST framework.

iv. *New cost claim forms*: Two new cost claim forms have been prepared, one for hearings and the other for consultation processes. The forms can be completed electronically and formulas have been embedded to assist in the calculations. Consequential changes to the forms have also been made to reflect some of the other revisions being made to the Practice Direction.

A number of other changes, many of a "housekeeping" nature, have also been made to the Practice Direction. These include: (a) the elimination of definitions for terms that are defined in the *Ontario Energy Board Act, 1998*; (b) changes to more clearly accommodate cost awards in the context of consultation processes; (c) a relaxation of the requirement to provide a consultant's CV (it need only be provided if one has not been filed in the previous 2 years); (d) revisions to provide greater clarity; and (e) a new section to remind interested parties of the Board's policy of publishing a summary of the costs awarded to a party in relation to its participation in Board processes, as announced in the Board's letter of February 6, 2012.

### Coming into Effect

The revisions to the Practice Direction come into effect today, and apply to all cost eligibility requests, cost claims and other cost award-related materials filed on or after today's date.

Sincerely,

Kirsten Walli  
Board Secretary

Attachments:	Attachment A:	Revised <i>Practice Direction on Cost Awards</i>
	Attachment B:	Comparison version of the <i>Practice Direction on Cost Awards</i> showing changes relative to the version issued June 9, 2009 (for information purposes only)



# ONTARIO ENERGY BOARD

Practice Direction

On

Cost Awards

Revised March 19, 2012

# ONTARIO ENERGY BOARD

## PRACTICE DIRECTION ON COST AWARDS

### 1. DEFINITIONS

1.01 In this Practice Direction, words have the same meaning as in the *Ontario Energy Board Act, 1998* or the Ontario Energy Board's Rules of Practice and Procedure, unless otherwise defined in this section.

"Act" means the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B;

"applicant" means:

- (a) when used in connection with a process commenced by an application to the Board, the person(s) who make(s) an application;
- (b) when used in connection with a process commenced by reference, Order in Council, or on the Board's own initiative, the person(s) named by the Board to be the applicant; and
- (c) when used in connection with a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, the person(s) from whom cost awards will be recovered in relation to the process, as determined by the Board;

"intervenor", in respect of a proceeding, means a person who has been granted intervenor status by the Board and, in respect of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, means a person who is participating in that process, and "intervention" shall be interpreted accordingly;

"municipality" has the same meaning as in the *Municipal Act, 2001*, S.O. 2001, c.25;

"party" means an applicant, an intervenor and any other person participating in a Board process;

"person" includes (i) an individual; (ii) a company, sole proprietorship, partnership, trust, joint venture, association, corporation or other private or public body corporate; and (iii) an unincorporated association or organization;

"process" means a process to decide a matter brought before the Board whether commenced by application, reference, Order in Council, notice of appeal or on the Board's own initiative, and includes a notice and comment process under section 45 or 70.2 of the Act and any other consultation process initiated by the Board;

"Tariff" means the Cost Award Tariff contained in Appendix A to this Practice Direction;

"*Travel, Meal and Hospitality Expenses Directive*" means the Ministry of Government Services, Management Board of Cabinet, *Travel, Meal and Hospitality Expenses Directive*,

dated April 1, 2010, as may be revised from time to time; and

“wholesaler” means a person who purchases electricity or ancillary services in the IESO-administered markets or directly from a generator or who sells electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer.

## **2. COST POWERS**

2.01 The Board may order any one or more of the following:

- (a) by whom and to whom any costs are to be paid;
- (b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed;
- (c) when any costs are to be paid;
- (d) costs against a party; and
- (e) the costs of the Board to be paid by a party or parties.

2.02 The timelines set out in this Practice Direction shall apply unless, at any stage in a particular process, the Board determines or orders otherwise.

## **3. COST ELIGIBILITY**

3.01 The Board may determine whether a party is eligible or ineligible for a cost award.

3.02 The burden of establishing eligibility for a cost award is on the party applying for a cost award.

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
- (b) primarily represents a public interest relevant to the Board's mandate; or
- (c) is a person with an interest in land that is affected by the process.

3.04 In making a determination whether a party is eligible or ineligible, the Board may:

- (a) in the case of a party that is an association or other form of organization comprised of two or more members, have regard to whether the individual members would themselves be eligible or ineligible;
- (b) in the case of a party that is a commercial entity, have regard to whether the entity primarily represents its own commercial interest (other than as a ratepayer) rather than the public interest, even if the entity may be in the business of providing services that can be said to serve a public interest relevant to the Board's mandate; and
- (c) also consider any other factor the Board considers to be relevant to the public interest.

3.05 Despite section 3.03, the following parties are not eligible for a cost award:

- (a) an applicant;
- (b) an electricity transmitter, wholesaler, generator, distributor, retailer, and unit sub-meter provider, either individually or in a group;
- (c) a gas transmitter, gas distributor, gas marketer and storage company, either individually or in a group;
- (d) the Independent Electricity System Operator;
- (e) the Ontario Power Authority;
- (f) the Smart Metering Entity;
- (g) the government of Canada (including a department), and any agency, Crown corporation or special operating agency listed in a schedule to the *Financial Administration Act* (Canada) that has not at the relevant time been privatized;
- (h) the government of Ontario (including a ministry), and any public body or Commission public body listed in Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies – Definitions) made under the *Public Service of Ontario Act, 2006* (Ontario);
- (i) a municipality in Ontario, individually or in a group;
- (j) a conservation authority established by or under the *Conservation Authorities Act* (Ontario) or a predecessor of that *Act*, individually or in a group;
- (k) a corporation, with or without share capital, owned or controlled by the government of Canada, the government of Ontario or a municipality in Ontario; and
- (l) a person that owns or has a controlling interest in a person listed in (a), (b) or (c) above.

For the purposes of paragraph (k), control has the same meaning as in the *Business Corporations Act* (Ontario).

For the purposes of paragraph (l): (i) a person has a controlling interest in another person listed in (a), (b) or (c) that is a limited partnership if the person is a general partner; (ii) a person has a controlling interest in another person listed in (a), (b) or (c) that is any other form of partnership if the person is a partner; and (iii) a person has a controlling interest in another person listed in (a), (b) or (c) that is a corporation if the person controls the corporation or controls a corporation that holds 100 percent of the voting securities of the first-mentioned corporation, control having the same meaning as in the *Business Corporations Act* (Ontario).

3.06 Notwithstanding section 3.05, a party which falls into one of the categories listed in section 3.05 may be eligible for a cost award if it is a customer of the applicant.

3.07 Also notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.

3.08 The Board may, in appropriate circumstances, award an honorarium in such amount as the Board determines appropriate recognizing individual efforts in preparing and presenting an intervention, submission or written comments.

#### **4. COST ELIGIBILITY PROCESS**

- 4.01 A party that will be requesting costs must make a request for cost eligibility that includes the reasons as to why the party believes that it is eligible for an award of costs, addressing the Board's cost eligibility criteria (see section 3). The request for cost eligibility shall be filed as part of the party's letter of intervention or, in the case of a notice and comment process under section 45 or 70.2 of the Act or any other consultation process initiated by the Board, shall be filed by the date specified by the Board for that purpose. For information on filing and serving a letter of intervention, refer to the Board's Rules of Practice and Procedure.
- 4.02 An applicant in a process will have 10 calendar days from the filing of the letter of intervention or request for cost eligibility, as applicable, to submit its objections to the Board, after which time the Board will rule on the request for eligibility.
- 4.03 The Board may at any time seek further information and clarification from any party that has filed a request for cost eligibility or objected to such a request, and may provide direction in respect of any matter that the Board may consider in determining the amount of a cost award, and, in particular, combining interventions and avoiding duplication of evidence or interventions.
- 4.04 A direction mentioned in section 4.03 may be taken into account in determining the amount of a cost award under section 5.01.

#### **5. PRINCIPLES IN AWARDING COSTS**

- 5.01 In determining the amount of a cost award to a party, the Board may consider, amongst other things, whether the party:
- (a) participated responsibly in the process;
  - (b) asked questions in interrogatories or on cross-examination which were unduly repetitive of questions already asked by one or more other parties;
  - (c) made reasonable efforts to ensure that its evidence or intervention was not unduly repetitive of evidence presented by or the intervention of one or more other parties;
  - (d) made reasonable efforts to co-operate with one or more other parties in order to reduce the duplication of interrogatories, evidence, questions on cross-examination or interventions;
  - (e) made reasonable efforts to combine its intervention with that of one or more similarly interested parties;
  - (f) contributed to a better understanding by the Board of one or more of the issues in the process;
  - (g) complied with directions of the Board, including directions related to the pre-filing of written evidence;
  - (h) addressed issues in its interrogatories, its written or oral evidence, its questions on cross-examination, its argument or otherwise in its intervention which were not relevant to the issues in the process;
  - (i) engaged in any other conduct that tended to lengthen unnecessarily the duration of the process; or

- (j) engaged in any other conduct which the Board considers inappropriate or irresponsible.

## **6. COSTS THAT MAY BE CLAIMED**

- 6.01 Reference should be made to the Board's Tariff.
- 6.02 Cost claims shall be prepared using the applicable Board-approved form attached to this Practice Direction as Appendix "B".
- 6.03 The burden of establishing that the costs claimed were incurred directly and necessarily for the party's participation in the process is on the party claiming costs.
- 6.04 A party that is a natural person who has incurred a wage or salary loss as a result of participating in a hearing may recover all or part of such wage or salary loss, in an amount determined appropriate by the Board.
- 6.05 A party will not be compensated for time spent by its employees or officers in preparing for or attending at Board processes. When determining whether an individual is an officer or employee of the party, the Board will look at the true nature of the relationship between the individual and the party and the role the individual performs for the party. The Board may deem the individual to be an officer or employee of the party regardless of the individual's title, position, or contractual status with the party. Furthermore, an employee or officer of a company or organization that is affiliated with or related to the party that is eligible for an award of costs will be deemed to be an employee or officer of the party.
- 6.06 Counsel fees will be accepted in accordance with the Board's Tariff.
- 6.07 Paralegal fees will be accepted in accordance with the Board's Tariff. To qualify for consideration as a paralegal service, a paralegal must have undertaken services normally or traditionally performed by legal counsel, thereby reducing the counsel's time spent on client affairs.
- 6.08 Where appropriate, fees for articling students may be accepted in accordance with the Board's Tariff.
- 6.09 Cost awards will not be available in respect of services provided by in-house counsel and supporting employees, including in-house paralegal and articling students.
- 6.10 Consultant and case management fees will be accepted in accordance with the Board's Tariff. A copy of the consultant's curriculum vitae must be attached to the completed form attached to this Practice Direction as Appendix "B" if the consultant has not already provided a curriculum vitae to the Board in another process within the preceding 24 months.
- 6.11 No differentiation will be made between the rates for preparation and attendance.



- 6.12 The Board may award costs to a party on the basis of a fixed amount per day for participation in workshops, working groups, advisory groups, stakeholder meetings, technical conferences, issues conferences, settlement conferences or pre-hearing conferences.

## **7. DISBURSEMENTS**

- 7.01 Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed in accordance with the Board's Tariff, including as applicable the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* referred to in the Tariff.
- 7.02 A party may be compensated for the reasonable disbursements of an employee or officer of the party which are necessarily and directly incurred as a result of participation in a Board process.
- 7.03 Itemized receipts must be submitted with the cost claim (credit card slips or statements are not sufficient). If an itemized receipt cannot be provided, a written explanation must be submitted to explain why the receipt is unavailable and a description itemizing and confirming the expenses must be provided.

## **8. GROUP INTERVENTIONS**

- 8.01 In a case where a number of eligible parties have joined together for the purpose of a combined intervention, the Board will normally allow reasonable expenses necessary for the establishment and conduct of such a group intervention.
- 8.02 The reasonable costs of meeting room rentals and associated costs required for the formation and coordination of a group, and which are specific to the intervention, will normally be allowed. The travel costs and personal expenses of group members attending such meetings will, however, normally be excluded.
- 8.03 Attendance at a hearing should be limited to the number of representatives required to effectively monitor and provide input into the processes. When groups are not represented by counsel and/or experts, the reasonable out of pocket disbursements directly incurred for the attendance of a maximum of four group members will normally be accepted. When the group is represented by counsel and/or experts, the reasonable out of pocket disbursements incurred for the attendance of a maximum of two group members, as advisors, will normally be accepted.

## **9. HARMONIZED SALES TAX ("HST")**

- 9.01 A party will be compensated for the HST it pays on goods and services which are

determined by the Board to be eligible for an award of costs.

9.02 To be compensated, a party shall provide the following required HST information when completing the applicable form attached to this Practice Direction as Appendix “B”:

- (a) the tax status of the party, e.g. full registrant, unregistered, qualifying non-profit, zero-rated, tax exempt, etc;
- (b) the HST registration number, if any; and
- (c) the details of costs incurred showing the HST related to each item of cost.

## **10. COST CLAIMS**

10.01 All cost claims will be subject to review by the Board for compliance with the Board’s Tariff, including as applicable the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* referred to in the Tariff.

10.02 Cost claims pertaining to a process must be accompanied by a letter addressing the reasons why costs should be awarded, and shall be filed with the Board and served on the party(ies) paying the cost awards within the time and in the manner determined by the Board in respect of the process.

10.03 Cost claims shall be prepared using the applicable Board-approved form attached to this Practice Direction as Appendix “B” and shall be provided in a clear and legible format.

10.04 Where a party who is a natural person represents himself or herself in a process and claims costs, the Board may accept the claim in the form of a letter providing details of the costs directly and necessarily incurred by the individual as a result of his or her participation in the process.

## **11. COST ASSESSMENT**

11.01 A party which the Board has determined shall pay the costs shall have 10 calendar days from the date of submission by a party claiming costs to file any objection to any aspect of the costs claimed. One copy of the objection is to be filed with the Board and one copy is to be served on the party against whose claim the objection is being made.

11.02 The party claiming costs shall have 7 calendar days from the date of the filing of an objection to file a reply with the Board and to serve a copy on the objecting party.

11.03 The Board will then issue its Decision and Order directing to whom and by whom costs are to be paid and detailing the costs to be awarded to each party. The Decision and Order may also address the Board’s costs.

## **12. SPECIAL PROVISIONS FOR CONSULTATION PROCESSES INITIATED BY THE BOARD**

- 12.01 Persons who will be ordered to pay cost awards for any consultation process initiated by the Board will be informed of their obligation at the commencement of the consultation process.
- 12.02 If the persons being ordered to pay the cost awards are part of a class of regulated entities who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the members of the class in the same manner as costs are apportioned within the class under the Board's Cost Assessment Model or as otherwise determined by the Board.
- 12.03 If the persons being ordered to pay cost awards are part of more than one class of regulated entities who have to pay cost assessments under section 26 of the Act, the cost awards may be apportioned between the classes in the same manner as costs are apportioned between the classes under the Board's Cost Assessment Model or as otherwise determined by the Board.
- 12.04 In some cases, the Board may act as a clearing house for all payments of cost awards in consultation processes initiated by the Board. In those cases, invoices for cost awards will be sent out to regulated entities who have to pay cost assessments under section 26 of the Act at the same time as the invoices for cost assessments are sent out. The persons paying the cost awards shall submit their payment to the Board in accordance with the invoices issued by the Board. Payment of these invoices will be due at the same time that cost assessments are due.
- 12.05 The Board will not send out the payments for the cost awards to persons eligible to receive the cost awards until at least eighty percent (80%) of the total amount owed by the payor(s) has been received by the Board.

## **13. PUBLICATION OF COST AWARD INFORMATION**

- 13.01 The Board may, in its discretion, publish a summary of the costs awarded to each party in relation to that party's participation in Board processes. This publication is in addition to the publication of information pertaining to cost award eligibility and cost awards within the scope of a given process.

## **14. EFFECTIVE DATE**

- 14.01 This revised Practice Direction on Cost Awards shall come into effect on March 19, 2012, and applies to all cost eligibility requests, cost claims and other cost award-related materials filed on or after that date.

## APPENDIX “A”

### COST AWARD TARIFF

**NOTE: All tariffs are exclusive of applicable HST.**

#### Legal Fees - Hourly Rates

Provider of Legal Services	Completed Years Practising	Maximum Hourly Rate
Lawyer	20+	\$330
Lawyer	11 to 19	\$290
Lawyer	6 to 10	\$230
Lawyer	0 to 5	\$170
Articling Student/Paralegal	-	\$100

#### Analyst/Consultant Fees - Hourly Rates

Consultants are experts in aspects of business or science such as finance, economics, accounting, engineering or the natural sciences such as geology, ecology, agronomy, etc.

Time spent providing expert evidence, providing expert professional advice to the Board, or acting as an expert witness will be compensated at the appropriate analyst/consultant rate set out in the table below. A copy of the analyst/consultant's curriculum vitae must be attached to the cost claim if the analyst/consultant has not already provided a curriculum vitae to the Board in another process within the preceding 24 months.

If a consultant provides case management services, these hours are to be listed separately and will be compensated at the case management rate.

#### Analyst/Consultant Fees (including Case Management)

Provider of Service	Years of Relevant Experience	Maximum Hourly Rate
Analyst/consultant	20+	\$330
Analyst/consultant	11 to 19	\$290
Analyst/consultant	6 to 10	\$230
Analyst/consultant	0 to 5	\$170
Case Management	-	\$170

## **Disbursements**

Reasonable disbursements, such as postage, photocopying, transcript costs, travel and accommodation, directly related to the party's participation in the process, will be allowed, as applicable in accordance with the principles and rules set out in the *Travel, Meal and Hospitality Expenses Directive* which is available on the Ministry of Government Services website. Except as provided in section 7.03 of this Practice Direction, itemized receipts substantiating the disbursement must accompany the cost claim.

