Memorandum of Understanding

Between

the Minister of Energy

and

the Chair of the Ontario Energy Board
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1 PURPOSES OF THIS MEMORANDUM

1.1 The purposes of this Memorandum are as follows:

(a) to establish the accountability relationships between the Minister of Energy and the Chair and Management Committee of the Ontario Energy Board.

(b) to clarify the operational roles and responsibilities of the Minister and Deputy Minister of Energy, and the Chair and the Management Committee, as well as officers and employees of the Ontario Energy Board, and to record their mutual understanding in respect of these matters.

(c) to set out the expectations for the operational, administrative, communications, financial, auditing and reporting arrangements between the Ontario Energy Board and the Ministry of Energy.

(d) to satisfy the requirements under section 4.6(1) of the Ontario Energy Board Act, 1998, and the Agencies and Appointments Directive (as defined in article 2 herein), requiring the Chair of the Ontario Energy Board to enter into a memorandum of understanding with the Minister of Energy.

1.2 This Memorandum does not affect, modify or limit the powers or responsibilities of the Ontario Energy Board or the powers or responsibilities of individuals or entities that are derived from the Ontario Energy Board, as set out in applicable legislation, or as otherwise established by law. In the event of a conflict between the provisions of this Memorandum and any applicable legislation (as defined in article 2 herein), the legislation shall prevail.

2 DEFINITIONS AND INTERPRETATION

2.1 For the purposes of this Memorandum, the following terms shall have the following meanings:

“2013 Long-Term Energy Plan” means the energy plan issued on December 9, 2013 by the Ministry of Energy, as amended from time to time.

“AAD” means the Agencies and Appointments Directive, approved by the Treasury Board/Management Board of Cabinet of the Government of Ontario. The AAD is
the successor to the former Agency Establishment and Accountability Directive (AEAD) and the Government Appointees Directive;

“Act” means the Ontario Energy Board Act, 1998, as may be amended from time to time;

“Board” means the Ontario Energy Board, continued under Part II of the Act;

“By-law” means a by-law made by the Management Committee of the Ontario Energy Board pursuant to section 4.10 of the Act;

“Cabinet” refers to the Executive Council of Ontario and is comprised of the Premier and the ministers of each of the Government’s portfolios;

“Chair” means the member of the Ontario Energy Board designated by the Lieutenant Governor in Council to be chair of the Board pursuant to section 4.1(6) of the Act, who is also the chair of the Management Committee and the chief executive officer of the Board, pursuant to sections 4.1(9) and 4.2(1) of the Act;

“COO” means the chief operating officer of the Board who is appointed by the Management Committee from among the Board’s employees pursuant to section 5 of the Act;

“Conservation First” means the policy framework identified in the 2013 Long-Term Energy Plan to put conservation as the first resource before building new generation and transmission facilities, and conservation will be the preferred choice wherever cost-effective.

“Deputy Minister” means the Deputy Minister (DM) of the Ministry of Energy;

“Fiscal Year” means the 12 month financial reporting period beginning April 1st and ending March 31st;

“Government” means the Government of Ontario;

“LGIC” means the Lieutenant Governor in Council;

“Legislation” means all statutes duly enacted by the Legislative Assembly of Ontario or the Parliament of Canada, as applicable to the Board, including all regulations made under any such statute or statutes;

“Management Committee” means the management committee of the Ontario Energy Board, composed of the Chair and two vice-chairs, established under section 4.2 of the Act. For greater clarity, the Chair shall be responsible for carrying out the duties of the Management Committee unless the context requires otherwise.

“MBC” means the Management Board of Cabinet;
“Member” means a member of the Ontario Energy Board appointed to the Board by the LGIC pursuant to section 4.1(2) of the Act, and includes the Chair and the vice-chairs. For greater clarity, a member of the Board shall not be interpreted to include an employee of the Board;

“Memorandum” means this memorandum of understanding between the Minister of Energy and the Chair of the Board, entered into on behalf of the Ministry, and the Board and its Management Committee, respectively, as may be amended from time to time by mutual agreement of the parties;

“Minister” means the Minister of Energy;

“Ministerial Directive” means a directive issued by the Minister with the approval of the LGIC under sections 27, 27.1, 27.2, 28, 28.1, 28.2, 28.3, 28.4, 28.5, 28.6 and 28.7 of the Act, or any other applicable sections of the Act;

“Ministry” means the Ministry of Energy of the Government of Ontario;

“PSOA” means the Public Service of Ontario Act, 2006;

“TB” means the Treasury Board of Cabinet; and,

“Vice-Chair” means a member designated by the LGIC as a vice-chair of the Ontario Energy Board under section 4.1(6) of the Act.

2.2 Any reference to the Act or any other Legislation (or section therein) shall be deemed to be a reference to the current Act or Legislation (or section therein), as may be amended from time to time.