**APPENDIX “B”**  
**COST CLAIM FORMS**

The form of “Cost Claim for Hearings” and the form of “Cost Claim for Consultations” are  
attached as separate documents



# Ontario Energy Board Commission de l'énergie de l'Ontario



## Orientation Session

## Electricity Distributors Rebasing for 2014 Rates

### Summary of Key Changes

Ted Antonopoulos, Manager, Electricity Rates

Martin Davies, Project Advisor, Electricity Rates

July 23, 2013

# 2014 Rebasing List - Status

## 2014 COS

Kitchener-Wilmot

Hawkesbury

Cooperative Embrun

Burlington

Cambridge and North Dumfries

Fort Frances

Haldimand

Niagara-on-the-Lake

Oakville

Orangeville

Veridian

## 2015 COS

Essex

Festival

Newmarket-Tay

Orillia

Hearst

North Bay

4<sup>th</sup> Gen IR - May 1

4<sup>th</sup> Gen IR - Jan 1





# Introduction

- Rate Applications and Hearing Process Review (APR) initiated June 2012
  - All 2014 applicants subject to APR outcomes
- Renewed Regulatory Framework for Electricity (RRFE) Report issued October 2012
  - RRFE takes effect with 2014 rates
  - Jan 1 filers used the previous filing requirements
- LDCs with a May 1 rate year
  - application deadline is October 1, 2013

# Substantive Changes

1. Administrative
2. Consolidation of Key Policy Statements and Generic Findings
3. New Requirements Arising From RRFE
4. Revisions Arising From APR
5. Revisions to Certain Other Existing Information Requirements

# Administrative

- Chapters 1 and 2 are now exclusively applicable to distributors
  - Chpts 1, 2, 3 & 5 make up new Dx rate applications compendium
- Interrogatory Nomenclature (chapter 1)
  - e.g. 1-Staff-20
    - Consistent acronyms
    - Continuous numbering system
- Focus on not repeating content of existing Board documents (chapters 1 & 2)
  - Responsibility of parties to refer to applicable documents (e.g. confidentiality section has been reduced in size)
- Key References (chapter 2)
  - Moved to appendix workbook

# Updates from Board Policies

- Exhibit 2 (Rate Base)
  - Chapter 5 - Consolidated Distribution System Plans
    - Chapters 1 and 2 revised to reflect impact
    - Reminder that DSP must be stand alone document and compliant with chapter 5
    - Mandatory filing for distributors beginning with 2014 CoS applications for May 1 rates
- Exhibit 4 (OM&A)
  - LRAM Legacy Period
    - No applications expected
    - 2012 and 2013 IRM decisions disallowed LRAM claims for persistence for programs deployed up to last test year (few exceptions)
- Exhibit 7 (Cost Allocation)
  - Embedded distributor class
    - Revised to reflect July 16 letter on the treatment of embedded distributors

# New Requirements Arising From RRFE

- Exhibit 1 (Administrative Documents)
  - Executive summary (include outcomes discussion)
  - Customer engagement (new section)
  - Corporate governance (added to administration section)
- Exhibit 2 (Rate Base)
  - New Appendix 2-AB (excel version of Table 2 – Chapter 5)
  - Appendix 2-AA still required
  - New Appendices 2-FA, FB & FC (REG Investments)
- Exhibit 8 (Rate Design)
  - No changes to rate mitigation (Less likely to be required)
  - Controls integrated with planning and rate-setting choices

# New Requirements Arising From RRFE (cont'd)

- Review of OM&A costs
  - Transitioning towards an output/program focused review
  - Onus on applicant to group activities into programs
  - Onus on application to describe compensation strategy
- Exhibit 4 (OM&A)
  - New Appendix 2-JC (OM&A Programs Table and Variance Analysis)
  - Eliminated Appendices 2-G & 2-H (2013 account by account expenses)
  - Revised Appendix 2-K (Employee Costs)
  - OM&A details under new Program Delivery Cost section

# New Requirements Arising From RRFE (cont'd)

Appendix 2-JC  
OM&A Programs Table

Programs	Last Rebasing Year (2009 Board- Approved)	Last Rebasing Year (2009 Actuals)	2011 Actuals	2012 Actuals	2013 Bridge Year	2014 Test Year	Variance (Test Year vs. 2012 Actuals)	Variance (Test Year vs. Last Rebasing Year (2009 Board-Approved))
<b>Reporting Basis</b>								
<b>Program Name #1</b>								
							0	0
							0	0
							0	0
							0	0
							0	0
<b>Sub-Total</b>	0	0	0	0	0	0	0	0
<b>Program Name #2</b>								
							0	0
							0	0
							0	0
							0	0
							0	0
<b>Sub-Total</b>	0	0	0	0	0	0	0	0

# New Requirements Arising From RRFE (cont'd)

## Appendix 2-K Employee Costs

	Last Rebasing Year - 2009- Board Approved	Last Rebasing Year - 2009- Actual	2011 Actuals	2012 Actuals	2013 Bridge Year	2014 Test Year
<b>Number of Employees (FTEs including Part-Time)<sup>1</sup></b>						
Management (including executive)						
Non-Management (union and non-union)						
Total	-	-	-	-	-	-
<b>Total Salary and Wages including overtime and incentive pay</b>						
Management (including executive)						
Non-Management (union and non-union)						
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Benefits (Current + Accrued)</b>						
Management (including executive)						
Non-Management (union and non-union)						
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Compensation (Salary, Wages, &amp; Benefits)</b>						
Management (including executive)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Non-Management (union and non-union)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -



# Revisions Arising from APR

- Materiality
  - Chapter 1
    - Focus on exploration through the discovery process of material issues
    - Excessive detail of non-material issues to be considered at cost awards
  - Chapter 2
    - OM&A and Rate Base thresholds unchanged
    - 5% threshold established for explanations of DVA with certain exceptions (exhibit 9)
- Letters of Comment
  - Chapter 2
    - All responses to matters raised in letters of comment are to be filed with the Board during the course of the proceeding (exhibit 1)

# Revisions Arising from APR (cont'd)

- Executive Summary
  - Chapter 2
    - New requirement to replace Overview of Filing (exhibit 1)
- Bill impacts
  - Distributor only impacts excluding pass throughs for notice (exhibit 1)
- Clarity of Expectations
  - Language changes to be clear on what is required

# Revisions to Certain Other Existing Information Requirements

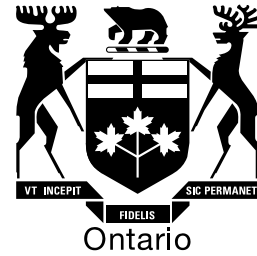
- Accounting changes
  - To address issues in previous applications and clarify expectations
- Financial statements
  - *Pro Forma* Financial Statements for the Bridge and Test years no longer required
  - Draft version required if most recent historical year not ready (exhibit 1)
- Rate year/fiscal year alignment
  - Detailed analysis no longer required
- Budget forecast
  - Eliminated statement as to when the forecast was prepared and when it was approved by the utility's management and/or Board of Directors

# Revisions to Certain Other Existing Information Requirements (cont'd)

- ICM
  - New section on addition of assets to rate base (exhibit 2)
- Service Reliability
  - CAIDI eliminated, five years of data required for the rest and New Appendix 2-G (exhibit 2)
- Load Forecast
  - Revised section on CDM Adjustment and new Appendix 2-I (exhibit 3)
- Smart Metering Charge
  - New section to reflect charge in applications (exhibit 8)
- Tariff of Rates and Charges
  - New Appendix 2-Z
  - New requirement for tracked changes version of current tariff sheet (exhibit 8)

# Revisions to Certain Other Existing Information Requirements (cont'd)

- HST Impacts
  - Eliminated the identification as to whether or not any adjustments have been made to capital expenditures and OM&A to reflect the implementation of the HST and the provision by the applicant of supporting schedules and analyses
- PILs
  - Eliminated the requirement to file tax notice of assessments and notice of re-assessments



# **Ontario Energy Board**

## **Filing Requirements For Electricity Distribution Rate Applications**

### **Chapter 1**

### **Overview**

**July 17, 2013**

## Chapter 1 Overview

This document provides information about the filing requirements for electricity distribution rate applications. It has been designed to provide direction to applicants, and it is expected that applicants will file applications consistent with the filing requirements. If circumstances warrant, the Board may require an applicant to file evidence in addition to what is identified in the filing requirements. The filing requirements are designed to ensure that an appropriate base level of information is either produced or at least considered for its applicability to the applicant's circumstance.

The filing requirements apply only to distributors. Unless specifically identified, the words "utility", "utilities", "applicant" or "applicants" in this document refer to distributors.

Transmitters should consult the June 28, 2012 edition of the Chapter 1 and 2 filing requirements for guidance on rate applications. The Board will issue further instructions to transmitters in due course.

References to a "party" refer to the applicant, Board staff and any registered intervenors.

### Renewed Regulatory Framework for Electricity

On October 18, 2012, the Board released its *Report of the Board, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* (the "RRFE Report") which introduced three rate-setting methods: (1) 4<sup>th</sup> Generation IR, (2) Custom IR and (3) Annual IR Index.

### Chapters Included in this Filing Requirement Document

The Filing Requirement document sets out the information that must be included in a rate application.

Chapter 1 outlines generic procedural matters and certain expectations of the Board from parties participating in the adjudication process pursuant to Chapters 2, 3 and 5.

Chapter 2 details the filing requirements for a cost of service rate application based on a forward test year that the Board will require from an electricity distribution company.

Chapter 3 details the filing requirements under the incentive regulation mechanism. This approach will be used for electricity distributors when there is no requirement to file a cost of service rate application. Chapter 3 includes specific guidance on requirements related to both the 4<sup>th</sup> Generation IR and Annual IR Index approaches.

Chapter 5, which was issued by the Board on March 28, 2013, "*Consolidated Distribution System Plan Filing Requirements*," sets out filing requirements for consolidated distribution system plans. These outline the information required by the Board to assess a distributor's planned expenditures on distribution system and other infrastructure. Distributors must review this Chapter and its cover letter, regardless of which rate-setting option they are contemplating, to ensure that they are meeting the specific requirements of this Chapter, which are applicable to all three rate-setting methods listed above.

## **Completeness and Accuracy of an Application**

An application to the Board by a regulated company must provide sufficient detail to enable the Board to make a determination as to whether the proposals are reasonable. The onus is on the applicant to substantiate the need for and reasonableness of the costs that are the basis of proposed new rates. A clearly written application that demonstrates the need for the proposed rates, complete with sufficient justification for those rates, is essential to facilitate an effective regulatory review and a timely decision. The filing requirements provide the minimum information that applicants must file for a complete application. However, applicants should provide any additional information that is necessary to justify the approvals being sought in the application.

The Board's examination of an application and subsequent decision are based only on the evidence filed in that case. This ensures that all interested parties to the proceeding have an opportunity to see the entire record, participate meaningfully in the proceeding and understand the reasons for a decision. Consequently, a complete and accurate evidentiary record is essential.

The purpose of the interrogatory process is to test the evidence before the Board, and not to seek information that should have been provided in the original application. The Board will consider an application complete if it meets all of the applicable filing requirements.

Applicants must also be cognizant of the need for accuracy and consistency of the information and data presented in their applications. A quality application has information and data that is consistent across all exhibits, appendices and models. If an application does not meet all of these requirements or if there are inconsistencies identified in the information or data presented, the Board may return the application unless satisfactory explanations for missing or inconsistent information have been provided.

## **Certification of Evidence**

Applications filed with the Board must be certified by a senior officer of the applicant that the evidence filed is accurate, consistent and complete to the best of his/her knowledge.



## Updating an Application

When changes or updates to a filing are necessary, a thorough explanation of the changes must be provided, along with revisions to the affected evidence and related schedules. This process is contemplated in Rule 11.02 of the *Rules of Practice and Procedure*. When these changes or updates are contemplated in later stages of a proceeding, applicants should proceed with the update only if there is a material change to the evidence already before the Board. Rule 11.03 states that any such updates should clearly indicate the date of the revision and the part(s) revised.

## Interrogatories

The Board is aware of the number of interrogatories that the regulatory review process can generate. The Board advises applicants to consider the clarity, completeness and accuracy of their evidence in order to reduce the need for interrogatories. The Board also advises parties to carefully consider the relevance and materiality of information before requesting it through interrogatories.

It is the Board's expectation that parties will not engage in detailed exploration of items that do not appear to be material. For rate applications, parties should be guided by the materiality thresholds documented in Chapters 2 and 3 in assessing what is material. The Board will consider at the cost award stage of the process whether or not specific intervenors have engaged in excessively detailed exploration of non-material issues and may reflect this in the cost award decision.

Where an applicant is requested by a party to file information that the applicant believes is not relevant to any matter at issue in the proceeding, the applicant may file and serve a response to the interrogatory that sets out the reasons for the applicant's belief that the requested information is not relevant. This process is contemplated in Rule 29 of the *Rules of Practice and Procedure* and applies to all interrogatories.

In order to facilitate an efficient review of interrogatories and responses, the filing of interrogatories and responses must be sorted by issue or exhibit as applicable and, for responses, by party within each issue or exhibit, and within each exhibit by topic. For example, all interrogatory responses on test year capital budget arising from an application under Chapter 2 must be grouped together by party. In the absence of a Board-approved Issues List, parties must sort their interrogatories and responses by topic as outlined in the exhibits in this filing requirement document (or by section numbers for chapter 3 which is not arranged in exhibits). This process is also contemplated in Rule 29 of the *Rules of Practice and Procedure* and applies to all interrogatories.

## Interrogatory Nomenclature

The Board will issue a list of acronyms for each party to the proceeding prior to the commencement of the interrogatory period. For instance, if the School Energy Coalition

was an intervenor in a proceeding, it may be assigned the acronym “SEC” while Board staff would be assigned “Staff”.

When parties are submitting interrogatories, a continuous numbering system must be used to facilitate subsequent referencing of the interrogatories. An illustration of the continuous numbering system for Board staff interrogatories is as below.

The first staff interrogatory would be numbered **1-Staff-1**. The first reference to number ‘1’ indicates that this is an interrogatory related to Issue 1 on the Board-approved Issues List. The “Staff” reference is the acronym for Board staff. The second reference to number ‘1’ means that it is the first Board staff interrogatory.

The next Board staff interrogatory for this issue would be numbered **1-Staff-2**. If these were the only two Board staff interrogatories for this issue, the next interrogatory would be numbered **2-Staff-3**. While this interrogatory is the first for Issue 2, the numbering system does not revert to ‘1’. This interrogatory is numbered as the third overall interrogatory due to the continuous numbering approach described above.

For applications without Board-approved issues lists, the Filing Requirement exhibit numbers (or section numbers for chapters that are not arranged in exhibits) must be used. As an example, the first Board staff interrogatory related to rate base in Chapter 2, which is Exhibit 2, would be **2-Staff-15** (assuming that under Exhibit 1 there had been 14 Board staff interrogatories).

If there is a supplemental round of discovery through interrogatories, the numbering sequence continues, with each interrogatory number appended with an “s”. For example, **5-Staff-37s** would refer to the 37<sup>th</sup> interrogatory issued by Board staff in the proceeding, in this case pertaining to Exhibit 5 (Cost of Capital) of Chapter 2 and in a supplementary round of interrogatories.

Applicants must ensure that the electronic version of their interrogatory responses is bookmarked by issue, exhibit, topic or section, as applicable.

## Confidential Information

The Board relies on full and complete disclosure of all relevant material in order to ensure that its decisions are well-informed. The Board's expectation is that applicants will make every effort to file material contained in an application publicly in order to ensure the transparency of the review process. The Board recognizes that applicants may consider some of that information to be confidential and may wish to request that it be protected. In such cases, the relevant rules in the Board's *Rules of Practice and Procedure* and the procedures set out in the Board's [\*Practice Direction on Confidential Filings\*](#) (the “Practice Direction”) are to be followed by all participants in a proceeding before the Board, unless otherwise directed by the Board. Applicants considering the need for confidential filing of material are expected to review and follow the Practice Direction:

The Board and parties to a proceeding are required to devote additional resources to the administration, management and adjudication of confidentiality requests and confidential filings. Parties must ensure that filings for which they intend to request confidential treatment are clearly relevant to any matter at issue in the proceeding, whether the information is being filed as part of an application, as an exhibit or in response to an interrogatory. An illustrative list of the types of information that the Board has previously assessed or maintained as confidential is set out in Appendix B of the Practice Direction.

Parties should also take note of the requirements related to relevance of interrogatories outlined in this chapter, which are also applicable to information which is requested and raises confidentiality concerns. Parties should give particular significance to the relevance of any information requested by interrogatories in relation to confidential filings given the administrative issues associated with the management of those filings.



# **Ontario Energy Board**

## **Filing Requirements For Electricity Distribution Rate Applications**

### **Chapter 2**

### **Cost of Service**

**July 17, 2013**

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## **Chapter 2      Filing requirements for electricity distribution companies' cost of service rate applications, based on a forward test year**

### **2.0 Introduction**

On October 18, 2012, the Board released its *Report of the Board, Renewed Regulatory Framework for Electricity Distributors: A Performance-Based Approach* (the "RRFE Report") which introduced three rate-setting methods: (1) 4<sup>th</sup> Generation IR, (2) Custom IR and (3) Annual IR Index. The 4<sup>th</sup> Generation IR option consists of a cost of service ("cost of service" or "CoS" or "rebasing")<sup>1</sup> followed by four years of incentive regulation mechanism ("IRM") adjustments. This chapter relates to the cost of service rate application. Filing requirements for IRM rate applications and the Annual IR Index option are provided in Chapter 3 of this document.

The use of the phrase "Board-approved" in these filing requirements typically refers to the set of data used by the Board as the basis for approving the most recent cost based rates. It does not mean that the Board, in fact, "approved" any of the data, but only that the final approved rates were based on those data.

The filing requirements contained in this Chapter (and Chapter 5) outline all the relevant information necessary for a complete cost of service-based application. The various appendices referenced in this chapter are linked to each of the sections in Chapter 2 and provide schedules to be completed by the applicant to facilitate the filing of all required information (e.g., Appendix 2-P Cost Allocation provides tables related to section 2.10.3 Revenue-to-Cost Ratios). These appendices are available in Microsoft Excel format on the Board's web site and must be completed by applicants and filed as part of a CoS application.

The models issued by the Board, including those contained in the appendices to this chapter, are provided to assist the applicant in filing a rate application, and to provide consistent formatting for all distributors for greater efficiency of the review process. An application to the Board is the applicant's responsibility and the Board expects that the application will be complete and accurate. Likewise, the applicant bears the responsibility to ensure the accuracy and appropriateness of all inputs and outputs from the models that it uses in supporting its application. The applicant is responsible for advising the Board of any concerns it may have regarding calculations flowing from the models as well as any changes that the applicant may have made to the models to address its own circumstances. Given the variety of different circumstances to be

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<sup>1</sup> The Board considers cost of service and rebasing to be the same and therefore these terms are used interchangeably.



considered, the use of a Board model does not necessarily mean that the Board will approve the results.

Applicants should review Chapter 1 of this document, which provides an overview of the Board's expectations on certain generic matters, such as the completeness and accuracy of an application, the exploration of non-material items, and confidential filings.

## **2.1 Cost of Service Application in Advance of Scheduled Application**

In the RRFE Report, the Board outlined the transition plan which it had established to facilitate the adoption of the three new rate-setting methods. Distributors should consult Section 5.2 "Transition" of the RRFE Report to ensure that their planned applications are consistent with this transition plan.

Those distributors who are within the term of their current 3<sup>rd</sup> Generation IR (in other words are scheduled to rebase for January 1, 2015 rates or later) and are opting for the 4<sup>th</sup> Generation IR option will continue to have their rates adjusted annually for the remaining years of their 3<sup>rd</sup> Generation IR term. Distributors can also opt for the Custom IR or the Annual IR Index methodologies. Distributors opting for 4<sup>th</sup> Generation IR and planning to file a cost of service application earlier than scheduled, must meet the threshold for early rebasing established in the Board's [letter of April 20, 2010](#).

## **2.2 Seeking Approval to Align Rate Year with Fiscal Year**

Distributors seeking an approval to align their rate year with their fiscal year (i.e. January 1) must provide a discussion of the rationale for the proposed alignment. If a January 1<sup>st</sup> effective date is being requested as well, the Board would normally expect such applications to be filed no later than by the end of April prior to the test year in order to allow sufficient time for the review of the application.

## **2.3 General Requirements**

The basic format of an application for a forward test year cost of service filing must include the following nine Exhibits:

Exhibit 1	Administrative Documents
Exhibit 2	Rate Base
Exhibit 3	Operating Revenue
Exhibit 4	Operating Costs
Exhibit 5	Cost of Capital and Capital Structure
Exhibit 6	Calculation of Revenue Deficiency/Sufficiency

Exhibit 7	Cost Allocation
Exhibit 8	Rate Design
Exhibit 9	Deferral and Variance Accounts

These exhibits correspond with the standard elements of a cost of service application, which is intended to establish rates that recover a revenue requirement based on an estimate of demand for the test year. A schematic of the elements of a cost of service application is provided in the Chapter 2 Appendices, tab 3.

Other exhibits may also be included in an application to document other proposals for which the applicant is seeking Board review and approval.

Applicants may refer to the Chapter 2 Appendices, tab 4 for a list of key references that underpin many of the filing requirements of this chapter.

The items outlined below are general requirements that are applicable throughout the application:

- Written direct evidence is to be included before data schedules;
- Average of the opening and closing fiscal year balances must be used for items in rate base;
- Total Capitalization (debt and equity) must equate to Total Rate Base;
- Data for the following years, at a minimum, must be provided:
  - Test Year = Prospective Rate Year;
  - Bridge Year = Current Year;
  - Three Most Recent Historical Years (or number of years necessary to provide actuals back to and including the most recent Board Approved Test Year, but not less than three years); and
  - Most recent Board Approved Test Year.
- Documents are to be provided in bookmarked and text-searchable Adobe PDF format; and
- Tables must also be provided in working Microsoft Excel spreadsheet format where available and practical.

If a distributor updates its evidence throughout the proceeding, the distributor must ensure that the following models, among others, are updated as applicable and the revised figures reconcile to each other:

- Revenue Requirement Work Form;
- Chapter 2 Appendices;
- EDDVAR Continuity Schedule;

- Income Tax PILs Workform;
- Cost Allocation Model;
- RTSR Model; and
- Smart Meter Model.

### **2.3.1 Integrated Distribution Planning for Eligible Investments to Connect Qualifying Generation Facilities**

On March 28, 2013, the Board issued Chapter 5 of its Filing Requirements, “*Consolidated Distribution System Filing Requirements*.”

Chapter 5 implements the Board's policy direction on an integrated approach to distribution network planning, as set out in the RRFE Report, and applies to distributors filing cost of service applications for the rebasing of their rates.

For distributor filings going forward, the Board's “*Filing Requirements: Distribution System Plans – Filing Under Deemed Conditions of Licence*” will no longer be applicable and such investments will henceforth be reviewed by the Board in the same fashion as other proposed capital expenditures. The funding mechanisms set out in the “*Filing Requirements: Distribution System Plans – Filing Under Deemed Conditions of Licence*” specifically for renewable generation connection and smart grid development will no longer be available after the distributor's first cost of service application containing a complete Chapter 5 distribution system plan.

In addition, no new deferral accounts for these types of expenditures will be established, and existing deferral accounts are expected to be discontinued following the filing of the first cost of service application containing a consolidated capital plan. Distributors filing cost of service applications in 2014 and subsequent years must include proposals for disposition of any existing balances in the deferral accounts.

Distributors yet to file a cost of service application containing a consolidated capital plan pursuant to Chapter 5 will continue to be able to record renewable energy generation costs, smart grid demonstration costs and funding adder revenues (for existing funding adders) in deferral accounts already established for this purpose. Likewise, such distributors may also seek new funding adders for material eligible investments if they are on the 4<sup>th</sup> generation IR plan as part of their IRM applications, until such time as the first cost of service application containing a consolidated capital plan.

In addition, distributors that have included eligible investments to connect qualifying facilities in their distribution system plans as part of a cost of service application may seek Board approval for investments forecast to enter service beyond the test year for purposes of implementing rate protection pursuant to the legislation. For these future years' investments distributors shall recover only the component associated with rate

protection. The remaining component of each investment is treated as any other capital investment made in non-rebasing years.

If “eligible investments” are approved by the Board as defined under Reg. 330/09 under the OEB Act, variance accounts will continue to be used for the purpose of recording actual costs of approved “eligible investments,” and revenue received from the IESO pursuant to the provincial pooling mechanism set out in section 79.1 of the OEB Act.

Further information on the requirements to implement recovery from all Ontario ratepayers can be found in section 2.5.2.5.

### **2.3.2 Accounting Standards**

This section provides information on the following accounting standards relevant to the filing of cost of service applications:

International Financial Reporting Standards (IFRS);

Canadian Generally Accepted Accounting Principles (CGAAP);

United States Generally Accepted Accounting Principles (USGAAP); and

Accounting Standards for Private Enterprise (ASPE).

The accounting standard that is used as the basis of the application must be clearly stated. Regardless of the accounting standard used in the application, the applicant must provide a summary of changes to its accounting policies made since the applicant’s last cost of service filing (e.g. capitalization of overhead, capitalization of interest, depreciation, etc.). Revenue requirement impacts of any changes in accounting policies must be separately quantified.

#### **2.3.2.1 Modified IFRS Application**

Distributors should refer to the following documents for detailed guidance relating to the use of IFRS in application filings:

- [\*Report of the Board: Transition to IFRS\*](#); dated July 28, 2009;
- [\*Addendum to Report of the Board: Implementing IFRS in an Incentive Rate Mechanism Environment \(the “Addendum”\)\*](#), dated June 13, 2011;
- [\*Asset Depreciation Study for the Ontario Energy Board, Kinectrics Inc. for distributors sponsored by the Board\*](#) dated July 8, 2010; and
- [\*OEB Accounting Policy Changes for Accounts 1575 and 1576\*](#); dated June 25, 2013.

For those applicants that have adopted IFRS for financial reporting purposes or will adopt IFRS for financial reporting purposes effective January 1, 2014 or earlier, cost of service applications must be filed on the basis of modified IFRS ("MIFRS").

### **2.3.2.2 CGAAP Application**

Utilities have the option of filing a CGAAP application if the utility chooses not to adopt IFRS for financial reporting purposes until January 1, 2015.

Per the Board's letter of July 17, 2012, electricity distributors electing to remain on CGAAP must implement regulatory accounting changes for depreciation expense and capitalization policies by January 1, 2013. These changes are mandatory in 2013 for all distributors that have not yet made these changes, and therefore all applications for 2014 rates should reflect that these changes were made in 2012 or 2013.

### **2.3.2.3 USGAAP or ASPE Application**

The Board requires a utility that adopts USGAAP or ASPE, in its first cost of service application following the adoption of the new accounting standard, to provide the following:

1. evidence of the eligibility of the utility under the governing securities legislation to report financial information using that standard (if applicable);
2. a copy of the authorization to use the standard from the corresponding Canadian securities regulator (if applicable); and
3. evidence demonstrating the benefits and potential disadvantages to the utility and its ratepayers of using the alternate accounting standard for rate regulation.

Per the Board's letter of July 17, 2012, electricity distributors adopting ASPE must implement regulatory accounting changes for depreciation expense and capitalization policies by January 1, 2013. These changes are mandatory in 2013 for all distributors that have not yet made these changes, even if there are further options to defer IFRS changeover.

## **2.4 Exhibit 1. Administrative Documents**

The items identified in this section provide the background and summary to the application as filed and are grouped into five sections:

- 1) Executive Summary;
- 2) Customer Engagement;
- 3) Financial information;

- 4) Materiality thresholds; and
- 5) Administration.

### **2.4.1 Executive Summary**

This section is the opportunity for the applicant to provide an overview of key elements of its application and its overall business strategy, including a narrative of how its approach supports the four outcomes established by the Board in the RRFE report. As a minimum, this section requires a brief summary of the following items in the application, if applicable.

#### **A. Revenue Requirement**

- Service Revenue Requirement requested for the test year;
- Increase/decrease (\$ and %) from previously approved service revenue requirement; and
- Schedule of main drivers of revenue requirement changes from the last Board approved year.

#### **B. Budgeting Assumptions**

- Economic Overview (such as growth and inflation).

#### **C. Load Forecast Summary**

- Load and customer growth (percentage change kWh and change in customer numbers from last Board approved); and
- Brief description of forecasting method(s) used, for customer/connection and consumption/demand.

#### **D. Rate Base and Capital Plan**

- Summary of the major drivers of the Distribution System Plan;
- Rate Base Requested for the test year;
- Change in Rate Base from last Board approved (\$ and %);
- Capital Expenditures requested for the test year;
- Change in Capital Expenditures from last Board approved (\$ and %);
- Summary of any costs requested for renewable energy connections/expansions, smart grid, and regional planning initiatives; and
- Total amount (\$) the Applicant seeks to recover from all ratepayers for renewable energy connection costs (Regulation 330/09).

**E. Operations, Maintenance and Administration Expense**

- OM&A for the test year and the change from last Board approved (\$ and %);
- Summary of overall drivers and cost trends;
- Inflation rates used for OM&A forecasts; and
- Total compensation for the test year and the change from last Board approved (\$ and %).

**F. Cost of Capital**

- A statement as to whether or not the Applicant is using the Board's cost of capital parameters; and
- Summary of any deviations from the Board's cost of capital methodology.

**G. Cost Allocation and Rate Design**

- Summary of any deviations from the Board's cost allocation and rate design methodologies; and
- Summary of any significant changes proposed to revenue to cost ratios and fixed/variable splits, and any proposed mitigation plans.

**H. Deferral and Variance Accounts**

- Total disposition (\$) including split between RPP and non-RPP customers;
- Disposition period; and
- New Deferral and Variance Accounts requested.

**I. Bill Impacts**

- Summary of total Bill Impacts (\$ and %) for all classes for typical customers.

**2.4.2 Customer Engagement**

The RRFE Report contemplates enhanced engagement between distributors and their customers to provide better alignment between distributor operational plans and customer needs and expectations. The Board expects distributors to provide an overview of customer engagement activities that the distributor has undertaken with respect to its plans and how customer needs have been reflected in the distributor's application.

Distributors should specifically discuss in the application how their customers were engaged in order to determine their needs. This could include references to any communications sent to customers about the application such as bill inserts, town hall

meetings held, or other forms of outreach undertaken to engage customers and explain to them how the application serves their needs and expectations and the feedback heard from customers through these engagement activities.

If distributors have not engaged in customer engagement activities, distributors must explain why and if any such activities are planned for in the future.

Distributors will also be expected to file with the Board their response to the matters raised within any letters of comments sent to the Board related to the distributor's application.

The planning elements of customer engagement activities are to be filed as part of the capital plan requirements as required by Chapter 5.

### **2.4.3 Financial Information**

This section must include the following:

- Non-consolidated audited financial statements of the utility (i.e. to exclude operations of affiliated companies that are not rate regulated) for which the application has been made, for the most recent three historical years (i.e. two years' statements must be filed, covering three years of historical actuals). If the most recent final historical audited financial statements are not available at the time of filing the application, the draft financial statements must be filed and the final audited financial statements must be provided as soon as they are available;
- Detailed reconciliation of the financial results shown in the Annual Reports/ Audited Financial Statements with the regulatory financial results filed in the application including a reconciliation of the fixed assets for example, in order to separate non-utility businesses. This must include the identification of any deviations that are being proposed between the Annual Reports/Audited Financial Statements and the regulatory financial statements including the identification of any prior Board approvals for such deviations that may exist;
- Annual Report and Management's discussion and analysis for the most recent year of the parent company, if applicable;
- Rating Agency Report(s), if available; and
- Prospectuses, information circulars, etc. for recent and planned public debt or equity offerings.

### **2.4.4 Materiality Thresholds**

The applicant must provide justification for changes from year to year to its rate base, capital expenditures, OM&A and other items above a materiality threshold. The



materiality thresholds differ for each applicant, depending on the magnitude of the revenue requirement.

Unless a different threshold applies to a specific section of these Filing Requirements, the default materiality thresholds are as follows:

- \$50,000 for a distributor with a distribution revenue requirement less than or equal to \$10 million;
- 0.5% of distribution revenue requirement for a distributor with a distribution revenue requirement greater than \$10 million and less than or equal to \$200 million; and
- \$1 million for a distributor with a distribution revenue requirement of more than \$200 million.

An applicant may provide additional details beyond the threshold if it determines that this is necessary to provide the Board with information necessary to its review.

Applicants are reminded that the onus is on the applicant to make its case and ensure that the Board has the information it needs to properly assess and deliberate on the application.

#### **2.4.5 Administration**

This section must include the following:

- Table of Contents;
- Statement as to who will be affected by the application, and which publication(s) the applicant proposes that notice must appear, whether it is a paid publication or not and the readership and circulation numbers, and the rationale for why the stated publication(s) are appropriate;
- Confirmation of the applicant's internet address for purposes of viewing the application and related documents;
- Contact information. The primary contact for the application may be a person within the applicant's organization other than the primary licence contact (the primary contact's name, address, phone number, fax and email address must all be provided). The Board will communicate with this person during the course of the application. After completion of the application, the Board will revert communication to the primary licence contact;
- Identification of any legal or other representation for the application;
- The requested effective date;
- Bill impacts (for distributors the distribution only bill impacts as per sub-total A of Appendix 2-W) to be used for the notice of application for a typical residential

customer using 800 kWh per month and for a General Service <50kW customer using 2000 kWh per month, or as applicable;

- Statement as to the form of hearing requested (i.e. written or oral) and an explanation as to the reasons for the applicant's preference;
- List of specific approvals requested and relevant section of legislation. All approvals, including accounting orders (deferral or variance accounts) which the applicant is seeking, must be separately identified in this exhibit and clearly documented in the appropriate section of the application;
- Changes in tax status (e.g. a change from a corporation to a limited partnership) must be disclosed;
- Existing accounting orders and list of any departures from the Uniform System of Accounts including references to Accounting Orders;
- Description of applicant's service area:
  - General description and map showing where the utility operates within the province, and the communities serviced by the utility. A utility may provide more detailed geographic and/or engineering maps where these may be useful to understand parts of the application, such as a capital expansion or replacement program;
- A description of whether the distributor is a host distributor (i.e. distributing electricity to another distributor's network at distribution-level voltages) and/or an embedded distributor (i.e. receiving electricity at distribution-level voltages from any host distributor). The distributor must identify the embedded and/or host distributor(s). Partially embedded status must also be clearly identified, including the percentage of load that is supplied through the host distributor;
- Corporate and utility organizational structure, showing the main units and executive and senior management positions within the utility. Include any planned changes in corporate or operational structure (including any changes in legal organization and control) and rationale for organizational change and the estimated cost impact, including the following:
  - Corporate Entities Relationship Chart, showing the extent to which the parent company is represented on the utility company board; and
  - the reporting relationships between utility management and parent company officials.
- Information about the distributor's corporate governance practices, including:

1. Board of Directors
  - a. The number of board members and how many are independent<sup>2</sup>. State whether or not there is a policy on the number or proportion of independent directors
  - b. A description of what the board of directors does to facilitate its exercise of independent judgment in carrying out its responsibilities.
2. Board Mandate

The text of the board's written mandate. If the board does not have a written mandate, describe how the board delineates its role and responsibilities.
3. Board Meetings

A schedule of the meetings of the Board in the current fiscal year (2013 for 2014 CoS filers).
4. Orientation and Continuing Education

A description of what measures, if any, the board takes to provide continuing education for its directors. If the board does not provide continuing education, describe how the board ensures that its directors maintain the skill and knowledge necessary to meet their obligations as directors.
5. Ethical Business Conduct
  - a. A statement as to whether or not the board has adopted a written code for the directors, officers and employees. If the board has adopted a written code:
    - i. provide a copy of the code; and
    - ii. describe how the board monitors compliance with its code, or if the board does not monitor compliance, explain whether and how the board satisfies itself regarding compliance with its code.
6. Nomination of Directors

A description of the process by which the board identifies and selects new candidates for nomination to the board of directors.
7. Board Committees
  - a. Identification of any committees of the Board.
  - b. For each committee identified:
    - i. a description of the functions of the committee; and
    - ii. the text of the charter for the committee, if one exists.

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<sup>2</sup> "Independent" means that the director is not an officer or employee of the distributor or of any of the distributor's affiliates. "Affiliate" has the same meaning as in the *Business Corporations Act (Ontario)*.

- c. If there is an audit committee, a statement as to whether or not the members of the committee are (i) independent; and (ii) financially literate.
- Statement as to whether or not the distributor has had any transmission assets (> 50kV) deemed previously by the Board as distribution assets and whether or not there are any such assets for which the distributor is seeking Board approval to be deemed as distribution assets in the present application;
- The Accounting Standard used and when it was adopted;
- A statement identifying all deviations from the Filing Requirements, if any;
- A statement identifying any changes to the methodologies used in previous applications and a description of the changes;
- If an applicant is conducting non-utility businesses, such as generation, it must confirm that the accounting treatment it has used has segregated all of these activities from its rate-regulated activities. Distributors owning generation facilities should consult the Board's *Guidelines: Regulation and Accounting Treatments for Distributor-Owned Generation Facilities* G-2009-0300, September 15, 2009;
- Identification of Board Directives from any previous Board Decisions and/or Orders. The applicant must clearly indicate how these are being addressed in the current application (e.g. filing of a study as directed in a previous decision);
- Reference to the distributor's Conditions of Service. The distributor does not need to file its Conditions of Service, but must provide a reference to where its Conditions of Service are publicly available (e.g. on the distributor's website), and confirm that this is the current version. If there are changes to its Conditions of Service as a result of approval of the application, the distributor must identify all such changes; and
- All responses to matters raised in letters of comment filed with the Board during the course of the proceeding.

## 2.5 Exhibit 2. Rate Base

This exhibit includes information on:

- 1) Rate Base;
- 2) Capital Expenditures; and
- 3) Service Quality and Reliability Performance.

### 2.5.1 Rate Base

This exhibit must include the following sections:

- 1) Overview;
- 2) Gross Assets – Property, Plant and Equipment and Accumulated Depreciation;
- 3) Allowance for Working Capital; and
- 4) Treatment of Stranded Assets Related to Smart Meter Deployment.

#### **2.5.1.1 Overview**

The applicant must provide a complete appendix 2-BA1 or 2-BA2.

For rate base, the applicant must include the opening and closing balances, and the average of the opening and closing balances for gross assets and accumulated depreciation. Alternatively, if an applicant uses a similar method such as calculating the average in service based on the average of monthly values, it must document the methodology used. Rate base shall also include an allowance for working capital.

At a minimum, the filed material in support of the requested rate base must include data for the Historical Actuals, Bridge Year (actuals to date and balance of year as budgeted), and Test Year.

Continuity statements and year-over-year variance analyses must be provided. Continuity statements must provide year-end balances and include interest during construction, and all overheads. Variance analyses must provide a written explanation for rate base-related material when there is a variance greater than the applicable materiality threshold.

If continuity statements have been re-stated for the purposes of the application, the utility must provide a thorough explanation for the restatement and also provide a reconciliation to the original statements.

The following comparisons must be provided:

- Historical Board-approved vs. Historical Actual (for most recent historic Board-approved year);
- Historical Actual vs. preceding Historical Actual (for the relevant number of years);
- Historical Actual vs. Bridge; and
- Bridge vs. Test Year.

The opening and closing balances of gross assets and accumulated depreciation that are used to calculate the fixed asset component of rate base must correspond to the respective balances in the fixed asset continuity statements. In the event that the balances do not correspond, the applicant must provide an explanation and reconciliation. This reconciliation must be between the December 31, 2013 and

December 31, 2014 net book value balances reported on the Fixed Asset Continuity Schedule (Appendix 2-BA1 or 2-BA2) and the balances included in the rate base calculation. Examples of adjustments that would be made to the fixed asset continuity schedule balances for rate base calculation purposes are the removal of the amounts for Work in Progress and Asset Retirement Obligations.

A distributor may include smart meter balances in its opening test year property, plant and equipment balances. This may result in opening balances not reconciling to the closing bridge year property, plant and equipment balances. If this is the case, the distributor must clearly show in its evidence (e.g. Appendix 2-BA) that the smart meter addition was included in the opening test year balances and must reconcile the figures. Distributors must provide the same reconciliation for accumulated depreciation.

The information outlined in Appendix 2-BA1 or 2-BA2 must be provided for each year, in both the application material and in working Microsoft Excel format.

#### **2.5.1.2 Gross Assets – Property Plant and Equipment and Accumulated Depreciation**

The applicant must provide the following information:

- Breakdown by function (transmission plant, distribution plant, general plant, other plant) for required statements and analyses;
- Detailed breakdown by major plant account for each functionalized plant item. For the test year, each plant item must be accompanied by a description;
- Summary of any incremental capital module adjustment(s), including what was approved and what was spent, if the distributor received approval for an incremental capital module adjustment as part of a previous IRM application;
- Continuity statements must be reconcilable to the calculated depreciation expenses (under Exhibit 4 – Operating Costs) and presented by asset account. Further guidance is included in the appendices.

#### **2.5.1.3 Allowance for Working Capital**

In a letter dated April 12, 2012, the Board provided an update to electricity distributors and transmitters on the options established in the June 22, 2011 cost of service filing requirements for the calculation of the allowance for working capital for the 2013 rate year. The applicant may take one of two approaches for the calculation of its allowance for working capital: (1) the 13% allowance approach; or (2) the filing of a lead/lag study.

The only exception to the above requirement is if the applicant has been previously directed by the Board to undertake a lead/lag study on which its current working capital allowance is based. Under such circumstances, the applicant must either continue to

use the results of that study or, in the event it wishes to propose a revision to its allowance, the applicant must file an updated study in support of its proposal. In the absence of such circumstances the two approaches are:

- 13% Allowance Approach

The 13% Allowance Approach is calculated to be 13% of the sum of Cost of Power and controllable expenses (i.e., Operations, Maintenance, Billing and Collecting, Community Relations, Administration and General).

The commodity price estimate used to calculate the Cost of Power must be determined by the split between RPP and non-RPP customers based on actual data and using the most current RPP (TOU) price. The calculation must also reflect the most recent Uniform Transmission Rates approved by the Board (EB-2012-0031), issued on December 20, 2012 and effective January 1, 2013. The calculation should also include the impacts arising from the new Smart Metering Entity charge approved by the Board on March 28, 2013 in its EB-2012-0100/EB-2012-0211 Decision and Order.

- Lead/Lag Study

A lead/lag study analysis for two time periods; namely:

- The time between the date customers receive service and the date that the customers' payments are available to the distributor (the lag); and
- The time between the date when the distributor receives goods and services from its suppliers and vendors and the date that it pays for them (the lead).

Leads and lags are measured in days and are generally dollar-weighted. The dollar-weighted net lag (i.e. lag minus lead) days is then divided by 365 (366 in a leap year) and then multiplied by the annual test year cash expenses to determine the amount of working capital required for operations. This amount is included in the applicant's rate base determination.

#### **2.5.1.4 Treatment of Stranded Assets Related to Smart Meter Deployment**

The Board's *Guideline: Smart Meter Funding and Cost Recovery* (G-2008-0002) provided two options to distributors regarding the accounting treatment for stranded meters related to the installation of smart meters: (1) leave them in rate base (i.e. Account 1860); or (2) record them in "Sub-account Stranded Meter Costs" of Account 1555.

Since the issuance of this guideline, distributors should have completed their smart meter deployments. Distributors are entitled to receive a rate of return for prudent investments in smart meters while recorded in Account 1555, from the time of their smart meter in-service deployment to the time of the disposition of the smart meters in

rates. The earned return on the smart meter investments serves to recognize that the meters are used and useful while they are recorded in Account 1555, although they are not yet included in rate base.