2.3 The parties hereto agree and acknowledge that amended, revised or successive versions of the directives listed in Appendix 2 continue to apply to the Board. Where a directive applies, all associated policies, procedures and guidelines also apply.

3 AGENCY STATUS

3.1 The Board is an agent of Her Majesty in right of Ontario, pursuant to section 4(4) of the Act.

3.2 The Board is a corporation without share capital and is comprised of at least five members appointed by the LGIC.

3.3 Pursuant to Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies - Definitions), made under the PSOA, the Board is prescribed as a public
body for the purposes of the PSOA, which requires the compliance by Members and employees of the Board with the ethical framework of the PSOA.

3.4 The Board is classified by MBC as a Provincial Agency with a governing board under the AAD, the key government directive setting out governance and accountability for provincial agencies and government appointments.

4 GUIDING PRINCIPLES

4.1 The Minister recognizes that the Board is a statutory corporation and that the Board, the Chair, and the Management Committee each exercise powers and perform duties in accordance with the Act and other applicable Legislation. The Minister also recognizes that as a statutory entity, the exercise of the Board’s powers and duties is subject to limitations, constraints and conditions that flow from applicable Legislation, from the Board’s status as an independent quasi-judicial tribunal or from both. The Minister acknowledges that the Board’s adjudicative and regulatory decisions must be made, and be seen by the public to be made, independently and impartially. The parties agree that this Memorandum and all obligations contained in it shall be interpreted and applied in a manner that is compatible with the foregoing.

4.2 The Chair, on behalf of himself or herself and the Management Committee, acknowledges that the Chair and the Management Committee are accountable to the Minister, in respect of the Board’s fiscal management and business operations, consistent with any applicable TB/MBC directives. The Chair acknowledges that accountability is a fundamental principle to be observed in the management, administration and operations of the Board, consistent with its status as an agent of the Crown pursuant to section 4(4) of the Act.

4.3 The Chair agrees to ensure that the Board, including its Management Committee, conducts its affairs according to the management principles of the Government. These principles include: ethical behaviour; the prudent, efficient and lawful use of public resources; fairness; and high-quality service to the public.

4.4 The Minister and the Chair agree that the exchange of information, on an appropriate basis, at the earliest possible time is of mutual benefit and promotes accountability.

4.5 The Minister and the Chair agree to develop and implement mutually satisfactory procedures and channels for the exchange of information to meet the requirements of this Memorandum.

5 MANDATE AND LEGISLATIVE FRAMEWORK

5.1 The mandate of the Board is set out in the Act.
5.2 The Board also exercises powers and authorities under a number of other Ontario statutes including, but not limited to, the Electricity Act, 1998, the Municipal Franchises Act and the Statutory Powers Procedure Act. A list of statutes of particular application to the Board is set out in Appendix 1. It is understood that Appendix 1 does not contain all of the statutes that apply to the Board and that there are other statutes that apply to the Board or give the Board powers, duties, or responsibilities.

5.3 The Board shall support the Government in successfully implementing its policy of Conservation First by incorporating the policy of Conservation First into distributor planning processes for both electricity and natural gas utilities, and supporting the development and implementation of a natural gas conservation framework and its coordination with the electricity Conservation First Framework.

6 ACCOUNTABILITY RELATIONSHIPS

6.1 Minister

6.1.1 The Minister is accountable to the Legislative Assembly of Ontario for the fulfillment by the Board of its mandate and its compliance with applicable Legislation and directives. For these purposes, the Minister reports and responds to the Legislative Assembly on the affairs of the Board.

6.1.2 The Minister is accountable to Cabinet for the performance of the Board and its compliance with applicable Legislation and directives.

6.2 The Chair and the Management Committee

6.2.1 The Chair is accountable to the Minister for the performance of the Board in fulfilling its mandate, and for carrying out the roles and responsibilities assigned to the Chair under the Act, and for providing oversight in respect of the Board’s compliance with applicable Legislation, Ministerial Directives, TB/MBC directives and this Memorandum.

6.2.2 The Management Committee is accountable to the Minister for the management of activities of the Board, including budgeting and the allocation of the Board’s resources, and shall perform such duties as are assigned to the Management Committee under the Act, other applicable Legislation, directives, and this Memorandum.

6.3 The Deputy Minister

6.3.1 The Deputy Minister is accountable to the Secretary of Cabinet and the Minister for the performance of the Ministry in its administrative and organizational support to the Board, and for carrying out the roles and
responsibilities assigned to the Deputy Minister by the Minister, applicable TB/MBC directives, and this Memorandum.

6.4 The Chief Operating Officer

6.4.1 The COO is accountable to the Management Committee, for such matters as are assigned to the COO by the Management Committee as set out in the Board’s By-law #1.

7 ETHICAL CONDUCT

7.1 The Board is prescribed as a public body under section 8 (1.1) (a) of the PSOA. As Members and employees of the Board are considered public servants under section 2 of the PSOA, they are governed by the ethical framework on conflict of interest, political activity, and protected disclosure of wrongdoing provisions, as well as any other duties and responsibilities provided for under the PSOA.

7.2 The Board shall follow the conflict of interest rules established under the PSOA, which are set out in Ontario Regulation 381/07 (Conflict of Interest Rules for Public Servants (Ministry) and Former Public Servants (Ministry)), made under the PSOA. All Members and employees of the Board are subject to the conflict of interest rules set out under the PSOA.

7.3 In addition, in order to demonstrate its commitment to the highest standard of ethical conduct and governance, the Board has established conflict of interest rules which apply to:

(a) current employees of the Board and Board members; and
(b) former senior employees and former Board members.

7.4 The conflict of interest rules address post-service restrictions on the activities of former senior employees and Board members and form part of the Board’s Code of conduct. To the extent of any conflict between the conflict of interest rules created by the Board and the PSOA, the PSOA shall govern.

8 ROLES AND RESPONSIBILITIES

8.1 The Minister

8.1.1 Without limiting any other responsibilities and duties set out in the Act, other applicable Legislation, Ministerial Directives, the AAD and other applicable TB/MBC directives, the Minister is responsible for:

(a) developing the Government’s overall energy policy priorities and
broad policy directions;

(b) informing the Chair of the Government's overall energy policy priorities and broad policy directions that may impact the Board;

(c) reporting and responding to the Cabinet and the Legislative Assembly of Ontario on the affairs of the Board;

(d) reviewing and approving, on a timely basis, the Board's annual business plan and submitting the Board's business plan to TB/MBC for review upon request;

(e) receiving the annual report from the Board and tabling it in the Legislative Assembly within one month of receiving the annual report from the Board;

(f) reviewing by-laws made by the Management Committee, and approving by-laws(s) made under section 4.10(e) of the Act governing the remuneration and benefits of the Chair, the Vice-Chairs and the other Members of the Board;

(g) meeting with the Chair regularly and as necessary to discuss issues relating to the effective discharge of the Board's mandate and the need for services or support to be provided by the Ministry to the Board;

(h) consulting, as appropriate, with the Chair on significant new directions or initiatives affecting the energy industry and/or the Board;

(i) directing that a periodic review of the Board be conducted as and when necessary, and making subsequent recommendations to TB/MBC; and

(j) following consultation with the Chair, as appropriate, making recommendations to Cabinet relating to the appointment and reappointment of the Chair, Vice-Chairs, and other Members, pursuant to the process established by the Public Appointments Secretariat of Ontario.

8.2 The Chair

8.2.1 Without limiting any other responsibilities and duties set out in the Act, other applicable Legislation, Ministerial Directives, the AAD and other applicable TB/MBC directives, the Chair is responsible for:

(a) keeping the Minister advised of issues or events relating to the Board that concern or can reasonably be expected to concern the Minister in the exercise of his or her ministerial responsibilities
related to energy matters and advising the Minister of these
issues or events in a timely manner, and in advance if it is
possible to do so, having regard to the seriousness of the event or
issue;

(b) ensuring that significant initiatives undertaken by the Board that
would be of importance to the Minister are brought to the attention
of the Minister in a timely manner, and in advance if it is possible
to do so, having regard to the seriousness of the initiative;

(c) consulting with the Minister with respect to the Board’s roles and
responsibilities in meeting Government public policy objectives,
current priorities and initiatives, including Conservation First;

(d) providing orientation to Members of the Board with regard to the
statutory objects of the Board, as well as Government public
policy objectives and current priorities;

(e) Identifying an executive lead for supporting the policy of
Conservation First to provide the necessary leadership within the
Board, and liaise regularly with Ministry officials responsible for
conservation to discuss progress;

(f) providing orientation to new Members to ensure that the new
Members are made aware of the requirements with regard to the
ethical framework under the PSOA;

(g) ensuring the Board’s compliance with applicable Legislation and
all applicable directives;

(h) attesting, reporting and responding to the Ministry on the Board’s
compliance with Legislation, the AAD and other applicable
TB/MBC directives, and Government operational policies as
required or as requested by the Ministry;

(i) at the request of the Minister, preparing material, attending and/or
making presentations before Cabinet, the Legislative Assembly or
Committees of either, on matters affecting or pertaining to the
Board;

(j) providing the Board with such information, assistance and advice
as either the Board or the Management Committee requires to
meet its responsibilities under the Act and other applicable
Legislation;

(k) notifying the Minister of upcoming vacancies in Order-in-Council
appointments to the Board, and making recommendations to the
Minister on persons appropriate to fill such vacancies;
(l) presiding over meetings of the Management Committee; and

(m) meeting with the Minister regularly, or as requested by either party, to discuss issues relating to the fulfillment by the Board of its mandate and public policy direction.