Accounting guidance in the December 2010 Accounting Procedures Handbook FAQs (Q and A #15) provides information as to how the CoS rate-setting process may be used to address the recovery by distributors of costs associated with stranded meters.

On December 15, 2011, the Board issued *Guideline G-2011-0001: Smart Meter Funding and Cost Recovery – Final Disposition*. Section 3.7 and Appendix A-1 provide the most current guidance on the treatment for recovery of costs for stranded meters replaced by smart meters.

If not already addressed in a previous Board decision, distributors must file as part of their 2014 application a proposed treatment for the recovery of stranded meters that is in conformity with the approach taken by the Board as follows:

- The total estimated NBV of the stranded meters as of December 31, 2013, or a revised amount calculated in accordance with the above-noted accounting guidance, must be removed from rate base (see Appendix 2-S). The 2014 revenue requirement must not include either a return on capital (i.e. debt cost and return on equity) or depreciation expense associated with the total estimated stranded meter costs removed from rate base;
- The total estimated NBV of the stranded meters must be recovered through separate rate riders for the applicable customer classes. A distributor must outline the manner in which it intends to allocate recovery of the NBV of the stranded meters to the applicable customer rate classes and the rationale for the selected approach;
- The total estimated stranded meter costs must be tracked in “Sub-account Stranded Meter Costs” of Account 1555; and
- The associated recoveries from the separate rate riders must also be recorded in this sub-account to reduce the balance in the sub-account.

In order to keep the distributor whole, as noted above, separate rate riders for the applicable customer classes must be proposed to recover the amount of the total estimated stranded costs (i.e. the Stranded Meter Rate Rider). If the distributor has not completed or does not expect to complete 100% of its smart meter deployment at the time of the application, there will be a need for the approved stranded meter estimated costs as of December 31, 2013 to be trued-up to actual stranded meter costs when the installation of all smart meters is completed.<sup>3</sup> An adjusting entry must be recorded for this adjustment in the sub-account referenced above. The residual balance (net of

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<sup>3</sup> However, most distributors have completed smart meter deployment and TOU billing implementation, and so there should be few, if any, distributors in this situation for 2014 rates applications.



recoveries) must be submitted for review as part of the distributor's next CoS application.

Distributors wishing to propose a different approach to that outlined above must provide a full explanation of the proposed approach and justification for it, including why the described approach would not be applicable to their circumstances.

If the recovery of stranded conventional meters replaced by smart meters has not been reviewed and approved for recovery in a previous application, the distributor must make a proposal for a Stranded Meter Rate Rider to recover the residual amounts. This applies even for distributors that have had smart meter costs reviewed and approved in stand-alone or IRM applications since their previous cost of service application. A completed Appendix 2-S must also be provided.

## **2.5.2 Capital Expenditures**

Included within this exhibit are the following sections, which will include the Distribution System Plan ("DS Plan") as outlined in Chapter 5.

- 1) Planning;
- 2) Required Information;
- 3) Capitalization Policy;
- 4) Capitalization of Overhead; and
- 5) Costs of Eligible Investments for Distributors.

### **2.5.2.1 Planning**

A distributor filing a cost of service rate application for 2014 or subsequent rate years must include in its application a consolidated DS Plan as outlined in Chapter 5.

To facilitate better planning, prioritization and pacing, the RRFE Report concluded that an integrated approach to planning is preferred. This means that all categories of system investments must be consolidated in a distributor's capital expenditure plan, including investments to renew and expand the distribution system, investments identified in a regional planning process, and investments to accommodate the connection of renewable generation or to implement a smart grid. To implement this integrated approach, the Board issued filing requirements and guidance specifically in relation to DS Plans which are incorporated under Chapter 5.

Chapter 5 is to be used by distributors in combination with this Chapter 2. Chapter 5 supersedes the Board's *Filing Requirements: Distribution System Plans - Filing under*

*Deemed Conditions of Licence* (EB-2009-0397). However, information on the costs of any eligible investments<sup>4</sup> identified pursuant to Chapter 5 for which a distributor is seeking prudence review and approval is to be provided as set out in section 2.5.2.5 below.

### **2.5.2.2 Required Information**

As part of this exhibit, distributors must file a consolidated DS Plan in accordance with Chapter 5 for matters pertaining to asset management, renewable energy generation, smart grid and regional planning. The consolidated DS Plan should be filed as a stand-alone document. Specifically, all elements of the DS Plan must be contained in one document and filed as part of Exhibit 2.

A complete appendix 2-AB must be filed, providing an overall summary of capital expenditures (in the categories identified by Chapter 5) over the past four historical years plus the bridge year and the test year.

Applicants must also provide a complete appendix 2-AA along with the following information about capital expenditures on a project-specific basis. This information is incremental to the requirements in Chapter 5:

- Written explanation of variances, including that of actuals versus the Board-approved amounts for the applicant's last Board-approved cost of service application; and
- For capital projects that have a project life cycle greater than one year, the proposed accounting treatment, including the treatment of the cost of funds.

Applicants should also provide the components of other capital expenditures such as for non-distribution activities, including a reconciliation of all capital components to the Total Capital Budget.

### **2.5.2.3 Capitalization Policy**

The applicant must provide its capitalization policy, including changes to that policy since the last rebasing application filed with the Board.

Per the Board's letter of July 17, 2012, electricity distributors electing to remain on CGAAP or choosing to adopt ASPE must implement regulatory accounting changes for depreciation expense and capitalization policies by January 1, 2013. These changes

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<sup>4</sup> Eligible investments are capital investments made for the purpose of connecting or enabling the connection of a qualifying generation facility to the distribution system. Rate protection under section 79.1 of the OEB Act may be available for the costs of these investments.

are mandatory in 2013 for all distributors that have not yet made these changes and therefore all applications for 2014 rates should reflect that these changes were made in 2013 (the bridge year).

These accounting changes under CGAAP and ASPE must be implemented consistent with the Board's regulatory accounting policies as set out for MIFRS as contained in the *Report of the Board, Transition to International Financial Reporting Standards*, EB-2008-0408, the Kinectrics Report, and the Revised 2012 APH.

If the applicant has changed its capitalization policy since the last rebasing application, regardless of whether the applicant has filed the application under CGAAP, MIFRS, USGAAP, or ASPE, the applicant must explain the reason for these changes and whether they are a result of adhering to an accounting requirement. The changes must be identified, (e.g. capitalization of indirect costs, etc.) and the causes of the changes must also be identified.

#### **2.5.2.4 Capitalization of Overhead**

Regardless of whether the applicant has filed the application under MIFRS, USGAAP, ASPE, or CGAAP, the applicant must complete either Appendix 2-DA or 2-DB depending on the accounting basis on which the application has been filed regarding overhead costs on self-constructed assets.

#### *Burden Rates*

The applicant must identify the burden rates related to the capitalization of costs of self-constructed assets. Furthermore, if the burden rates were changed since the last rebasing application, the applicant must identify the burden rates prior to and after the change.

#### **2.5.2.5 Costs of Eligible Investments for the Connection of Qualifying Generation Facilities**

For any costs incurred to make eligible investments as described in section 79.1 of the OEB Act and Reg. 330/09 under the Act (and documented in Chapter 5 for distributors), including any facilities forecast to enter service beyond the test year, the distributor must provide a proposal, where applicable, to divide the costs of eligible investments between the distributor's ratepayers and all Ontario ratepayers per Regulation 330/09, taking into account the Board's Report on the *Framework for Determining Direct Benefits* (EB-2009-0349) (the "Direct Benefits Report").

The component of such investments not eligible for rate protection will be treated similarly to any other new investment undertaken by a distributor and will not be separately tracked. For renewable generation connection investments, distributors can

assume the direct benefit percentage to be 17 percent and for renewable enabling improvement investments 6 percent. Distributors would continue to have the option to undertake a more rigorous “detailed” direct benefits assessment based on the criteria set out in the Direct Benefits Report where the distributor believes the standard percentages would not be reflective of the direct benefits.

Appendices 2-FA through 2-FC must be filed identifying all eligible investments (to a maximum of five years) for which cost recovery is required. These appendices provide information on all costs (capital and OM&A), and the shares of total costs to be recovered from all Ontario ratepayers (net of direct benefits) and the distributor’s ratepayers. The appendices also provide a revenue requirement calculation for the asset costs to be recovered annually through Regulation 330/09 Provincial Rate Protection.

#### **2.5.2.6 Addition of ICM Assets to Rate Base**

Any distributor that has an approved ICM must file a schedule of the ICM capital asset amounts (i.e., property, plant and equipment and associate depreciation) it proposes be incorporated into rate base. The distributor must compare actual capital spending with the Board-approved amount and provide an explanation for variances. The Board will make a determination on any true-up treatment of any variance between forecast and actual capital spending during the IRM plan term.

The applicant must also file the account balances recorded under:

- Account 1508 Other Regulatory Asset, Sub-account, Incremental Capital Expenditures;
- Account 1508 Other Regulatory Asset, Sub-account, Depreciation Expense;
- Account 1508 Other Regulatory Asset, Sub-account, accumulated Depreciation; and
- Account 1508, Other Regulatory Asset, Sub-account, Incremental Capital Expenditures Rate Rider.

The distributor must provide a reconciliation between amounts recorded in these accounts and amounts used to propose what will be incorporated into rate base and explain any differences.

In the event the Board decides to approve the true up of any variances, the recalculated revenue requirement should be compared to the rate rider revenues collected in the same period and these variances should be refunded to or collected from customers through a rate rider.

### **2.5.2.7 Service Quality and Reliability Performance**

The following information must be provided:

- Reported Electricity Service Quality Requirements (“ESQRs”), as set out in Chapter 7 of the *Distribution System Code*, for the last five completed years. In the event performance is below the established standard, the applicant must provide an explanation for the under-performance, as well as actions taken to address this matter, and any outcomes, as appropriate; and
- SAIDI and SAIFI, for the last five completed years. The Board has determined that CAIDI will no longer be required as a filing. Reliability performance must be reported for the two indicators for: (1) All interruptions, and (2) All interruptions excluding Loss of Supply (Cause Code 2). In the event performance is outside of the established range, the applicant must provide an explanation for the under-performance, actions taken to address the issue, and any outcomes (if available).

A completed Appendix 2-G must be filed.

## **2.6 Exhibit 3. Operating Revenue**

This exhibit includes evidence on the applicant’s forecast of customers, energy and load, service revenue and other revenue, and variance analyses related to these items.

The applicant must provide its customer, volume and revenue forecast, weather normalization methodology, and other sources of revenue in this exhibit. The applicant must include a detailed description of the methodologies and the assumptions used. Estimates must be presented excluding commodity revenues.

The information presented must include:

- 1) Load and Revenue Forecasts;
- 2) Accuracy of Load Forecast and Variance Analyses; and
- 3) Other Revenue.

### **2.6.1 Load and Revenue Forecasts**

The applicant must provide an explanation of the causes, assumptions and adjustments for the volume forecast. All economic assumptions and data sources used in the preparation of the load and customer count forecast must be included in this section (e.g. Housing Outlook & Forecasts, relative energy prices and other variables used in forecasting volumes).

The applicant must also provide an explanation of the weather normalization methodology used. The Board recognizes that an important aspect of any case is the uniqueness of the distributor and the circumstances in which it operates. Generic load profiles and universal normalization methods may not reflect the unique customer mix, weather, and economies of each utility's market.

The applicant must include in the test year forecast any impacts arising from the persistence of historical conservation and demand management ("CDM") programs, as well as the forecast impacts arising from new programs deployed in the bridge and test years. This CDM component of the forecast must be specifically identified by class, as the amount approved by the Board will be the basis for the lost revenue adjustment mechanism variance account ("LRAMVA").

Two types of load forecasting models have generally been filed with the Board in previous cost of service applications. These are Multivariate Regression and Normalized Average Use per Customer ("NAC") models. While the applicant is not restricted to filing one of these two models, the following information is required for these two models when used.

#### **2.6.1.1 Multivariate Regression Model**

- Rationale as to why the proposed model was chosen;
- Statistics of the regression equation(s) (coefficient estimates and associated t-statistics, and model statistics such as  $R^2$ , adjusted  $R^2$ , F-statistic, or Root-Mean-Squared-Error, etc.). Explanation for any resulting unintuitive relationships (e.g. negative correlation between load growth and economic growth, load growth and customer growth, etc.). An explanation of modeling approaches and alternative models tested must be provided;
- Explanation of the weather normalization methodology proposed including:
  - If the monthly Heating Degree Days ("HDD") and/or Cooling Degree Days ("CDD") are used to determine normal weather, the monthly HDD and CDD based on a) 10-year average and b) a trend based on 20-years;
  - Definition of HDD and CDD:
    - Climatological measurement point (i.e. identification of Environment Canada weather station(s)) and why that is (those are) appropriate for the distributor's service territory; and
    - Identification of base numbers from which HDDs and CDDs are measured (e.g. 18 degrees C)
  - In addition to the proposed test year load forecast, the load forecasts based on a) 10-year average and b) 20-year trend HDD and CDD; and
  - Rationale as to why the proposed normal weather methodology was chosen.

- Sources of data used for both the endogenous and exogenous variables. Where a variable has been constructed, a complete explanation of the variable, data used and source of the data must be provided. Where a utility has constructed the demand variable to model billed consumption on a class-specific basis, a full explanation of the approach used to pro-rate or interpolate non-interval data (i.e. billing data not based on calendar monthly readings as obtained from interval or smart meters) must be provided, including an explanation as to why the constructed demand series is suitable for modelling; and
- Data used in the load forecast must be provided in working Microsoft Excel format. This would include showing the derivation of any constructed variables where practical.

#### **2.6.1.2 Normalized Average Use per Customer (“NAC”) Model**

- Rationale as to why the proposed NAC methodology was chosen;
- Data supporting the calculation of NAC values used in the application for each rate class;
- Description of how CDM impacts have been accounted for in the historical period, and how CDM, including the CDM targets that are a condition of a distributor's licence, is factored into the test year load forecast; and
- Discussion of weather normalization considerations.

#### **2.6.1.3 CDM Adjustment for the Load Forecast for Distributors**

Consistent with the Board's CDM Guideline EB-2012-0003, it is expected that the distributor will integrate an adjustment into the 2014 load forecast that takes into account the measured CDM results from 2011 and 2012 CDM programs as reported by the OPA, when available. The OPA results should be taken into account for determining the amount of CDM reductions to be achieved in 2013 and 2014 in order to achieve the four-year (2011-2014) targets for kWh and kW reductions.

The license condition targets and the LRAMVA balances are based on the reported OPA results, which are annualized. It is recognized that the CDM programs in a year are not in effect for the full year, although persistence of previous year's programs will be. Therefore, the actual impact on the load forecast for the first year of the program should not be the full annualized amount. For this reason, the amount that will be used for the LRAMVA will be related to, but not necessarily equal to, the CDM adjustment for the load forecast.

Further, the actual results for 2011 and 2012 historical years, which will, in all likelihood, be used to develop the base forecast, includes the impacts of 2011 and 2012 CDM programs. The CDM adjustment to the load forecast should also take into account the

historical CDM results factored into the base load forecast before the CDM adjustment, in order to avoid double counting of the impacts.

The distributor should document the CDM savings to be used as the basis for the 2014 LRAMVA balance and the corresponding adjustment to the 2014 load forecast. In addition, the allocation of the CDM savings for the LRAMVA and the load forecast adjustment should be provided by customer class and for both kWh and, as applicable, kW. The distributor should document its proposal adequately. Appendix 2-I is provided as one approach for calculating the aggregate amounts for the LRAMVA and the corresponding CDM adjustment to the load forecast.

### **2.6.2 Accuracy of Load Forecast and Variance Analyses**

The applicant must demonstrate the historical accuracy of the load forecast for at least the past 5 years by providing the following, as applicable:

- Schedule of volumes (in kWh and in kW for those rate classes that use this charge determinant), revenues, customer/connections count by rate class and total system load in kWh) for:
  - Historical Actual for the past 5 years;
  - Historical Board Approved;
  - Historical Actual for the past 5 years – weather normalized, if applicable;
  - Bridge Year;
  - Bridge Year – weather normalized; and
  - Test Year.

A minimum of 5 historical years of customer and connection numbers must be provided. For each rate class, the applicant must also provide the following information:

- Customer count increases or decreases forecasted for the Test Year with explanations of the forecast by rate class and identification as to whether customer count is shown in year-end or year average format;
- Explanations for changes in the definition of, or major changes in the composition of, each class, such as the loss, gain or re-classification of major customers in one or more customer classes;
- Weather-normalized (if applicable) average historical actual consumption per customer for historical 5 years and forecasted average consumption for the Bridge Year and Test Year;
- For each rate class, an explanation of the net change in average consumption from last Board Approved and actual for Historical, Bridge Year and Test Year;
- Details for the development of the billing kW value for applicable classes; and



- Revenues, provided on the basis of both existing and proposed rates.

The applicant must provide the following variance analyses and relevant discussion for volumes, revenues, customer/connections count and total system load:

- Historical Board-approved vs. Historical Actual;
- Historical Board-approved vs. Historical Actual – weather normalized;
- Historical Actual – weather-normalized vs. preceding year’s Historical Actual – weather-normalized (for the necessary number of years);
- Historical Actual – weather normalized vs. Bridge Year – weather-normalized; and
- Bridge Year – weather-normalized vs. Test Year.

All data used to determine the forecasts must be presented and filed in live MS Excel spreadsheet format.

### **2.6.3 Other Revenue**

The applicant must provide the following information on Other Revenue. Breakdown of each of the other distribution revenue accounts (see Appendix 2-H for the required format);

- Comparison of actual revenues for historical years to forecast revenue for Bridge and Test Years, including explanations for significant variances in year-over-year comparisons;
- Any new proposed specific service charges, changes to rates or new rules for applying existing specific service charges; and
- Any revenue from affiliate transactions, shared services or corporate cost allocations as described in section 2.7.3.2 For each affiliate transaction, identification of the service, the nature of the service provided to affiliated entities, accounts used to record the revenue and the associated costs to provide the service.

Revenues or costs (including interest) associated with deferral and variance accounts must not be included in Other Revenue.

## **2.7 Exhibit 4. Operating Costs**

Exhibit 4 includes information that summarizes the Operating, Maintenance and Administrative (“OM&A”) Costs, Depreciation Expense and Taxes.

With the release of the RRFE report, the Board is adopting an outcomes-based approach to regulation. On this basis, the review of OM&A costs will be moving towards an output / program-focused review in place of the previous approach which focused

significant attention to discrete elements of the inputs to the OM&A costs. The Board recognizes that a transition period to achieve the full adoption of such an approach is necessary. As such, to the extent possible, applicants for a 2014 cost of service should do their year over year variance analyses based on their OM&A programs. For example, an OM&A program could be vegetation management, insulator washing, pole testing, cable locates, etc.

In this context, the Board has eliminated two appendices from the 2012 version of the Filing Requirements (2-G and 2-H) that required OM&A details on an account by account basis. The Board has inserted a new appendix, 2-JC, OM&A Programs Table and Variance Analysis, which provides OM&A details and variance analysis on a program basis. This table must reflect the entire OM&A envelope requested for recovery as part of the 2014 rate application. All applicants must provide information for the bridge and test years. In the absence of historical information on an OM&A program basis, and recognizing that this is a period of transition, the Board has retained the Recoverable OM&A Cost Driver Table appendix from 2012 (2-JB) which should be used to provide high-level cost driver information. All applicants must file all remaining OM&A appendices including appendix 2-JA that breaks down the OM&A envelope into major categories (e.g. Operations, Maintenance, etc).

This exhibit must include the following sections:

- 1) Overview;
- 2) Summary and Cost Driver Tables;
- 3) Program Delivery Costs with Variance Analysis;
- 4) Depreciation/Amortization/Depletion;
- 5) Taxes; and CDM Costs, if applicable.

### **2.7.1 Overview**

The overview should provide a brief explanation (quantitative and qualitative) of the following:

- OM&A Test Year Levels;
- Associated cost drivers and significant changes that have occurred relative to historical and Bridge years;
- Overall trends in costs;
- Inflation Rate assumed: The Board will determine an appropriate inflation rate for use by utilities with respect to IRM rate applications, and distributors should be mindful of this rate and if adopting an inflation rate other than the rate determined by the Board should provide a full explanation as to why this has been done; and

- Business environment changes.

## **2.7.2 Summary and Cost Driver Tables**

The applicant must include the following tables as part of its evidence:

- Summary of Recoverable OM&A Expenses (Appendix 2-JA);
- OM&A Cost Drivers (Appendix 2-JB); and
- Recoverable OM&A Cost per Customer and per Full Time Equivalent (Appendix 2-L).