8.3 The Management Committee

8.3.1 Without limiting any other responsibilities and duties of the Management Committee set out in the Act, other applicable Legislation, Ministerial Directives, the AAD and other applicable TB/MBC directives, the Management Committee is responsible for:

(a) managing the activities of the Board, including the Board's budgeting and the allocation of the Board's resources;

(b) ensuring that all of the Board's reporting requirements and specific obligations set out in this Memorandum, including the reporting and documentary requirements listed in Appendix 3 for review and approval by the Minister, are met;

(c) ensuring that the Board has an appropriate risk management framework and mitigating strategy in place to provide the proper level of assurance that the Board can continue to carry out its functions; and

(d) acting as the equivalent to a Board of Directors for providing approvals under applicable TB/MBC directives, where Board of Directors approvals are required.

8.4 The Deputy Minister

8.4.1 Without limiting any other responsibilities and duties of the Deputy Minister set out in the Act, other applicable Legislation, Ministerial Directives, the AAD and other applicable TB/MBC directives, the Deputy Minister is responsible for:

(a) advising and assisting the Minister in discharging his or her delegated ministerial responsibility with respect to the Board, including the Minister's responsibilities for approving the Board's business plan(s) and by-laws governing the remuneration and benefits of the Chair, the Vice-Chairs or other Members;

(b) monitoring the activities of the Board on behalf of the Minister to ensure that its mandate is being fulfilled and that it is acting in accordance with all applicable Legislation and applicable directives;

(c) ensuring that the Board has an appropriate risk management
framework and a risk management plan in place for managing risks that the Board may encounter in meeting its mandate and business plan;

(d) ensuring that the Board, where and when appropriate, receives such information and guidance as required or as requested to meet its responsibilities under the Act, other applicable Legislation, applicable Ministerial Directives, TB/MBC directives, and this Memorandum;

(e) undertaking, on behalf of the Minister, assessments of whether or not the Board is fulfilling its legislative mandate;

(f) attesting, reporting and responding to TB/MBC annually and as required, on the Board’s compliance with the AAD, other applicable TB/MBC directives and Legislation;

(g) meeting with the Chair on a regular and as needed basis on matters of mutual importance; and

(h) requiring that the Deputy Minister’s senior staff meet with the COO and Board’s senior management on a regular and as needed basis to discuss on-going issues.

8.5 The Chief Operating Officer

8.5.1 Without limiting any other responsibilities and duties as may be specified by applicable Legislation or by the Management Committee, the COO is responsible for:

(a) the general supervision of employees, and the financial, administrative and other affairs of the Board.

(b) such other duties as are assigned by the Management Committee as set out in the Board’s By-law #1, as may be amended from time to time.

9 REPORTING REQUIREMENTS AND OTHER SPECIFIC OBLIGATIONS

9.1 Business Plan

9.1.1 Each year, the Chair, on behalf of the Management Committee, shall provide the Minister with the Board’s business plan for approval at least 30 days before the beginning of the new Fiscal Year. The business plan shall cover, at a minimum, the Board’s next three fiscal years.
9.1.2 Prior to submitting the business plan to the Minister, the Board shall first submit its business plan to the Ministry at least 90 days before the start of the new Fiscal Year. Senior Board employees and Senior Ministry staff shall discuss the contents of the business plan in respect of the alignment of the Board’s key initiatives, as identified in the business plan, with the Government’s policy directions, performance standards, and the plan’s compliance with the AAD.

9.1.3 The Board shall consult, as and when appropriate, with stakeholders on the Board’s goals, objectives and strategic directions.

9.1.4 The Management Committee shall ensure that the Board’s business plan meets the requirements of the AAD, and the other requirements described in this Memorandum.

9.1.5 Ministry staff shall exercise due diligence in their review of the Board’s business plan prior to making any recommendation for approval by the Minister. Ministry staff may request additional information and analysis from the Board, as necessary, for the purpose of this review.

9.1.6 The Minister shall review the Board’s annual business plan in a timely manner, and shall advise the Management Committee whether or not the Minister concurs with the direction proposed by the Board’s Management Committee. The Minister will advise the Management Committee where and in what manner the Board’s plan varies from Legislation, the Government’s energy policy objectives or priorities, or from any applicable directives, and the Management Committee will reconsider the business plan accordingly.

9.1.7 The business plan must clearly articulate, among other things, how the Board’s activities are aligned with the Government’s energy policy objectives, which include the objectives of promoting electricity and natural gas conservation and demand management, implementation of a smart grid, and generation of electricity from alternative and renewable energy sources.

9.1.8 The business plan should include: projected revenues of the Board and their sources; capital and operating expenditures; and any other items required under applicable TB/MBC directives.

9.1.9 The Minister or TB/MBC may require the Management Committee to submit the Board’s business plan to TB/MBC for review at any time.

9.1.10 The Management Committee shall publish the approved business plan on the Board’s website within 30 days of Minister’s approval and shall make a paper copy available to the public upon request.
9.2 Statement of Priorities

9.2.1 The Management Committee shall provide the Minister with a statement of the Board’s priorities in the Board’s annual business plan.

9.2.2 The statement of priorities shall include details of the Board’s policy and operational priorities and a description of how the Board intends to achieve its priorities.

9.2.3 The Management Committee shall report any material changes to the Board’s operational priorities during the course of the year to the Minister.

9.3 Regulatory Calendar

9.3.1 The Management Committee shall publish and regularly update the Board’s regulatory calendar on the Board’s website in a timely manner, and shall make a paper copy available to the public upon request.

9.4 Annual Reports

9.4.1 Within six months after the end of each fiscal year, the Management Committee shall deliver to the Minister an annual report on the affairs of the Board for that Fiscal Year in accordance with section 4.9 of the Act.

9.4.2 The Chair shall ensure that the Board’s annual report fulfills the requirements of the AAD and other applicable TB/MBC directives, and other requirements as described in this Memorandum.

9.4.3 Ministry staff shall exercise due diligence in their review of the annual report prior to making any recommendation for acceptance by the Minister. Ministry staff may request additional information and analysis from the Board, as necessary, for the purpose of this review.

9.4.4 The Management Committee, in accordance with the AAD, shall ensure that the total annual remuneration of Members is included in the annual report.

9.4.5 The Minister shall lay the annual report before the Assembly by delivering the report to the Clerk in accordance with section 4.9 (2) of the Act.

9.4.6 After the annual report has been tabled in the Legislative Assembly, Ministry staff shall advise the Board that the annual report has been tabled, and the Management Committee shall ensure the annual report is published on the Board’s website within 30 days after the annual report has been tabled, and shall make a paper copy available to the public upon request.

9.5 Performance Standards of the Board

9.5.1 The Management Committee shall ensure that the Board’s business plan
includes a system of performance standards for the Board.

9.5.2 The system for measuring performance shall include, but is not limited to, the following measures:

(a) the achievement of proposed outcomes that align with the goals, strategic objectives and vision identified in the Board’s business plan; and

(b) the efficiency in the operations of the Board.

9.5.3 The Management Committee shall ensure that the Board seeks continuous improvement in its performance.

9.5.4 The Management Committee shall ensure that the Board establishes annual as well as longer-range performance standards for operating and financial results.

9.6 Performance Results of the Board

9.6.1 The Management Committee shall ensure that an independent auditor reviews and reports on the Board's past year's achievement of the performance standards contained in its business plan.

9.6.2 The Management Committee shall provide the Minister with the auditor's report on the Board's achievement of the performance standards contained in its business plan within 90 days after the end of each fiscal year, and as soon as it is completed and accepted by the Management Committee.

9.6.3 The auditor's report on the Board's performance shall include a description of performance achieved as against the performance standards established by the Management Committee and a discussion of significant variances between actual and planned results.

9.6.4 The auditor's report described in article 9.6.2 of this Memorandum shall be reviewed by the Chair and the Minister annually.

9.6.5 A summary of the auditor's report described in section 9.6.2 of this Memorandum shall be included in the Board's annual report.

9.6.6 The Management Committee shall publish the auditor's report described in article 9.6.2 of this Memorandum on the Board's website and shall make a paper copy available to the public upon request. The Management Committee shall ensure that the publication of the auditor's report on the Board's website shall be made available and posted together with the annual report for the corresponding year.
9.7 Remuneration

9.7.1 The Management Committee may make by-law(s) governing the remuneration and benefits of the Chair, the Vice-Chairs and other Members. Any remuneration by-law must be submitted to the Minister for review and approval in accordance with sections 4.10(3) to 4.10(7) of the Act.

9.7.2 The Management Committee shall establish a pay for performance plan for the full-time Members of the Board that links the payments to the achievement of performance standards. Full-time Members include the Chair, the Vice-Chairs and other full-time Members.

9.7.3 The Management Committee shall submit the pay for performance plan and any material proposed changes to the pay for performance plan to the Minister for approval.

9.7.4 The determination of the pay for performance of the Chair, Vice-Chairs and the full-time Members will be based on the audited achievements of the performance standards and shall be administered in accordance with the Minister-approved pay for performance plan, and any other applicable Legislation, and applicable Minister’s Directives and TB/MBC directives.

9.7.5 The Management Committee shall publish the Minister-approved pay for performance plan on the Board’s website and shall make a paper copy available to the public upon request.

9.7.6 The Board’s compensation policies shall reflect, as appropriate, current Government policies, as communicated to the Board or to energy sector entities generally, as well as any relevant fiscal considerations for or relating to public sector compensation.

9.7.7 The Board shall adhere to any Government Legislation which affects or constrains the manner by which the Board must establish executive and other compensation levels. Until such time as Government Legislation has been proclaimed, the Management Committee shall ensure the comparator group for total senior management compensation is comparable to other regulatory organizations in Ontario.