Regardless of whether the applicant has filed the application under MIFRS, USGAAP, CGAAP, or ASPE, the applicant must identify the overall level of increase (*or decrease*) in OM&A expense in the test year in relation to a decrease (*or increase*) in capitalized overhead. The applicant must provide a variance analysis for the change in OM&A expense for the test year in respect to each of the bridge year and historical years. The applicant must complete Appendix 2-DA or 2-DB.

## **2.7.3 Program Delivery Costs with Variance Analysis**

As discussed previously, applicants must complete the revised Appendix 2-JC OM&A Programs Table making best efforts to identify the OM&A cost by program, and if not by major functions. This will include a variance analysis between the Test Year costs and the last Board-approved cost and the most recent actual.

Given this is a transitional period further details are still required to be filed for the following categories of costs, as discussed further in the sections that follow:

- 1) Employee Compensation
- 2) Shared Services and Corporate Cost Allocation
- 3) Purchase of Non Affiliate Services
- 4) One-time Costs
- 5) Regulatory Costs
- 6) Low Income Energy Assistance Programs
- 7) Charitable and Political Donations

### **2.7.3.1 Employee Compensation Breakdown**

The applicant must complete Appendix 2-K in relation to employee complement, compensation, and benefits. Information on labour and compensation must include the total amount, whether expensed or capitalized.

The Board's RRFE Report established the process of implementing an outcomes-based regulatory model, which has as one of its objectives the achievement of increased regulatory efficiency by focussing on results instead of activities. The Board is of the view that as employee compensation costs are already reflected in the applied-for capital and expense programs, the detailed segregation of compensation costs is not necessary in the Board's consideration of the expected outcomes from the proposed program costs.

The Board has accordingly streamlined the information required in Appendix 2-K from that of previous years as the Board has determined this level of detail is no longer necessary. The Board will expect subsequent stages of the discovery process to conform to these reduced requirements unless compelling reasons can be provided as to why additional information is necessary.

In place of the details removed from Appendix 2-K, it is the Board's expectation that distributors will provide a description of their compensation strategy, and clearly explain the reasons for all material changes to head count and compensation and the outcomes expected from these changes. A complete explanation includes:

- Year over year variances, inflation rates used for forecasts, plan for any new employees and relevant details on collective agreements (such as, the date the agreement was signed, the effective date, length of term and any information available to the applicant on other collective agreements entered into in the same time period);
- Basis for performance pay, goals, measures, and review processes for any pay-for-performance plans; and
- Any relevant studies conducted by or for the applicant (e.g., compensation benchmarking).

Applicants who are virtual utilities (i.e. utilities which have outsourced, the majority of functions, including employees to affiliates) must also complete this appendix in relation to the employees who are doing the work of the regulated utility. In addition to the information required per Appendix 2-K, the status of pension funding and all assumptions used in the analysis must be provided.

Where there are three or fewer employees in any category, the applicant must aggregate this category with the category to which it is most closely related. This higher level of aggregation must be continued, if required, to ensure that no category contains three or fewer employees.

The applicant must provide details of employee benefit programs, including pensions and other costs charged to OM&A for the last Board-approved rebasing application, Historical, Bridge and Test Years. The most recent actuary report(s) must be included in the pre-filed evidence. What is disclosed in the tax section of the pre-filed evidence must agree with this analysis.

### **2.7.3.2 Shared Services and Corporate Cost Allocation**

Shared Services is defined as the concentration of a company's resources performing activities (typically spread across the organization) in order to service affiliates (and/or a parent company) with the intention of achieving lower costs and higher service levels.

The applicant must identify all shared services among the affiliated entities, including the extent to which the applicant is a "virtual" utility.

Corporate Cost Allocation is an allocation of costs for corporate and miscellaneous shared services from the parent company to the utility (and vice versa). This is not to be confused with the allocation of the revenue requirement to rate classes for the purposes of rate design.

The applicant must provide the allocation methodology, a list of costs and allocators, and any 3<sup>rd</sup> party review of the corporate cost allocation methodology used.

The applicant must complete Appendix 2-N in relation to each service provided or received for the Historical (actuals), Bridge and Test years. The table found in Appendix 2-N must be completed for each year. Additional rows may be added if required. Applicants must provide a reconciliation of the revenue arising from Appendix 2-N with the amounts included in Other Revenue in section 2.6.3.

Variance analyses, with explanations, are required for the following:

- Test Year vs. Last Board-approved; and
- Test Year vs. Most Current Actuals.

The applicant must identify any Board of Director-related costs for affiliates that are included in its costs.

### **2.7.3.3 Purchase of Non-Affiliate Services**

Utility expenses incurred through the purchase of services from non-affiliated firms must be documented and justified. An applicant must provide a copy of its procurement policy including information on such areas as the level of signing authority, a description of its competitive tendering process and confirmation that its non-affiliate services purchases are in compliance with it.

For any such transactions above the materiality threshold that were procured without a competitive tender, or are not in compliance with the procurement policy, the applicant must provide an explanation as to why this was the case, as well as the following information for Historical (actuals):

- Summary of the nature of the product or service that is the subject of the transaction; and

- A description of the specific methodology used in determining the vendor (including a summary of the tendering process/cost approach, etc.).

#### **2.7.3.4 One-time Costs**

The applicant must identify one-time costs in the historical, bridge and test years and provide an explanation as to how the costs included in the test year are to be recovered. If a distributor is not proposing that one-time costs be recovered over the test year and the subsequent IRM term, an explanation must be provided.

#### **2.7.3.5 Regulatory Costs**

The applicant must provide a breakdown of the actual and anticipated regulatory costs, including OEB cost assessments and expenses for the current application such as legal fees, consultant fees, costs awards, etc. Appendix 2-M must be completed. The applicant must provide information supporting the level of the costs associated with the preparation and review of the current application. In addition, the applicant must identify how such costs are to be recovered (i.e., over what period the costs are proposed to be recovered). For distributors, the recovery period would normally be the duration of the expected cost of service plus IRM term under the 4<sup>th</sup> generation option. If the applicant is proposing a different recovery period, it must explain why it believes this is appropriate.

#### **2.7.3.6 Low-income Energy Assistance Programs (“LEAP”)**

In March 2009, the Board issued its *Report of the Board: Low Income Energy Assistance Program* (the “LEAP Report”) which describes policies and measures for electricity and natural gas distributors to assist low-income energy consumers, including emergency financial assistance.

As set out in the LEAP Report, the Board has determined that the greater of 0.12% of a distributor’s Board-approved distribution revenue requirement, or \$2,000, is a reasonable commitment by all distributors to emergency financial assistance. The \$2,000 minimum is intended to ensure that, for smaller distributors, more funding is available than otherwise would be if based solely on a percentage of distribution revenues. The LEAP amount must be calculated based on total distribution revenues, and is to be recovered from all rate classes based on the respective distribution revenue of each of those rate classes.

A distributor must include the relevant LEAP amount as part of its OM&A expenses. For greater clarity, Board-approved total distribution revenue means a distributor’s forecasted service revenue requirement as approved by the Board.

A distributor must also state whether or not any amounts have been included in its test year revenue requirement for legacy programs, such as Winter Warmth. If this is the case, the programs and amounts must be identified and a brief description of each of the programs must be provided.

#### **2.7.3.7 Charitable and Political Donations**

The applicant must file the amounts paid in charitable donations (per year) from the last Board-approved rebasing application up to and including the test year. The recovery of charitable donations will not be allowed for the purpose of setting rates, except for contributions to programs that provide assistance to the distributor's customers in paying their electricity bills and assistance to low income consumers (e.g. applicable programs under 2.7.3.6 above). If the applicant wishes to recover such contributions, it must provide detailed information for such claims.

The applicant must review the amounts filed to ensure that all other non-recoverable contributions are identified, disclosed and removed from the revenue requirement calculation. The applicant must also confirm that no political contributions have been included for recovery.

#### **2.7.4 Depreciation, Amortization and Depletion**

The information outlined below is required for Depreciation, Amortization and Depletion:

- The applicant must provide details for Depreciation, Amortization and Depletion by asset group for the Historical, Bridge and Test Years, including asset amount and rate of depreciation or amortization. This must tie back to the accumulated depreciation balances in the continuity schedule under Rate Base.
- The applicant must identify any Asset Retirement Obligations ("AROs") and any associated depreciation or accretion expenses in relation to the AROs, including the basis and calculation of how these amounts were derived.
- The Board's general policy for electricity distribution rate setting is that capital additions would normally attract six months of depreciation expense when they enter service in the test year. This is commonly referred to as the "half-year" rule. The applicant must identify its historical practice and its proposal for the test year. Variances from this "half-year" rule, such as calculating depreciation based on the month that an asset enters service, must be documented with explanation.
- The applicant must provide a copy of its depreciation/amortization policy, if available. If not, the applicant must provide a written description of the depreciation practices followed and used in preparing the application. Regardless of the accounting standard used in the application, the applicant must provide a summary of changes to its depreciation/amortization policy made since the applicant's last cost of service filing.

- The applicant must ensure that the significant parts or components of each item of PP&E are being depreciated separately. The applicant must explain if it departs from this practice.
- For an applicant that is expected to make regulatory accounting changes for depreciation expense and capitalization policies by January 1, 2013:
  - The applicant must use the Board sponsored Kinectrics study or provide its own study to justify changes in useful lives.
  - The applicant must provide a list detailing all asset service lives and tie this list to the Uniform System of Accounts as appropriate. The applicant must detail differences of its asset service lives from the Typical Useful Lives ("TUL") from the Kinectrics Report and provide a detailed explanation for using a service life that is different from the TUL in the Kinectrics Report. Appendix 2-BB must be filed.
  - Applicants must perform a recalculation to determine the average remaining life of the opening balance of assets on the date of making depreciation changes.
  - For those applicants filing an application under MIFRS, the applicant must file the applicable depreciation appendices as provided in the Chapter 2 MIFRS Appendices.
  - For those applicants filing an application under CGAAP, ASPE, or USGAAP, the applicant must file the applicable depreciation appendices as provided in the Chapter 2 CGAAP, ASPE, or USGAAP Appendices.

If the applicant has adopted an accounting standard other than IFRS, the applicant must specify the details if it adopted, in part or in full, TUL estimates that were used in the Board-sponsored Kinectrics study or its own asset service life studies, and determine the impacts. The applicant must provide a detailed justification for any changes in service lives. Applicants that filed a rate application under USGAAP must complete Appendix 2-CV.

### **2.7.5 Taxes or Payments In Lieu of Taxes (PILs) and Property Taxes**

The applicant must provide the information outlined below:

- Detailed calculations of Income Tax or PILs, as applicable (including a completed pdf and live MS Excel version of the Income Tax /PILs model available on the Board's web site) , including derivation of adjustments (e.g., Tax credits, CCA adjustments) for the Historical, Bridge and Test Years. Regulatory assets (and regulatory liabilities) must generally be excluded from PILs calculations both when they were created, and when they were collected, regardless of the actual tax treatment accorded those amounts;
- Supporting schedules and calculations identifying reconciling items;



- Copies of most recent Federal and Provincial tax returns (non-utility tax items, if material, must be separated);
- Financial statements included with tax returns, if different from the financial statements filed in support of the application (section 2.4.3);
- A calculation of tax credits (e.g., Apprenticeship Training Tax Credits, education tax credits). A Scientific Research and Experimental Development (“SRED”) return, if filed, may have confidential personal information of the people who are apprenticing like SIN, address, hourly rate, etc. which must be excluded from the filing; and
- Supporting schedules, calculations and explanations for “other additions” and “other deductions” in the applicant’s PILs model.

Taxes other than Payments In Lieu of Income Taxes (e.g. property taxes) should be clearly identified where included.

#### **2.7.5.1 Non-recoverable and Disallowed Expenses**

There may be some distribution-only expenses incurred by a distributor that are deductible for general tax purposes, but for which recovery in 2014 distribution rates is partially or fully disallowed.

Where an expense incurred by a distributor is non-recoverable in the revenue requirement (e.g. certain charitable donations) or disallowed for regulatory purposes, such amounts must also be excluded from the regulatory tax calculation including the updated calculation filed as part of the draft Rate Order.

#### **2.7.5.2 Integrity Checks**

The applicant must ensure the following integrity checks have been completed in its application and provide a statement to this effect, or an explanation if this is not the case:

- The depreciation and amortization added back in the application’s PILs model agree with the numbers disclosed in the rate base section of the application;
- The capital additions and deductions in the UCC/ CCA Schedule 8 agree with the rate base section for historic, bridge and test years;
- Schedule 8 of the most recent federal T2 tax return filed with the application has a closing December 31<sup>st</sup> historic year UCC that agrees with the opening bridge year UCC at January 1<sup>st</sup>. If the amounts do not agree, then the applicant must provide a reconciliation with explanations for the reasons;

- The CCA deductions in the application's PILs tax model for historic, bridge and test years agree with the numbers in the UCC schedules for the same years filed in the application;
- Loss carry-forwards, if any, from the tax returns (Schedule 4) agree with those disclosed in the application;
- CCA is maximized even if there are tax loss carry-forwards;
- A statement is included in the application as to when the losses, if any, will be fully utilized;
- Accounting OPEB and pension amounts added back on Schedule 1 reconciliation of accounting income to net income for tax purposes, must agree with the OM&A analysis for compensation. The amounts deducted must be reasonable when compared with the notes in the audited financial statements, FSCO reports, and the actuarial valuations; and
- The income tax rate used to calculate the tax expense must be consistent with the utility's actual tax facts and evidence filed in the proceeding.

## **2.7.6 Conservation and Demand Management Costs**

CDM activity is funded either through OPA Contracted Province Wide CDM Programs, or through a Board-approved CDM program. Both of these approaches fund the programs through the global adjustment mechanism, and therefore must not be included in distribution rates.

### **2.7.6.1 Lost Revenue Adjustment Mechanism**

The lost revenue adjustment mechanism ("LRAM") is a retrospective adjustment, which is designed to account for differences between the forecast revenue loss embedded in rates and the actual revenue loss.

On April 26, 2012, the Board issued updated CDM Guidelines. The CDM Guidelines were developed to provide more clarity on the CDM Code and what information needs to be filed in support of Board-Approved CDM program applications, as well as to provide updated details on the LRAM and the associated variance account for the 2011-2014 period.

### **2.7.6.2 LRAM for pre-2011 CDM activities**

Per the Board's CDM Guidelines and reinforced through the Board's decisions in the 2012 and 2013 IRM process, distributors that have rebased commencing in 2010 are not eligible for LRAM claims for lost revenue associated with the persistence of legacy programs in 2010 and beyond unless the Board explicitly stated its expectation in the

distributor's last rebasing decision (or if it was explicitly stated in a settlement agreement) that the distributor may file a claim in the future. Furthermore, the Board expects that any LRAM claims for the period prior to 2010 have been completed. Therefore, no LRAM claims are expected in 2014 cost of service applications.

## **2.8 Exhibit 5. Cost of Capital and Capital Structure**

The Board's general guidelines for cost of capital in rate regulation are currently provided in the *Report of the Board on Cost of Capital for Ontario's Regulated Utilities* (the "2009 Report"), issued December 11, 2009. This report supersedes the previous *Report of the Board on Cost of Capital and 2<sup>nd</sup> Generation Incentive Regulation for Ontario's Electricity Distributors* of December 20, 2006.

As per the 2009 Report, the Board issues the cost of capital parameter updates for cost of service applications. Distributors should use the most recent parameters as a placeholder, subject to an update if new parameters are available prior to the issuance of the Board's decision for a specific distributor's application.

If the applicant wishes to adopt the Board's guidelines for the cost of capital, the application must clearly state this and confirm that the cost of capital parameters will be updated in accordance with the Board's guidelines at the time of the Board's decision.

Alternatively, the applicant may apply for a utility-specific cost of capital and/or capital structure. If the applicant wishes to take such an approach, it must provide appropriate justification and supporting evidence for its proposal.

### **2.8.1 Capital Structure**

The elements of the deemed capital structure are shown below and must be presented with the required schedules (Appendices 2-OA and 2-OB) for current Board approved, Historical Actuals, Bridge and Test Years:

- Long-Term Debt;
- Short-Term Debt;
- Preference Shares; and
- Common Equity.

Appendix 2-OB must be completed for the required years of all historical years, Bridge Year and Test Year.

Any explanations of changes in actual capital structure are required including:

- Retirements of debt or preference shares and buy-back of common shares; and

- Short-Term Debt, Long-Term Debt, preference shares and common share offerings.

### **2.8.2 Cost of Capital (Return on Equity and Cost of Debt)**

These requirements are outlined in the 2009 Report. The applicant must provide the following information for each year:

- Calculation of the cost for each capital component;
- Profit or loss on redemption of debt and/or preference shares, if applicable;
- Copies of any current promissory notes or other debt arrangements with affiliates;
- Explanation of the applicable debt rate for each existing debt instrument, including an explanation on how the debt rate was determined and is in compliance with the policies documented in the 2009 Report;
- Forecasts of new debt anticipated in the bridge and test years, including estimates of the applicable rate and any pertinent information on each new debt instrument (e.g. whether the debt is affiliated or with a third party, expected term/maturity, any capital project(s) that the debt funding is for, etc.); and
- If the applicant is proposing any rate that is different from the Board guidelines, a justification of forecast costs by item, including key assumptions.

### **2.8.3 Not-for-Profit Corporations**

In prior decisions, the Board has determined that applicants which are not-for-profit corporations may apply using the Board's deemed capital structure, cost of capital and working capital allowance to the extent that the excess revenue is to be used for the purpose of meeting the applicant's need to build up or accumulate appropriate operating and capital reserves. The Board has further stated that, once the appropriate limits for these reserves have been achieved, it would expect such applicants to submit an application seeking a rate adjustment.

## **2.9 Exhibit 6. Calculation of Revenue Deficiency or Sufficiency**

The applicant must include the following information in this exhibit, excluding energy costs (i.e. cost of power and associated costs) and revenues:

- Determination of Net Utility Income;
- Statement of Rate Base;
- Actual Utility Return on Rate Base;

- Indicated Rate of Return;
- Requested Rate of Return;
- Deficiency or Sufficiency in Revenue; and
- Gross Deficiency or Sufficiency in Revenue.

The filing requirements have been designed in a manner to isolate the delivery-related deficiency/sufficiency separate and apart from the energy-related deficiency/sufficiency. In keeping with this separation, the applicant must provide revenue deficiency or sufficiency calculations net of electricity price differentials captured in the RSVAs and also net of any cost associated with LV charges or smart meter expenditures/revenues being tracked through variance accounts and for which disposition is not being sought in the application.

The applicant must provide a summary of the drivers of the test year deficiency/sufficiency, along with how much each driver contributes. Specific references to the data contained in the detailed schedules and tables must be provided so that parties can map the summary cost driver information to the evidence supporting it.

The impacts of any change in methodologies must be provided on the overall deficiency/sufficiency and on the individual cost drivers contributing to it.

The Revenue Requirement Work Form ("RRWF") must be filed in this exhibit in pdf along with a live MS Excel version. The revenue requirement components in the application and the resulting revenue deficiency/sufficiency in this exhibit must correspond with the calculations in the RRWF. Applicants must ensure that numbers entered in the RRWF are reconciled with the appropriate numbers in other exhibits.

## **2.10 Exhibit 7. Cost Allocation**

The following areas are discussed in this exhibit:

- 1) Cost Allocation Study Requirements;
- 2) Class Revenue Requirements; and
- 3) Revenue-to-Cost Ratios.

### **2.10.1 Cost Allocation Study Requirements**

The Board expects that filings made by a distributor will follow the cost allocation policies outlined in the Board's report of March 31, 2011 *Review of Electricity Distribution Cost Allocation Policy* (EB-2010-0219) (the "Cost Allocation Review").

A completed cost allocation study using the Board-approved methodology or a comparable model must be filed. This filing must reflect future loads and costs and be supported by appropriate explanations and live Excel spreadsheets. The most current update of the model (version 3.1) will be available on the Board's web site.

For any customer class for which updated load profiles are not available, the load profiles provided by Hydro One for use in the Informational Filing may be used, scaled to match the load forecast as it relates to the respective rate classes (see section 2.6.2 above). In particular, if a rate class has experienced a decline in customers or disappeared, or will disappear in the Test Year, the model must be consistent with the updated load forecast, and include an explanation of the changed load forecast of the rate class.

Distributors should refer to section 2.6.4 of the Cost Allocation Review concerning weighting factors for allocation of certain costs. A description of the weighting factors is required. Distributors are expected to develop their own weighting factors. As explained in the report, if the distributor has chosen to use the default weighting factors, an explanation must be provided.