9.8 By-laws

9.8.1 The Management Committee may make by-laws in accordance with section 4.10 of the Act:

(a) governing the administration, management and conduct of the affairs of the Board;

(b) prescribing emergency circumstances in which the quorum of the
Management Committee is one member;

(c) governing the appointment of an auditor;

(d) setting out the powers, functions and duties of the Chair, the Vice-Chairs and the officers employed by the Board;

(e) governing the remuneration and benefits of the Chair, the Vice-Chairs and the other Members of the Board; and

(f) governing the composition and functions of the Market Surveillance Panel and the appointment, removal and remuneration of members of the Market Surveillance Panel.

9.8.2 The Management Committee shall deliver to the Minister a copy of every by-law passed by it.

9.8.3 The Management Committee shall publish every by-law made under section 4.10(1) of the Act on the Board’s website as soon as practicable after the by-law becomes effective.

9.8.4 Within 60 days after the delivery of a by-law made under section 4.10(1)(e) of the Act (a remuneration and benefits by-law), the Minister may approve, reject or return it to the Management Committee for further consideration.

9.8.5 A by-law made under section 4.10(1)(e) of the Act that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide.

9.8.6 A by-law made under section 4.10(1)(e) of the Act that is rejected by the Minister does not become effective.

9.8.7 A by-law made under section 4.10(1)(e) of the Act that is returned to the Management Committee for further consideration does not become effective until the Management Committee returns it to the Minister and the Minister approves it.

9.8.8 If, within the 60-day period referred to in article 9.8.4 of this Memorandum, the Minister does not approve, reject or return the by-law for further consideration, the by-law becomes effective on the 75th day after it is delivered to the Minister or on such later date as the by-law may provide.

9.9 Governance Training for Appointees

9.9.1 As a board-governed provincial agency under AAD, Members appointed by the Government to the Board are requested to participate in training on public sector governance organized by the Public Appointments Secretariat.
9.10 Consumer Protection

9.10.1 The Chair and the Management Committee acknowledge that consumer protection in energy markets is a key priority for both the Government and the Board. The Chair and the Management Committee shall ensure that the Board has the management focus and processes necessary to discharge its responsibilities in the areas of consumer protection, consumer education, complaint handling, licensing, inspections, compliance, and enforcement in a timely manner.

9.10.2 The Management Committee shall ensure that the Board provides public reporting on the Board’s website of any assurance of voluntary compliance by a regulated entity, any compliance order issued by the Board against a regulated entity, and any compliance activities that the Board has undertaken. This information should be maintained as a historical record on the Board’s website.

9.10.3 The Management Committee shall maintain and periodically review rules governing practice and procedure under section 25.1 of the *Statutory Powers Procedure Act* that govern interim and final awards of costs to organizations representing consumers.

9.10.4 The Management Committee shall ensure that the rules referred to in article 9.10.3 of this Memorandum can be found in the Board’s Rules of Practice and Procedure and the Board’s Practice Direction on Cost Awards. The Management Committee shall review the Practice Direction on Cost Awards periodically. Any material changes shall be reported to the Minister on a timely basis.

9.11 Stakeholder Input

9.11.1 The Management Committee shall ensure that there are one or more processes for stakeholder input by which consumers, distributors, generators, transmitters and other persons who have an interest in the Board may provide advice and recommendations for consideration by the Board in accordance with section 4.4 of the Act.

9.12 Financial and Other Reports

9.12.1 The Management Committee shall provide to the Minister, in a timely manner, the Board’s financial and any other relevant information for consolidation into the budget of the Province of Ontario Public Accounts and for other Government financial planning and reporting purposes.

9.12.2 The Management Committee shall provide to the Minister, in a timely manner, audited annual financial statements, and will include them as part of the Board’s annual report. The statements will be provided in a format that is in accordance with the Province’s stated accounting policies issued by the Office of the Provincial Controller.
9.12.3 The Management Committee shall submit to the Minister of Finance its salary information according to the Public Sector Salary Disclosure Act, 1996.

9.12.4 The Management Committee shall provide to senior Ministry staff a report on the Board’s progress and results in meeting Government energy public policy initiatives, including Conservation First, as identified in the Board’s business plan. The written report is to be provided annually within 60 days after the end of the fiscal year, and on a more frequent basis if requested by the Ministry.

9.12.5 The Management Committee shall also provide to the Ministry, at the request of the Ministry, such other reports, information and analysis as may be necessary, to support the Ministry in agency governance and policy development.

9.12.6 In accordance with section 4.7 of the Act, the Management Committee shall give the Minister such information about the Board’s activities, operations and financial affairs as the Minister requests.

9.13 Labour Negotiations

9.13.1 In advance of commencing discussions for the renewal of its collective agreements with its union, the Management Committee shall seek advice from the Ministry on Provincial policy direction and relevant fiscal considerations affecting labour negotiations in the broader public and/or the energy sectors.

9.13.2 When a collective agreement has been negotiated and ratified, the Board shall inform the Ministry of the results and details of the collective agreement in a timely manner.

10 COMMUNICATIONS

10.1 The Chair and the Minister recognize that timely exchange of information and effective consultation, when necessary and as appropriate, are essential to the effective discharge of their respective responsibilities.

10.2 The Minister and the Chair will consult with each other on key public communications strategies. They will keep each other informed of the results of stakeholder and other public consultations.

10.3 The Minister and the Chair shall consult with each other, as appropriate, on key communication issues that may affect the Ministry or the Board: they will keep each other informed, as appropriate, of key communication issues in a timely manner, and in advance if it is possible to do so, having regard to the seriousness of the key public communication issue and the quasi-judicial nature of the Board.
10.4 The Chair shall ensure the Board’s communication strategies include promotion and awareness of conservation to increase public understanding of energy consumption and the benefits of conservation.

10.5 The Ministry and the Board shall appoint persons to serve as public communications “leads”. Coordination on key public communications matters shall be the responsibility of the Board and the Ministry leads.

10.6 The public communications leads of the Board and the Ministry shall maintain timely and effective communication about the matters provided for in this Article in respect of the Board and the Ministry, as applicable.

10.7 The public communications leads shall ensure that inquiries received from the general public by the Minister’s Office or the Ministry regarding a Board proceeding in progress must be re-directed to the Board.

11 STAFFING AND APPOINTMENTS

11.1 Staffing

11.1.1 Employees of the Board are subject to such provisions of the PSOA and its regulations as are made applicable thereby.

11.2 Appointments

11.2.1 Members shall be appointed by the LGIC pursuant to section 4.1(2) of the Act.

11.2.2 The LGIC, by order, shall designate a Member as Chair and two Members as Vice-Chairs.

11.2.3 Subject to article 11.2.4 below, and notwithstanding any other provision of this Memorandum, Members shall be governed by the AAD.

11.2.4 The provisions related to the rates of remuneration of appointees in the AAD are not applicable to Members of the Board by virtue of section 4.10(e) of the Act.

11.2.5 Without limiting the generality of the foregoing, and in accordance with section 4.7 of the Act, the Management Committee shall provide the Minister, upon request and in a timely manner, information relating to the proposed remuneration applicable to Members. Such information includes any information, research and analysis considered by the Management Committee.
12 AUDIT ARRANGEMENTS

12.1 The Management Committee shall prepare financial statements according to Generally Accepted Accounting Principles established by the Public Sector Accounting Board, and in a format that is in accordance with the Province's stated accounting policies issued by the Office of the Provincial Controller. The financial statements must present the financial position, results of operations and changes in the financial position of the Board for its most recently completed fiscal year.

12.2 The Management Committee, as part of its business planning process, must annually evaluate operational and financial risks, determine the level of internal audit, if any, appropriate to the organization and include a summary statement of its decision regarding the need for an internal audit in the business plan.

12.3 The Management Committee shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit the financial statements of the Board for each fiscal year.

12.4 The Internal Audit Division of the Government may also carry out an internal audit, if approved to do so by the Ministry's Audit Committee or by the Corporate Audit Committee.

12.5 The Chair may request an external audit of the financial transactions or management controls of the Board.

12.6 Furthermore, the Board is subject to audit by the Auditor General of Ontario under the *Auditor General Act*.

12.7 Regardless of any annual external audit, the Minister may direct that the Board be audited at any time.

12.8 The Chair, the Management Committee, and the COO shall cooperate in any audit of the Board.

12.9 The results of any material audits will be shared with the Management Committee and the Minister.

12.10 The Chair shall provide a copy of every report from an audit to the Minister and the Minister of Finance within 7 days of the release of the report. If the Chair responds to the audit report and any recommendations therein, the Chair shall also provide a copy of the response to the Minister and the Minister of Finance.

12.11 The Chair shall advise the Minister annually on any outstanding audit recommendations.
13 FINANCIAL ARRANGEMENTS, BORROWING, AND INVESTMENT POWERS

13.1 The parties hereto acknowledge that, in accordance with section 4.11 of the Act, the Board shall not, without the approval of the LGIC,

(a) create a subsidiary;

(b) purchase or sell real property;

(c) borrow money, pledge, mortgage or hypothecate any of its property, or create or grant a security interest in any of its property;

(d) enter into a contract of a class prescribed by the regulations; or

(e) exercise other rights, powers or privileges under section 4(2) of the Act that are prescribed by the regulations.

13.2 Financial procedures of the Board must be in accordance with applicable Legislation and applicable TB/MBC directives.

13.3 The operations of the Board are funded by fees payable under section 12.1 of the Act, assessments payable under section 26 of the Act, costs payable to the Board under section 30 of the Act, and administrative penalties payable under section 112.5 of the Act.