If using the Board-issued model, the distributor must file a hard copy of input sheets I-6 and I-8, and output sheets O-1 and O-2 (first page only). Input sheet I.2, cells c-15 and c-17 must be used to identify the final run of the model on each sheet. If using another model, the distributor must file equivalent information. A complete hard copy of the cost allocation model is not required, but the distributor must file a complete live MS Excel model with the application.

Distributors should note the following:

- Large General Service and Large Use classes: The treatment of the Transformer Ownership Allowance has been revised in the updated version, as opposed to the version that the distributor would have used in the previous re-basing application;
- Streetlighting: Experience has shown that the revenue requirement of the Streetlighting class is sensitive to inputs related to the number of connections (which determines the number of services) as distinct from the number of streetlighting devices (which determines the estimated coincident and non-coincident loads). Distributors are encouraged to use information that is as accurate as possible, and to stay apprised of progress in modeling in this area;
- Embedded Distributor Class: Any distributor that is the host to one or more distributors must provide the following information, as applicable:
  - Evidence that the host distributor has consulted with its embedded distributor(s) prior to preparing its cost allocation model and filing its rate application, and a statement as to whether or not the embedded distributor supports the host distributor's approach to the allocation of costs.

- If the host has a separate rate class for its embedded distributor(s) the host distributor must include the class as such in its cost allocation study and in Appendix 2-P.
- If the host proposes to establish a new class, the host distributor must include the class as such in its cost allocation study and in Appendix 2-P and provide rationale and supporting evidence for the establishment of an Embedded Distributor class, where applicable. The host must provide the cost of serving the embedded distributors, load served, information regarding ownership of relevant assets involved in the connection(s), and the distribution charges levied.
- If the host distributor proposes to bill the embedded distributor(s) as if it/they were General Service Class customers, the costs and revenue must be included with that class in the cost allocation study and Appendix 2-P. In this case, the host distributor must also complete Appendix 2-Q which shows details on how much of the host's facilities are required to serve the embedded distributor(s), regardless of the fact that they are not treated as a distinct rate class elsewhere. The host must provide the cost of serving the embedded distributors, load served, information regarding ownership of relevant assets involved in the connection(s), and the distribution charges levied. Additionally, the host distributor must provide evidence supporting the continued appropriateness of the rate class that is being used to levy distribution charges on the embedded distributor;
- microFIT class: The Board does not expect a distributor to include microFIT as a separate class in the cost allocation model in 2014. The model will produce a calculation of unit costs which the Board will use to update the uniform microFIT rate at a future date. Unlike other classes, the cost information is not used to establish a separate class revenue requirement for the microFIT class;
- New Customer Class(es): If the distributor is establishing a new customer class, the rationale for doing so is required, and information provided in the distributor's previous cost of service application concerning class revenue requirements must be restated in Appendix 2-P on the basis of the proposed customer classes, to provide continuity with the proposed new customer class(es); and
- Eliminated Customer Class(es): If the distributor is proposing to eliminate or combine existing customer classes the distributor must identify such proposals and the supporting rationale. To the extent possible, the distributor must restate information from its previous cost of service application concerning class revenue requirements in Appendix 2-P, on the basis of the proposed customer classes to provide continuity of information.

## 2.10.2 Class Revenue Requirements

Appendix 2-P shows the format for filing cost allocation information and includes four tables.

The first table in Appendix 2-P is a format for showing the test year class revenue requirements, which is produced in output sheet O-1 of the Board model. This table also includes a comparison to the most recent study previously filed with the Board.

The Board has established ranges for revenue-to-cost ratios. Rate re-balancing is the process of changing rates by different percentage amounts for different customer rate classes. To support a proposal to re-balance rates, the distributor must provide information on the revenue by class that would pertain if all rates were changed by a uniform percentage. These ratios must be compared with the ratios that will result from the rates being proposed by the distributor.

The second table in Appendix 2-P shows three revenue scenarios, by rate class. Each scenario is based on the forecast of class billing quantities. The scenarios are, respectively, the forecast quantities multiplied by: a) existing rates, b) prorated existing rates that would yield the test year Base Revenue Requirement, and c) proposed class revenues. The table also shows the allocation of Miscellaneous Revenue to the rate classes, which is an output from the cost allocation model.

### **2.10.3 Revenue-to-Cost Ratios**

The Board has established its policy with respect to how closely class revenues must be related to allocated costs. The policy is expressed in terms of revenue-to-cost ratios. The Board has updated the range of acceptable ratios in its March 31, 2011 Report, section 2.9.4. The distributor must propose re-balancing to bring the revenue-to-cost ratio for one or more classes into the Board's policy range.

The third table in Appendix 2-P combines information from the previous two tables in the form of Revenue-to-Cost Ratios and includes the following information for each class:

- The previously approved ratios most recently implemented by the distributor;
- The ratios that would result from the most recent approved distribution rates and the distributor's forecast of billing quantities in the test year, prorated upwards or downwards (as applicable) to match the revenue requirement, expressed as a ratio with the class revenue requirements derived in the updated cost allocation model; and
- The ratios that are proposed for the test year, which are the proposed class revenues, together with the updated cost allocation model.

If the distributor proposes to continue re-balancing after the test year, the ratios proposed for the subsequent year(s) must be provided. The fourth table in Appendix 2-P provides a format for presentation. In particular, if the proposed ratios are outside the Board's policy range in the test year, the distributor must show the proposed ratios in subsequent years that would move the ratios into the policy range.



If using a cost allocation model other than the Board model, the distributor must ensure that costs exclude LV costs and deferral and variance accounts such as Smart Meter costs and that revenues exclude rate riders, rate adders and the Smart Metering Entity charge. The distributor must also ensure that information relevant to microFIT unit costs and revenue is consistent with the output from the Board's model.

## **2.11 Exhibit 8. Rate Design**

The following areas are discussed in this exhibit:

- 1) Fixed/Variable Proportion;
- 2) Retail Transmission Service Rates (RTSRs);
- 3) Retail Service Charges;
- 4) Wholesale Market Service Rate;
- 5) Smart Metering Charge
- 6) Specific Service Charges;
- 7) Low Voltage Service Rates (where applicable);
- 8) Loss Adjustment Factors;
- 9) Tariff of Rates and Charges;
- 10) Revenue Reconciliation;
- 11) Bill Impact Information; and
- 12) Rate Mitigation (where applicable).

Please note that monthly fixed charges must be shown to two decimal places while variable charges must be shown to four places. Distributors wishing to depart from this approach must provide a full explanation as to why they believe it is necessary.

### **2.11.1 Fixed/Variable Proportion**

The applicant must provide the following information related to the fixed/variable proportion of its proposed rates:

- Current fixed/variable proportion for each rate class, along with supporting information;
- Proposed fixed/variable proportion for each rate class, including an explanation for any changes from current proportions; and
- A table comparing current and proposed monthly fixed charges with the floor and ceiling as calculated in the cost allocation study. The applicant must include an

explanation if the monthly fixed charge for any customer class exceeds the ceiling.

The fixed/variable analysis must be net of (i.e. exclude) rate adders, funding adders and rate riders (i.e. Low Voltage, smart meters, GEA, deferral/variance account disposition, etc).

### **2.11.2 Retail Transmission Service Rates (“RTSRs”)**

In preparing its application, the distributor must reference the Board’s *Guideline G-2008-0001: Electricity Distribution Retail Transmission Service Rates*, October 22, 2008, and subsequent updates to the Uniform Transmission Rates (“UTRs”). A completed version of the RTSR model must be filed in pdf and live MS Excel.

The distributor must ensure that the information provided in this section is consistent with that provided in the working capital allowance calculation provided in Section 2.5.1.3, as it relates to rates such as RTSRs, or provide explanations for any differences.

### **2.11.3 Retail Service Charges**

Retail services refer to services provided by a distributor to retailers or customers related to the supply of competitive electricity as set out in the Retail Settlement Code. Distributors should note that the current retail service rates and charges were established on a generic basis. The Board expects distributors proposing changes to the level of the rates and charges or the introduction of new rates and charges, to provide evidence that they have consulted with retailers about the changes and have provided them with adequate notice of such changes.

Distributors must maintain the appropriate Retail Service Costs Variance Accounts (“RCVA”) to record the difference between charges rendered to customers and retailers, and the direct incremental costs for the provision of these services. The RCVAs are discussed in section 2.12.6.

### **2.11.4 Wholesale Market Service Rate**

The Wholesale Market Service Rate is designed to allow distributors to recover costs charged by the Independent Electricity System Operator (“IESO”) for the operation of the IESO administered markets and the operation of the IESO-controlled grid.

The Wholesale Market Service Rate is an energy based rate (per kWh). This rate only applies to those customers of a distributor who are not wholesale market participants. An embedded distributor who is not a wholesale market participant would be treated as a customer to the host distributor and charged the same rate.

This rate will be set by the Board on a generic basis. Distributors wishing to apply for a rate other than the generic rate set by the Board must provide justification as to why their specific circumstances would warrant such a change.

On March 21, 2013, the Board issued a Decision with Reasons and Rate Order (EB-2013-0067) establishing that the Wholesale Market Service rate used by rate regulated distributors to bill their customers shall be \$0.0044 per kilowatt hour effective May 1, 2013. Furthermore, the Board approved the rate for rural and remote rate protection ("RRRP") to be \$0.0012 per kilowatt hour. Distributors should reflect a total charge of \$0.0056 in their applications.

### **2.11.5 Smart Metering Charge**

On March 28, 2013, the Board issued a Decision and Order (EB-2012-0100/EB-2012-0211) establishing a Smart Metering charge of \$0.79 per month for Residential and General Service < 50kW customers effective May 1, 2013. Distributors should reflect this charge in their applications.

### **2.11.6 Specific Service Charges**

A distributor must describe the purpose of each new or revised specific service charge for which it is seeking approval. Distributors must specify which charges are new and for which existing charges they are proposing changes.

Distributors requesting either a new specific service charge or a change to the level of an existing charge should describe the purpose of such charges, or the reason for the proposed change to an existing charge and provide calculations supporting the determination of each such charge including the following elements:

- Direct labour (internal and/or external);
- Labour rate (internal and/or external);
- Burden rate;
- Incidental (e.g. postage for mail); and
- Vehicle time and rate (if applicable).

Distributors must also identify any rates and charges that are included in the Conditions of Service but do not appear on the Board-approved tariff sheet, and an explanation for the nature of the costs being recovered must be provided. A schedule outlining the revenues recovered from these rates and charges from 2009 to 2012 and the revenue forecasted for the 2013 bridge and 2014 test years must also be provided as well as an explanation whether these rates and charges must be included on the applicant's tariff sheet.

Distributors must ensure that the revenue from the total of the proposed specific service charges corresponds with the evidence under Operating Revenues (see section 2.6.3).

### **2.11.7 Low Voltage Service Rates (where applicable)**

If the distributor is embedded (see section 2.4.5) the distributor must provide the following information:

- Forecast of LV cost, which is the sum of the host distributor's charges to the applicant;
- Actual LV costs for the last three historical years, along with bridge and test year forecasts. The distributor must also provide the year-over-year variances, and explanations for substantive changes in the costs over time, up to and including the test Year forecast;
- Support for the forecast of LV costs: forecast volumes and actual or forecast host distributor's LV rates. For example, an applicant distributor whose host distributor is Hydro One would include the distributor's costs for Sub-Transmission lines, plus a Sub-Transmission service charge, plus any other charges such as facility charges for connection to a shared distribution station that apply to the embedded distributor's monthly bill from the host distributor, together with the applicable charge determinants;
- Allocation of forecast LV cost to customer classes (generally in proportion to Transmission Connection Rate revenues); and
- Proposed LV rates by customer class to reflect these costs.

### **2.11.8 Loss Adjustment Factors**

The distributor must identify the proposed Supply Facilities Loss Factor ("SFLF"), distribution and total loss factors for the test year.

The distributor must file the following information related to its proposed loss factors:

- A statement as to whether the distributor is embedded;
- Details of loss studies and recommendations, if required by a previous decision;
- Calculations showing the losses in previous years. Five years of historical data is preferred. A minimum filing of three years of data is required;
- Appendix 2-R showing the energy delivered to the distributor with and without losses;
- Explanation of distribution losses greater than 5%;

- If proposed distribution loss factor is greater than 5%, details of actions taken to reduce losses in previous five years and actions planned to reduce losses going forward; and
- Explanation of the derivation of the SFLF, including reasons for any differences from the standard SFLFs referenced in Appendix 2-R, Row H.

### **2.11.9 Tariff of Rates and Charges**

The distributor must provide the current and proposed tariff of rates and charges. The distributor must also provide a marked-up (track changes) version of the currently approved tariff of rates and charges showing each proposed change. Distributors must ensure that each proposed change is explained and supported in the appropriate section of the application. Distributors must file the new Tariff of Rates and Charges appendix (Appendix 2-Z).

The distributor must provide an explanation of changes to terms and conditions of service and the rationale behind those changes if the changes affect the application of the rates. Distributors should take note that only rates shown on the Board-approved Tariff of Rates and Charges can be applied.

### **2.11.10 Revenue Reconciliation**

For the proposed tariff of rates and charges, the following information must be provided:

- Detailed calculations of revenue per rate class under current rates and proposed rates by customer class; and
- Detailed reconciliation of rate class revenue and other revenue to total revenue requirement (i.e. breakout volumes, rates and revenues by rate component, etc).

The applicant must provide a completed Appendix 2-V.

### **2.11.11 Bill Impact Information**

Appendix 2-W must be filed for all classes. This appendix identifies existing rates, proposed changes to rates, and detailed bill impacts (including % change in distribution excluding pass-through costs – “Sub-Total A”, % change in distribution – “Sub-Total B”, % change in delivery – “Sub-Total C”, and % change in total bill).

The distributor must provide the impact of changes resulting from the as-filed application on representative samples of end-users, i.e., volume, percentage rate change and revenue. The distributor must include the base distribution rates, any applicable rate adders or rate riders, and RTSRs. Commodity rates and regulatory charges should be held constant.

The bill comparisons must be provided for typical customers and consumption levels. Bill impacts must be provided for residential customers consuming 800 kWh per month and general service customers consuming 2,000 kWh per month and having a monthly demand of less than 50 kW. In addition, distributors must provide a range that is relevant to their service territory, class by class. A general guideline of consumption is provided in Appendix 2-W.

For certain classes where one or more customers have unique consumption and demand patterns and which may be significantly impacted, the distributor must show a typical comparison, and provide an explanation.

#### **2.11.12 Rate Mitigation (where applicable)**

##### **2.11.12.1 RRFE Report Mitigation Statements**

In the RRFE report the Board concluded that it will maintain its current policy on rate mitigation.

The Board stated that the implementation of the renewed regulatory framework makes the need for mitigation of large rate increases less likely as controls to address cost increases are integrated into the planning and rate-setting processes, and each distributor will be able to choose the rate-setting approach that best suits its particular investment profile.

The Board further stated that it would expect distributors to consider total bill increases when they engage in planning, an exercise that will be facilitated under the integrated approach to network planning described in Chapter 5 and to demonstrate to the extent possible the responsiveness of their planned capital and OM&A expenditures to the need for reasonably stable and affordable rates for customers.

##### **2.11.12.2 Mitigation Plan Approaches**

A distributor must file a mitigation plan if total bill increases for any customer class exceed 10%. The mitigation plan must include the following information:

- A specification of all customer classes or groups of customers that were initially identified as having increases in excess of 10% and the magnitude of these increases;
- A detailed description of any mitigation measures undertaken, e.g. reductions to the revenue requirement, inter- or intra-class shifts, or longer disposition periods for deferral and variance account balances;

- A justification for all mitigation measures proposed;
- Revised impact calculations; and
- Any other information the distributor believes is relevant.

The distributor must ensure that Appendix 2-W reflects any mitigation plan proposed in the application.

The bill comparisons must assume a constant commodity price and other rates, despite potential changes such as changes in the commodity price and other rates that may not be known at the time of an application.

If a distributor determines, in the course of the development of its mitigation plan, that there is no suitable manner in which to resolve the bill increases exceeding the mitigation threshold, such a determination must be stipulated in the mitigation plan and supported with sufficient rationale.

#### **2.11.12.3 Rate Harmonization Mitigation Issues**

Distributors which have merged or amalgamated service areas, and which have not yet fully harmonized the rates between or among the affected distribution service areas, must file a rate harmonization plan. The plan must include a detailed explanation and justification for the implementation plan, and an impact analysis.

In the event that the combined impact of the cost of service based rate increases and harmonization effects result in total bill increases for any customer class exceeding 10%, the distributor must include a discussion of proposed measures to mitigate any such increases in its mitigation plan discussed in section 2.11.12 or provide a justification as to why a plan is not required.

A migration to fully harmonized rates that is to be accomplished over more than one year must be supported by a detailed plan for accomplishing this during the IRM period.

### **2.12 Exhibit 9. Deferral and Variance Accounts**

The information outlined below is required regardless of whether or not the applicant is seeking disposition of any or all deferral and variance accounts:

- List of all outstanding deferral and variance accounts and sub-accounts. The applicant must provide a brief description of any account that the applicant may have used differently than as described in the APH;
- A continuity schedule for the period following the last disposition to the present, showing separate itemization of opening balances, annual adjustments, transactions, interest and closing balances. A completed version of the

continuity schedule available on the Board's web site must be filed in working Microsoft Excel format;

- Interest rates applied to calculate the carrying charges for each regulatory deferral and variance account. The applicant must provide the rates by month or by quarter for each year;
- Explanation if the account balances in the continuity schedule differ from the account balances in the trial balance reported through the *Electricity Reporting and Record-keeping Requirements* and the Audited Financial Statements;
- Identification of which Group 2 accounts the distributor will continue and discontinue on a going-forward basis, with an explanation for each;
- If a distributor is proposing to allocate a deferral or variance account for which the Board has not established an approved allocator, the distributor must propose an allocator based on the cost driver(s), along with the charge type (fixed or variable) for recovery purposes, and include this in the continuity schedule.
- Statement as to any new accounts or sub-accounts that the applicant is requesting, and justification for each requested account or sub-account. This must correspond with information provided in Exhibit 1 (see section 2.4.5);
- A statement as to whether or not the applicant has made any adjustments to deferral and variance account balances that were previously approved by the Board on a final basis in both cost of service and IRM proceedings (i.e. balances that were adjusted subsequent to the balance sheet date that were cleared in the most recent rates proceeding). If this is the case, the applicant must provide explanations for the nature and amounts of the adjustments and include supporting documentation; under a section titled "Adjustments to Deferral and Variance Accounts."
- A breakdown of energy sales and cost of power expense balances, as reported in the Audited Financial Statements by distributors, mapped to USoA account number. The distributor must reconcile these numbers to the Audited Financial Statements. If there is a difference between the energy sales and cost of power expense reported numbers, the distributor must explain why it is making a profit or loss on the commodity;
- A statement confirming that the distributor pro-rates the IESO Global Adjustment Charge into the RPP and non-RPP portions. If this is not the case, the distributor must provide an explanation.

### **2.12.1 PILs and Tax Variances for 2006 and Subsequent Years - Account 1592**

If the distributor has not already filed for disposition in a prior rate year, the Board expects distributors to file for disposition of account 1592 in their cost of service



applications. Distributors must complete and file Appendix 2-TA in support of their request to dispose of account 1592.

### **2.12.2 Harmonized Sales Tax Deferral Account**

During the 2010 IRM application process, the Board directed electricity distributors to record in deferral account 1592 (PILs and Tax Variances for 2006 and subsequent years, Sub-account HST/OVAT ITCs), beginning July 1, 2010, the incremental ITCs received on distribution revenue requirement items that were previously subject to PST and became subject to HST.

In December 2010, as part of its Frequently Asked Questions on the Accounting Procedures Handbook for electricity distributors, the Board provided accounting guidance on this matter and provided a simplified approach designed to facilitate administrative cost-saving opportunities. Distributors filing for disposition of this sub-account in their cost of service applications should review this material.

No more amounts should be recorded in Account 1592 (PILs and Tax Variances for 2006 and subsequent years, Sub-account HST/OVAT ITCs for the test year and going forward), as the impact of the HST and associated ITCs on capital and operating costs in the test year must be reflected in the applied-for revenue requirement. For the 2014 test year for example, entries to record variances in the sub-account of Account 1592 would cover the period from July 1, 2010 to December 31, 2013 since the test year, which starts January 1, 2014 would include the HST impacts in rates going forward. If the test year's rate year begins May 1, 2014, entries to record variances in the sub-account of Account 1592 would cover the period from July 1, 2010 to April 30, 2014.

The distributor must provide an analysis that supports the distributor's conformity with December 2010 APH FAQs, in particular the example shown in FAQ # 4.

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### **2.12.3 One-time Incremental IFRS Costs**

As per the October 2009 APH FAQ #1 and FAQ #2, an applicant must file a request for review and disposition of the balance in Account 1508 Other Regulatory Assets, Sub-account Deferred IFRS Transition Costs or Account 1508 Other Regulatory Assets, Sub-account IFRS Transition Costs Variance, in its next cost of service rate application immediately after the IFRS transition period.

For an applicant that files a 2014 cost of service application on the basis of MIFRS and is seeking recovery of one-time administrative incremental IFRS transition costs, or has such costs already reflected in base rates must file a completed Appendix 2-U and must:

- File for disposition of the balance in Account 1508, Other Regulatory Assets, Sub-account IFRS Transition Costs Variance reflecting the difference between the amounts recovered in rates and the actual incurred one-time administrative incremental IFRS transition costs;
- Provide a statement as to whether any one-time administrative incremental IFRS transition costs are embedded in the proposed 2014 revenue requirement. If this is the case, the applicant must state the section of the proposed 2014 revenue requirement that includes these costs;
- Include any amounts in rates as credits on a separate line in Appendix 2-U if an applicant has one-time administrative incremental IFRS transition costs already included for recovery in its rates;
- Provide explanations for each category of costs recorded in the Account 1508 Other Regulatory Assets, Sub-account Deferred IFRS Transition Costs Account or Account 1508 Other Regulatory Assets, Sub-account IFRS Transition Costs Variance Account. The applicant must explain how the costs recorded meet the criteria of one-time IFRS administrative incremental costs;
- Provide explanations for material variances that may exist in the Account 1508 Other Regulatory Assets, Sub-account IFRS Transition Costs Variance account; and
- Per the October 2009 APH FAQ #3 regarding costs that are permitted to be recorded in the Account 1508 Other Regulatory Assets, Sub-account Deferred IFRS Transition Costs Account and Account 1508 Other Regulatory Assets, Sub-account IFRS Transition Costs Variance Account, the applicant must provide a confirmation statement that no capital costs, ongoing IFRS compliance costs, or impacts arising from adopting accounting policy changes are recorded in Account 1508 Other Regulatory Assets, Sub-account Deferred IFRS Transition Costs Account or Account 1508 Other Regulatory Assets, Sub-account IFRS Transition Costs Variance Account. If this is not the case, the applicant must provide an explanation.

#### **2.12.4 Account 1575, IFRS-CGAAP Transitional PP&E Amounts**

Account 1575 will apply to an applicant that files a 2014 cost of service application on the basis of MIFRS. For an applicant filing based on MIFRS, Account 1575 must capture all PP&E accounting changes made on transition to IFRS, not just those related to capitalization and depreciation.

Deferral Account 1575 and variance Account 1576 cannot be used interchangeably and the applicant must follow the required accounting treatment applicable under each account. The accounting changes applicable to Account 1576 are not applicable to Account 1575 in relation to “changeover date” accounting on the applicant’s adoption of IFRS.

Per its letter dated June 25, 2013, effective for the 2014 cost of service rate applications and subsequent rate years, the Board will require the use of a separate rider for the disposition of the balance in Account 1575.

Applicants must provide the following:

- A breakdown of the balance related to the IFRS-CGAAP Transitional PP&E Amount that is effective on the transition date to modified IFRS. The applicant must provide the supporting analysis of the amounts in this account by completing Appendices 2-EA, 2-EB, or 2-EC;
- A listing and quantification of the drivers of the change in closing net PP&E (CGAAP versus modified IFRS). The Fixed Asset Continuity Schedule (Appendix 2-BA1 or 2-BA2) in the rate application must not be adjusted for balances related to the IFRS-CGAAP Transitional PP&E Amount. The applicant must show that the application of the accounting policies change is applied on a prospective basis in the year in which the accounting changes occurred (e.g., 2013);
- A breakdown for quantification of any accounting changes arising from the transition to IFRS in relation to PP&E (e.g. customer contributions, asset retirement obligations, interest capitalization, etc.), including an explanation for each of the accounting changes made by the applicant;
- A separate volumetric rate rider for Account 1575 for the clearance of the account balance over the proposed disposition period, including all calculations showing its derivation. The applicant must show that the rate rider is comprised of the amortized amount of the account balance over the number of years proposed for the disposition period (e.g. five years);
- A rate of return component (i.e., weighted average cost of capital) to be applied to the balance of Account 1575, including all calculations showing its derivation. The rate of return amount must be amortized over the number of years proposed for the disposition period (e.g. five years) and added together with the account balance amortized amount for inclusion in the Account 1575 rate rider. The amount for the return component must not be recorded in the Account 1575;
- A statement confirming that no carrying charges are applied to the balance in the account;
- An explanation for the basis of the proposed disposition period to clear the Account 1575 rate rider. The Board's determination of the disposition period will be on a case-by-case basis and that it will be guided primarily by such considerations as bill impacts and the financial impact on applicants; and
- The balance of the account in the DVA Continuity Schedule for the cost of service application.

### 2.12.5 Account 1576, Accounting Changes Under CGAAP

Applicants will use Account 1576 to record the financial differences arising as a result of changes to accounting depreciation or capitalization policies permitted by the Board under Canadian GAAP or ASPE in 2012 or as mandated by the Board in 2013.

Account 1576 will apply to an applicant that files a 2014 cost of service application on the basis of CGAAP or ASPE. For an applicant that files a 2014 test year application under modified IFRS and made the changes to accounting capitalization or depreciation policies in 2012 or 2013 under CGAAP, the applicant must file with the Board a request to clear Account 1576 for these changes as part of the cost of service application.

Per its letter dated June 25, 2013, effective for the 2014 cost of service rate applications and subsequent rate years, the Board will require a rate of return component to be applied to the balance in Account 1576 and require the use of a separate rider for the disposition of the balance in Account 1576.

- For accounting changes made in 2012, Account 1576 would capture the accounting changes made in 2012 under CGAAP. The applicant must incorporate the impact of these changes in both the Historic year (2012) and Bridge year (2013) for applicants making the changes to the accounting capitalization or depreciation policies effective January 1, 2012; or
- For accounting changes made in 2013, Account 1576 would capture the accounting changes made in 2013 under CGAAP. The applicant must incorporate the impact of these changes in the Bridge year (2013) for applicants making the changes to the accounting capitalization or depreciation policies effective January 1, 2013.

Applicants must provide the following:

- The Fixed Asset Continuity Schedule (Appendix 2-BA1 or 2-BA2) in the rate application, which must not be adjusted for balances related to Account 1576. The applicant must show that the application of the accounting policies change is applied on a prospective basis in the year in which the accounting charges occurred (e.g., 2013);
- A breakdown of the balance related to Account 1576. The applicant must provide the supporting analysis of the amounts in this account by completing Appendices 2-ED or 2-EE. The drivers of the change in closing net PP&E (former policies under CGAAP versus revised policies under CGAAP or ASPE) must be identified and quantified;
- A separate volumetric rate rider for Account 1576 for the clearance of the account balance over the proposed disposition period, including all calculations showing its derivation. The applicant must show that the rate rider is comprised

of the amortized amount of account balance over the number of years proposed for the disposition period (e.g. five years);

- A rate of return component (i.e., weighted average cost of capital) to be applied to the balance of Account 1576, including all calculations showing its derivation. The rate of return amount must be amortized over the number of years proposed for the disposition period (e.g. five years) and added together with the account balance amortized amount for inclusion in the Account 1576 rate rider. The amount for the return component must not be recorded in the Account 1576;
- A statement confirming that no carrying charges are applied to the balance in the PP&E account;
- An explanation for the basis of the proposed disposition period to clear the account balance through the Account 1576 rate rider. The Board's determination of the disposition period will be on a case-by-case basis and will be guided primarily by such considerations as bill impacts and the financial impact on distributors; and
- The balance of the account in the DVA Continuity Schedule for the cost of service application.

#### **2.12.6 Retail Service Charges**

If the distributor has material debit or credit balances in Account 1518 RCVA Retail or Account 1548 RCVA STR, the distributor must:

- Confirm that all costs incorporated into the variances reported in Account 1518 and Account 1548 are incremental costs of providing retail services;
- Identify the drivers for the balances in Account 1518 and/or Account 1548;
- Provide a schedule identifying all revenues and expenses listed by USoA account number, that are incorporated into the variances recorded in Account 1518 and/or Account 1548 for 2012, the actual/forecast for 2013 and a forecast for 2014; and
- State whether or not the distributor has followed Article 490, Retail Services and Settlement Variances of the Accounting Procedures Handbook for Account 1518 and Account 1548. The distributor must provide an explanation and quantify the variance if the distributor has not followed Article 490.

If the distributor has zero balances in Account 1518 RCVA Retail or Account 1548 RCVA STR, the distributor must state whether or not it has followed Article 490, Retail Services and Settlement Variances of the Accounting Procedures Handbook for these accounts. The distributor must provide an explanation and quantify the variance if Article 490 has not been followed.

### 2.12.7 Disposition of Deferral and Variance Accounts

The applicant must:

- Identify all accounts for which it is seeking disposition;
- Identify any accounts for which the applicant is not proposing disposition and the reasons why;
- Propose rate riders for recovery or refund of balances that are proposed for disposition. The default disposition period is one year; if the applicant is proposing an alternative recovery period, an explanation must be provided;
- Provide a statement that the balances proposed for disposition before forecasted interest are consistent with the last Audited Financial Statements and provide explanations for any variances;
- Provide an explanation for any variances greater than 5% between amounts proposed for disposition before forecasted interest and the amounts reported in the applicant's RRR filings for each account;
- Provide explanations even if such variances are below the 5% threshold if the variances in question relate to: (1) matters of principle (i.e. conformance with the APH or prior Board decisions, and prior period adjustments); and/or, (2) the cumulative effect of immaterial differences over several accounts totaling to a material difference between what is proposed for disposition in total before forecasted interest and what is recorded in the RRR filings ;
- Show all relevant calculations, including the rationale for the allocation of each account, the proposed billing determinants and the length of the disposition period; and
- Establish separate rate riders to recover the RSVA Power Account Global Adjustment from non-RPP customers.

In the event an applicant seeks an accounting order to establish a new deferral/variance account, the following eligibility criteria must be met:

- Causation - The forecasted expense must be clearly outside of the base upon which rates were derived;
- Materiality – The forecasted amounts must exceed the Board-defined materiality threshold and have a significant influence on the operation of the distributor, otherwise they must be expensed in the normal course and addressed through organizational productivity improvements; and
- Prudence - The nature of the costs and forecasted quantum must be reasonably incurred although the final determination of prudence will be made at the time of disposition. In terms of the quantum, this means that the applicant must provide evidence demonstrating as to why the option selected represents a cost-effective option (not necessarily least initial cost) for ratepayers.

In addition, applicants must include a draft accounting order which must include a description of the mechanics of the account, including providing examples of general ledger entries, and the manner in which the applicant proposes to dispose of the account at the appropriate time.

#### **2.12.8 LRAM Variance Account (LRAMVA) for 2011 – 2014**

For CDM programs delivered within the 2011 to 2014 period, the Board established Account 1568 as the LRAMVA to capture the variance between the Board-approved CDM forecast and the actual results at the customer rate class level. Accounting guidelines regarding the LRAMVA can be found in Appendix B of the 2012 CDM Guidelines. Distributors should refer to the CDM Guidelines for further details.

The distributor shall compare the Board-approved CDM adjustment to the load forecast, to the actual CDM results. The variance calculated from this comparison shall be recorded in separate sub-accounts for the applicable customer rate classes.

##### **2.12.8.1 Disposition of the LRAMVA**

At a minimum, distributors must apply for the disposition of the balance in the LRAMVA as part of their COS applications. Distributors may apply for the disposition of the balance in the LRAMVA on an annual basis, as part of their IRM rate applications, if the balance is deemed significant by the applicant.

In support of its application for lost revenues, distributors must file the following:

- A statement indicating that the distributor has used the most recent input assumptions available at the time of the program evaluation when calculating its lost revenue amount;
- A statement indicating that the distributor has relied on the most recent and appropriate final CDM evaluation report from the OPA in support of its lost revenue calculation and a copy of this report;
- Separate tables for each rate class showing the lost revenue amounts requested by the year they are associated with and the year the lost revenues took place;
- Lost revenue calculations, determined by calculating the energy savings by customer class and valuing those energy savings using the distributor's Board-approved variable distribution charge appropriate to the class;
- A statement, and if applicable a table, that indicates if carrying charges are being requested on the lost revenue amount; and
- For Board-approved programs, a third party report, in accordance with the OPA's EM&V Protocols as set out in Section 6.1 of the CDM Code, that provides a review and verification of the lost revenue calculations, including:

- Confirmation of the use of correct input assumptions and lost revenue calculations;
- Verified participation amounts;
- The net and gross kW and kWh impacts of each program and for each class, both gross and net of free riders, separated by year; and
- Verification of any carrying charges requested.

A separate third party review of the distributor's OPA-Contracted Province-Wide CDM programs is not required.

### **2.12.9 Smart Meters**

If the applicant is applying for smart meter-related recoveries, the applicant must refer to *Guideline G-2008-0011: Smart Meter Funding and Cost Recovery – Final Disposition*, or any successor document issued by the Board, with respect to any proposal to dispose, or partially dispose balances in accounts 1555 and 1556. In support of such proposals, the applicant must provide a completed smart meter model.

Distributors must apply for the disposition of smart meter costs, subsequent inclusion in rate base, and for recovery of stranded costs, if not previously addressed in a prior stand-alone or cost of service application.

Where a distributor has had some or all of its smart meter costs reviewed for prudence and approved for recovery in a previous cost of service or stand-alone application, the distributor must clearly document this, and in the latter case, must identify the specific adjustments to rate base and OM&A.





# Ontario Energy Board Commission de l'énergie de l'Ontario



## **Orientation Session** **Electricity Distributors Rebasing for** **2014 Rates** **Completeness Check**

Violet Binette, Project Advisor, Electricity Rates  
July 23, 2013

# Filing Requirements

## Chapter 1 - Completeness

*The filing requirements provide the minimum information that applicants must file for a complete application.*

## Chapter 1 – Accuracy and Consistency

*A quality application has information and data that is consistent across all exhibits, appendices and models. If an application does not meet all of these requirements or if there are inconsistencies identified in the information or data presented, the Board may return the application unless satisfactory explanations for missing or inconsistent information have been provided.*

# Filing Requirements and Checklists

## 2013 Filing Requirements

- Issued on June 28, 2012
- Checklist posted on October 2, 2012

## 2014 Filing Requirements

- Issued on July 17, 2013
- Checklist will be posted shortly

# Checklist as an Aid

- Assists applicant with preparation of application and completion check prior to filing application
- Assists Board with assessment of completeness

# 2013 Checklist

2013 Cost of Service Checklist		
LDC Name Inc.		
EB-2012-XXXX		
Filing Requirement	Date:	
Page # Reference		
<b>GENERAL</b>	Yes/No/NA	Evidence Reference, Notes
6 Text searchable and bookmarked (RESS Guidelines - bookmarks for large files)		
Ch. 1 p4 Confidential information - cover letter, confidential version of document and redacted version		
2 In Advance of Scheduled Application, distributor must clearly demonstrate why and how it cannot adequately manage its resources and financial needs during the remainder of its IRM plan period (April 20, 2010 letter) NOTE: There is a preliminary threshold issue to address before the application is processed (including the completeness check).		
2 Effective Date other than May 1 - analysis of benefits and ratemaking implications (April 15, 2010 letter, Appendix B)		
<b>EXHIBIT 1 - ADMINISTRATIVE DOCUMENTS</b>		
5 When was forecast prepared and when approved by management and/or Board of Directors		
11 Application - including certification from senior officer that evidence is accurate		
11 Publication information		
11 Date rate order required		
11 Primary contact		
11 List of approvals requested		
11 Request to deem transmission assets as distribution assets		
12 Proposed Issues List		
12 Description of Operating Environment (including map, identification of host/embedded distributors)		
12 Identification of embedded distributors		
12 Organizational Structure and identification of affiliated entities		
12 Identification of any planned changes in corporate structure		
12 Identification of accounting treatment of any non-utility business		
6 & 13 Identification of Board Directives from previous Board Decisions, and how addressed		
12 Reference to Conditions of Service - LDC does not need to file Conditions of Service, but should provide reference to website. LDC should identify if there are rates and changes in the Conditions of Service.		
13 Summary of Application (timing, key elements of application, bill impact)		
13 Budget Overview - budget directives, guidelines, economic assumptions		
13 Schedule of overall revenue sufficiency/deficiency		
13 Schedule/breakdown of most recent Board approved revenue requirement		
13 RRWF - Excel		
<b>Financial Information</b>		
14 Audited Financial Statements for 2 most recent historical years (i.e. 3 years of historical actuals)		
14 Pro Forma Financial Statements for Bridge and Test Years		
14 Detailed reconciliation of AFS with regulatory financial results		
14 Annual Report and MD&A for most recent year of parent company		
14 Rating Agency Reports, if available		
14 Prospectuses, etc. for recent and planned public issuances		
14 Materiality Threshold and justification if different than level outlined in EB-2007-0673		
10 & 13 Identification of accounting standard for financial reporting purposes under which application is filed. If adopting IFRS for financial reporting purposes by January 1, 2013, file 2013 cost of service applications on the basis of MIFRS.		

# Example #1 – Confidential Documents

## 2013 Filing Requirements

The Board relies on full and complete disclosure of all relevant material in order to ensure that its decisions are well-informed. The Board recognizes that applicants may consider some of that information to be confidential and may wish to request that it be protected. In such cases, the relevant rules in the Board's *Rules of Practice and Procedure* and the procedures set out in the Board's *Practice Direction on Confidential Filings* (the "Practice Direction") are to be followed by all participants in a proceeding before the Board, unless otherwise directed by the Board.

## Distributor Application

No confidential documents

## 2013 Checklist

33				
34			Yes/No/NA	Evidence Reference, Notes
35	<b>GENERAL</b>			
36	Ch. 1 p4	Confidential Information - cover letter, confidential version of document and redacted version	N/A	
37			Yes	
38			No	
39			N/A	

# Example #2 – Transmission Assets

## 2013 Filing Requirements

Statement as to whether or not the distributor has had any transmission assets (> 50kV) deemed previously by the Board as distribution assets and whether or not there are any such assets for which the distributor is seeking Board approval to be deemed as distribution assets in the present application;

## Exhibit 1-1-1, page 5 of Distributor Application

Distributor confirms that it does not have transmission assets (i.e. assets operating at greater than 50 kV) in its distribution system that had previously been deemed by the Board as distribution assets. Further Distributor confirms that it is not seeking approval in the Application for any such assets.

## 2013 Checklist

25					
26				Yes/No/NA	Evidence Reference, Notes
27	<b>EXHIBIT 1 - ADMINISTRATIVE DOCUMENTS</b>				
28	11	Request to deem transmission assets as distribution assets	Yes	Exhibit 1, Tab 1, Schedule 1, page 5	
29			Yes		
30			No		
31			N/A		

# Example #3 – Conditions of Service

## 2013 Filing Requirements

Reference to the applicant's Conditions of Service. The applicant does not need to file its Conditions of Service, but should provide a reference to where its Conditions of Service are publicly available (e.g. on the utility's website), and confirm that this is the current version. The utility should identify if there are any rates and charges documented in its Conditions of Service. If there are changes to its Conditions of Service that would change as a result of approval of the application, the applicant must identify all such changes.

## Exhibit 1-1-2, page 7 of Distributor Application

Distributor's current Conditions of Service can be found on our website at Distributor.com. There is a link on the main page. There are no rates or charges documented in the Conditions of Service. There are no anticipated changes to the Conditions of Service as a result of approval of the application.

## 2013 Checklist

		Yes/No/NA	Evidence Reference, Notes
<b>EXHIBIT 1 - ADMINISTRATIVE DOCUMENTS</b>			
13	Reference to Conditions of Service - LDC does not need to file Conditions of Service, but should provide reference to website. LDC should identify if there are rates and changes in the Conditions of Service.	Yes	Exhibit 1, Tab 1, Schedule 2, page 7



# Example #4 – RRWF and Consistent Information

## 2013 Filing Requirements

[Overview] section should include: Revenue Requirement Work Form. The link on the Board's website may be used to access this work form provided in Microsoft Excel Format.

...

The revenue requirement components in the application and the resulting revenue deficiency/sufficiency in this Exhibit should correspond with the calculations in the Revenue Requirement Work Form.

## Example of Distributor Application

- RRWF filed as part of Exhibit 1 (Attachment G)
- RRWF filed as an Excel spreadsheet (Attachment G\_RRWF.xlsx)
- The revenue requirement components in the application and the resulting revenue deficiency/sufficiency in Exhibit 6 “correspond” with the calculations in the RRWF.

# Example #4 (cont.)

## Originally filed RRWF

Line No.	Particulars	Initial Application	
		At Current Approved Rates	At Proposed Rates
1	Revenue Deficiency from Below		\$3,220,371
2	Distribution Revenue	\$ -	\$ -
3	Other Operating Revenue	\$240,938	\$240,938
	Offsets - net		
4	<b>Total Revenue</b>	\$240,938	\$3,461,309

## Exhibit 6

### Revenue Deficiency

Revenue Deficiency Determination			
Description	2012 Bridge Year	2013 Test Existing Rates	2013 (MIFRS) Test - Required Revenue
Revenue			
Revenue Deficiency			438,967
Distribution Revenue	2,861,600	2,781,405	2,781,405
Other Operating Revenue (Net)	161,000	240,938	240,938
Total Revenue	3,022,600	3,022,342	3,461,309
Costs and Expenses			

## RRWF filed after Incomplete Letter

Line No.	Particulars	Initial Application	
		At Current Approved Rates	At Proposed Rates
1	Revenue Deficiency from Below		\$438,967
2	Distribution Revenue	\$2,781,405	\$2,781,405
3	Other Operating Revenue	\$240,938	\$240,938
	Offsets - net		
4	<b>Total Revenue</b>	\$3,022,342	\$3,461,309

# Example #4 – RRWF and Consistent Information

## 2013 Checklist

14				
15			Yes/No/NA	Evidence Reference, Notes
16	<b>EXHIBIT 1 - ADMINISTRATIVE DOCUMENTS</b>			
17	13	RRWF - Excel	Yes	Exhibit 1- Attachement G, Attachment G_RRWF.xlsx
18	<b>EXHIBIT 6 - REVENUE DEFICIENCY/SUFFICIENCY</b>			
19	40 & 41	Calculation of Revenue Deficiency/Sufficiency: net utility income, rate base, actual return on rate base, indicated rate of return, requested rate of return, def/sufficiency, gross def/sufficiency. <b>Should correspond with calculations in RRWF</b>		Exhibit 6, Tab 1, Schedule 1, page 4
20			Yes	
21			No	
22			N/A	
23				

# Examples of Common Incomplete Items - 2013

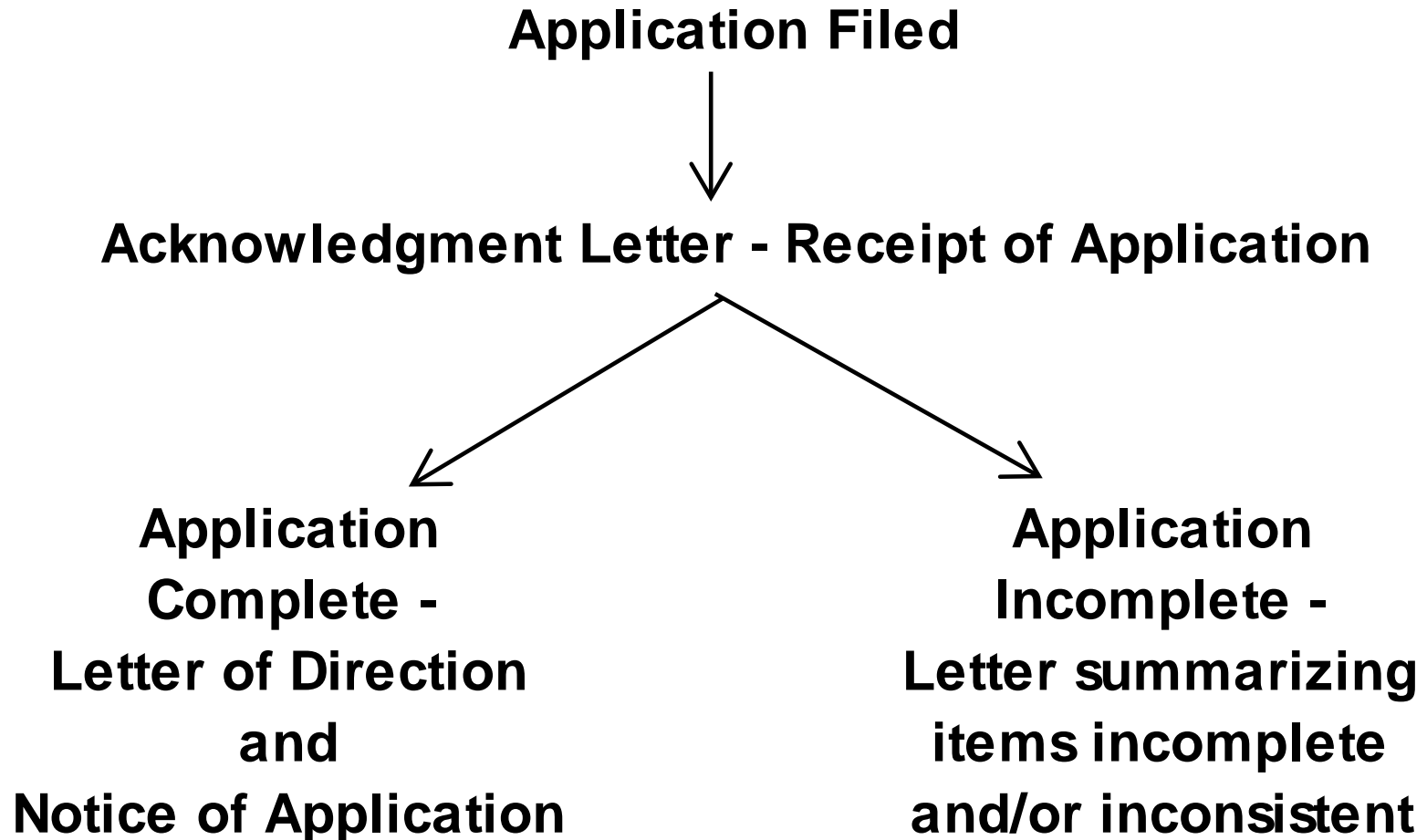
- Certification from senior officer that evidence is accurate
- Publication information – paid or not, readership and circulation numbers
- Breakdown of most recent Board approved Revenue Requirement
- Summary of changes to accounting policy since last rebasing and identification of the associated revenue requirement impacts (e.g. capitalization of overheads)
- Data used to determine load forecast filed in Excel
- Integrity checks for PILs
- The LRAMVA section had the highest number of required items that were not filed

# Examples of Accuracy and Consistency Items

## - 2013

- RRWF did not correspond with data in exhibits
- Depreciation in Exhibit 4 did not tie back to continuity schedule under rate base
- Revenue to cost ratios in Appendix 2-P did not correspond to ratios in Exhibit 7
- DVA balances in exhibits did not match totals claimed for derivation of rate riders
- Principal and interest balances for disposition did not match RRR

# Receipt of Application – Procedural Steps



# 2014 Checklist



# Dos and Don'ts (Common Issues)

- Do ensure data integrity/consistency – e.g. continuity schedule and rate base
- Do clearly indicate when documents stamped/labelled “confidential” are no longer confidential
- Do provide support for requests – eg. New specific service charge
- Do clearly name Excel spreadsheets. Do not use “Attachment F.xlsx” but “Attachment F – RRWF.xlsx”
- Do not file updates without clear identification of version dates



# Questions





# Ontario Energy Board Commission de l'énergie de l'Ontario



## Orientation Session Electricity Distributors Rebasing for 2014 Rates

### Exhibit 1 – Administrative Documents

Richard Battista, Project Advisor, Electricity Rates  
Kristi Sebalj, Counsel, Legal Services  
July 23, 2013

# Exhibit 1 - Administrative Documents sections

Exhibit 1 is comprised of the following sections:

Previous (Administrative Documents)	2014 Filing Requirements (Administrative Documents)
1-Administration	1-Executive Summary
2-Overview of the filing	2-Customer Engagement
3-Financial Information	3-Financial Information
4- Materiality thresholds	4-Materiality thresholds
	5-Administration

# Nature of Changes in Exhibit 1

- Aligned with the Renewed Regulatory Framework for Electricity (RRFE)
- New or expanded requirements
  - Executive Summary Section
  - Customer Engagement Section
  - Corporate Governance detail in Administration section

# Nature of Changes cont'd

- Specific items added or eliminated
  - Responses to matters raised in letters of comments received by the Board must be filed on the record.
  - Financial section to include draft financial statements if audited statements not yet available.
  - Pro Forma Statements for Bridge and Test Years no longer required.
- Regrouped & consolidated information
  - Administration section now consolidates certain items formerly in:
    - Administration
    - Overview of Filing
    - General Requirements

# Executive Summary

## Purpose:

- To provide an overview of key elements of the application and the applicant's overall business strategy.
- Beyond the minimum requirements, provides the applicant an opportunity to:
  - Show how the four RRFE outcomes (customer focus, operational effectiveness, public policy responsiveness and financial performance) guided the process and decision-making underpinning the applied for rates.
  - Present a narrative/story that demonstrates how the approach supports the four RRFE outcomes.

# Executive Summary cont'd

## Minimum Content

### A. Revenue Requirement

- Service Revenue Requirement requested for the test year
- Increase (\$ and %) from previously approved service revenue requirement
- Schedule of main drivers of revenue requirement changes from last Board approved year

### B. Budgeting Assumptions

- Economic Overview (such as growth and inflation)

### C. Load Forecast Summary

- Load and customer growth (percentage change kWh and change in customer numbers from last Board approved)
- Brief description of forecasting method(s) used, for customer/connection and consumption/demand.

# Executive Summary cont'd

## D. Rate Base and Capital Plan

- Summary of the major drivers of the Distribution System Plan
- Rate Base requested for the test year
- Change in Rate Base from last Board approved (\$ and %)
- Capital Expenditures requested for the test year
- Change in Capital Expenditures from last Board approved (\$ and %)
- Summary of any costs requested for renewable energy connections/expansions, smart grid, and regional planning initiatives
- Total amount (\$) the Applicant seeks to recover costs from all ratepayers for renewable energy connection costs (Regulation 330/09)

## E. Operations, Maintenance and Administration Expense

- OM&A for the test year and the change from last Board approved (\$ and %)
- Summary of overall drivers and cost trends
- Inflation rates used for general OM&A and Wages/Benefits
- Total compensation for the test year and the change from last Board approved (\$ and %)



# Executive Summary cont'd

## F. Cost of Capital

- A statement as to whether or not the Applicant is using the Board's cost of capital parameters
- Summary of any deviations from the Board's cost of capital methodology

## G. Cost Allocation and Rate Design

- Summary of any deviations from the Board's cost allocation and rate design methodologies. Summary of any significant changes proposed to revenue to cost ratios and fixed/variable splits, and any proposed mitigation plans

## H. Deferral and Variance Accounts

- Total disposition (\$) including split between RPP and non-RPP customers
- Disposition period
- New Deferral and Variance Accounts requested

## I. Bill Impacts

- Summary of total Bill Impacts (\$ and %) for all classes for typical customers

# Customer Engagement – new section

- A “complete” application must discuss customer engagement activities
- A description of the customer engagement activities undertaken and how customer needs have been reflected in the plans that are in the application
  - Media, meetings and other channels employed to determine customer needs, explain to customers how the application serves their needs and expectations and get feedback from customers
- The planning elements of customer engagement activities are to be filed as part of the capital plan requirements as required by Chapter 5.
- If there haven't been any engagement activities, explain why and if any such activities are planned for in the future.

# Financial Information section

- Required Material
  - Non-consolidated audited financial statements of the utility – most recent historical 3 years
  - Reconciliation of the financial results shown in the Annual Reports/ Audited Financial Statements with the regulatory financial results filed in the application, including fixed assets
    - Include identification of differences between audited statements and regulatory statements, and any related Board approvals.
  - Annual Report and Management's discussion and analysis for the most recent year of the parent company
  - Rating Agency Report(s)
  - Prospectuses, information circulars, etc. for recent and planned public debt or equity offerings.

# Materiality Thresholds section

- No changes to thresholds where year to year changes require justification
  - \$50,000 for a distributor with a distribution revenue requirement less than or equal to \$10 million;
  - 0.5% of distribution revenue requirement for a distributor with a distribution revenue requirement greater than \$10 million and less than or equal to \$200 million; and
  - \$1 million for a distributor with a distribution revenue requirement of more than \$200 million.
- Onus is on the applicant to make its case and ensure that the Board has the information it needs to properly assess and deliberate on the application.

# Administration section

- Required Material
  - Table of Contents
  - Who will be affected by the application and publication details
  - Internet address for application viewing purposes and primary contact
  - Legal or other representation
  - Hearing form ( oral or written) and proposed effective date
  - Bill impacts
  - List of specific approvals requested
  - Changes in tax status
  - Existing Accounting Orders and List of any departures from the Uniform System of Accounts including references to Accounting Orders
  - Description of applicant's service area

# Administration cont'd

- Identify whether a host or embedded distributor and associated particulars
- Corporate and utility organizational structure and any changes thereto
- Corporate Entities Relationship Chart, including management and Board of Directors
- Corporate governance practices
- Status of transmission assets ( $> 50\text{kV}$ )
- Accounting Standard used and when adopted
- Deviations from Filing Requirements
- Statement and description of changes to methodologies used in previous applications
- Confirmation of accounting treatment used to segregate non-utility from regulated activities

# Administration cont'd

- Identification of Board Directives from any previous Board Decisions and/or Orders and status
- Indication of where current version of Conditions of Service publicly available and identification of any changes to the Conditions of Service that would ensue from an approved application
- All responses to matters raised in letters of comment filed with the Board during the course of the proceeding

# Corporate Governance

- Corporate Governance Practices: an expanded topic in Administration Section
  - Filing Requirements cover letter:
    - Board will initiate a policy consultation on corporate governance.
    - Consultation to facilitate a broad discussion about corporate governance in the Ontario electricity distribution sector, to define standards of good governance, and to identify how best to achieve those standards.
  - To support this initiative application to include evidence on the corporate governance practices of distributor.
    - This will provide information as to the governance practices which currently exist.



# Corporate Governance cont'd

- Evidence to contain details on:
  - Board of Directors
  - Board Mandate
  - Orientation and Continuing Education
  - Ethical Business Conduct
  - Nomination of Directors
  - Board Committees

# Questions?



The background of the slide is a photograph of a beach. In the foreground, there are several green plants in pots. The middle ground shows a sandy beach with a few people walking. The background features a blue ocean and a blue sky with large white clouds.

# **Intervenor Review of Electricity Distributor Rate Applications**

*July 23, 2013  
Jay Shepherd  
for School Energy Coalition*



# **School Energy Coalition**

- **Who We Are**
  - Coalition of seven school board organizations
  - All school boards are active members
  - 5000 schools with 2 million students
  - Spend \$550 million per year on energy
- **Intervention Principles**
  - Always look for the win-win solution
  - “Walk softly but carry a big stick”
  - Think long term



# **Electricity Intervenors**

- **Organizations:**
  - Up to five active ratepayer groups in LDC applications: SEC, VECC, CCC, AMPCO and Energy Probe
- **People:**
  - Experienced consultants specializing in energy regulation
- **Division of Responsibility**



# **Goals for the Review**

**(in order of priority)**

- **Knowing the Utility**
- **Hearing/Adjudication**
- **ADR**
- **Interrogatories**



# Preliminary Work

- **We don't just look at the Application**
- **Website, Newspaper stories, Google search, etc.**
- **Yearbook data for all years**
- **Previous applications, results, rates**
- **People: Who do we know?**
- **“Knowing the utility”**



# **Within the Application**

- **Financial Statements**
- **Rating agency reports**
- **Shareholders' Agreement/Direction**
- **Asset Condition Assessment and AMP**
- **IT Plan or Strategy**
- **Strategic/Business Plan**
- **Tax returns or tax calculations**
- **Other “non-regulatory” documents**



# Components

- **Revenue Requirement**
  - OM&A issues (pattern, FTEs, affiliates)
  - Rate Base issues (opening, capex, dep'n)
  - Cost of Capital issues (debt rate, taxes)
- **Revenue Forecast (load, customers)**
- **Deficiency/Sufficiency**
- **Who Pays**
  - Cost Allocation (RTC, anomalies)
  - Rate design (fixed charges)



# Comparative Data

- **Valuable diagnostic tools**
  - Identify potential problem areas
  - Test against evidence for consistency
  - “Outcomes-based” analysis
- **Comparative Rates the most important**
  - Captures all aspects of costs, but rough
- **Rate Base and Capital Spending**
  - e.g. Capex/depreciation ratio each year



# Comparative Data

- **OM&A Metrics**
  - OM&A or FTE per customer
  - Spending ratios (e.g. maint. vs. G&A)
  - Individual line items, esp. trends
- **Other Metrics**
  - Components of revenue (e.g. by class)
  - Compensation levels
  - Debt/equity ratio (leveraging)



# Interrogatories

- **What are we looking for?**
  - **Documents referred to (or omitted)**
    - Sometimes prior versions
  - **Explanations**
    - Missing data, steps, or confusion
    - Comparative data
- **Clear answers simplify the TC (call)**
- **Challenges facing this LDC**
  - **Show investigation and analysis**
  - **Thoughtful plan to deal with them**



# Technical Conference

- **Usually first contact with intervenors**
- **Not cross-examination, but tougher than IRs**
- **Model TC is a dialogue**
- **Point is to save the Board panel from wasting their time**



# **ADR –The Process**

- **What is actually going on?**
  - **Most COS applications can be settled**
    - **Equality of negotiating strength (hearings are not so bad, but everyone benefits if you don't get there)**
    - **Willingness to compromise/listen – on both sides**
  - **Opportunity vs. challenge**
- **Steps**
  - **Exchange of information/dialogue**
  - **Intervenor caucus – application of standard metrics and formulae to the specific situation**
  - **Offers back and forth**
  - **Documenting any agreement**



# **ADR – Negotiations**

- **Offers**
  - Issue by issue – revenue requirement usually first
  - Deficiency based packages (looking for savings)
- **Settlement of other issues**
  - Cost allocation and rate design
  - Deferral and variance accounts
  - Severability
- **Intervenor point of view**
  - Result by agreement vs. result by decision
  - ADR positions vs. Hearing/Argument positions
  - Comparative data increasingly influential



# Oral Hearings

- **Cross-examination**
  - Bias in favour of the cross-examiner
  - Utility counsel has limited freedom to protect you
  - Good questioners are well prepared
- **Approach**
  - Don't “play the game” - use your natural advantage
  - Credibility not easily lost, but also not easily regained
  - Pay close attention to questions from Board members





# Intervenor Review of Electricity Distributor Rate Applications

*Jay Shepherd*

[www.canadianenergylawyers.com](http://www.canadianenergylawyers.com)



# Ontario Energy Board Commission de l'énergie de l'Ontario



## **Orientation Session** **Electricity Distributors Rebasing for 2014 Rates** Board Members' Perspective

Marika Hare, Ken Quesnelle

July 23, 2013

# Explaining yourself (story telling)

- Written evidence should be comprehensive and clear.
- Tell it knowing the ratepayer is in the audience.
- Approvals sought for exceptional capital or operating expenditures should be supported by “the full story”. The evidence should convey to the reader what the proposal is, why it is needed and why the proposal is the best option.

# The process works best when:

## Settlement Conferences are ...

- viewed by all as an opportunity to identify priorities.
- approached with a view that not all issues need to be settled (some exceptional issues are best heard by the Board).
- not seen as a way to avoid a hearing.

## Oral hearings provide an opportunity to explain your proposals through an open and transparent process and...

- can be used in conjunction with a partial settlement agreement and limited to particular issues.
- can be as short as a half day for a single issue hearing.
- allow for detailed exchanges with the Board panel members on complex matters.

# The process works best when: *continued*

When an oral hearing is required, the company witnesses selected to tell the story are...

- well prepared and knowledgeable
- able to explain both the technical aspects of the proposal as well as how the proposal fits into the “big picture”
- able to take ownership of the evidence
- aware of Board protocols and procedures

# This is part of your business

A Cost of Service application should not be seen as separate from your “real work”. It should be built-in, not bolted-on.

- Documentation required to support a cost of service application should be information that you already require to run your business effectively
- Aligns your ratepayer’s needs with your services through a transparent review and approval process
- Represents the final approval process that allows you to proceed with planned activities



# Questions?