14 ADMINISTRATIVE ARRANGEMENTS

14.1 Applicable TB/MBC Directives

14.1.1 The Board is subject to the TB/MBC directives set out in Appendix 2 of this Memorandum.

14.1.2 Where the same matters dealt with in the directives referred to in article 14.1.1 are the subject of the provisions in the Act, the regulations and the rules thereunder, the provisions in the Act, the regulations and the rules made thereunder shall govern.

14.1.3 The Chair and the Minister acknowledge that TB/MBC may amend directives, operational policies and guidelines that apply to the Board from time to time over the duration of this Memorandum. The Board is responsible for complying with all TB/MBC directives, operational policies and guidelines to which it is subject.

14.2 Freedom of Information and Protection of Privacy

14.2.1 For the purposes of the Freedom of Information and Protection of Privacy
Act, the Chair is the head of the Board. The Board is designated as an institution for the purposes of that Act and for the purposes of Regulation 460 made thereunder.

14.2.2 The Board shall respond to access requests and privacy investigations and shall fulfill all requirements under the Freedom of Information and Protection of Privacy Act in a timely manner.

14.3 Records Management

14.3.1 The Management Committee is responsible for ensuring that a system is in place for the creation, collection, maintenance, and disposal of records.

14.3.2 The Management Committee is responsible for ensuring that the Board complies with the Archives and Recordkeeping Act, 2006.

14.4 Service to Stakeholders and the Public

14.4.1 The Board shall have one or more formal processes in place for responding to complaints about the quality of the Board’s services received by the public and stakeholders that is consistent with the Government’s service quality initiative.

14.4.2 The Board’s process for responding to complaints about the quality of services is separate from any statutory provisions about re-consideration, appeals, etc. of the Board’s adjudicative or regulatory orders or decisions.

14.4.3 The Board’s annual business plan will include performance standards for responding to complaints received from members of the public and stakeholders about the quality of services they received from the Board.

14.4.4 The Board shall ensure that it delivers its services at a quality standard that adheres to the principles of the Service Directive of the Ontario Public Service.

14.5 Agreement with Third Parties

14.5.1 The Board has, pursuant to section 4(2) of the Act, the capacity and the rights, powers and privileges of a natural person for the purpose of exercising and performing its powers and duties under the Act or any other Legislation, except as otherwise provided for in the Act. As such, the Board may enter into agreements with third parties, subject to any limitations provided for in the Act or in any other Legislation or in any TB/MBC directive applicable to the Board.

14.6 Procurement Arrangements

14.6.1 The Board is subject to the TB/MBC Procurement Directive.

14.6.2 Any relevant by-laws made by the Management Committee shall be in
accordance with the Procurement Directive.

14.7 Other Arrangements

14.7.1 Where the Deputy Minister or other senior staff of the Ministry request that Board staff provide assistance to Ministry staff, the Deputy Minister and the COO, or their designates shall agree on a timetable for the provision of that assistance and for any other matters relating to the provision of such services.

15 LIABILITY AND PROTECTION INSURANCE

15.1 The Management Committee acknowledges that the Board shall put into effect, and maintain for the period during which this Memorandum is in effect, insurance coverage with insurers that are licensed to underwrite in Ontario.

15.2 The Management Committee shall conduct periodic reviews of its insurance portfolio and report to the Minister on any material changes.

16 PERIODIC REVIEW

16.1 The Board may be subject to a periodic review at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the Board that are determined by TB/MBC or the Minister, and may include, but are not limited to, the mandate, powers, governance structure and/or operations of the Board.

16.2 In requiring a review, TB/MBC or the Minister will determine the timing and responsibility for conducting the review, the roles of the Chair, the Management Committee and the Deputy Minister, and how any other parties should be involved.

16.3 The Minister will consult with the Chair as appropriate during any such review.

16.4 The Chair, the Management Committee and the COO will cooperate in any such review.

17 THE ONTARIO PIPELINE CO-ORDINATION COMMITTEE

17.1 The Ontario Pipeline Co-ordination Committee ("OPCC"), representing a number of ministries and agencies concerned with the impact of proposed hydrocarbon pipelines and associated facilities and chaired by a Board employee, will provide technical assistance to the Ministry, which may intervene before the National Energy Board on behalf of the Government when such matters are under federal
jurisdiction. The primary function of the OPCC is to ensure that proposals for the
construction of hydrocarbon facilities brought before the Board adhere to Ontario
regulations and codes and have minimal undesirable effects on the environment
and resources of the Province of Ontario.

18 PROCESS FOR APPROVAL, REVIEW AND AMENDMENT

18.1 Effective Date of the Memorandum

18.1.1 This Memorandum becomes effective on the date it is signed by the
Minister.

18.1.2 This Memorandum shall remain in effect for a period of three years from
the date of the Minister's signature unless earlier amended or replaced.

18.2 Approval and Execution

18.2.1 The Minister is responsible for recommending to the TB/MBC the approval
of this Memorandum prior to execution by either party to it. Once this
Memorandum has been approved by the TB/MBC, it shall then be signed
by the Chair, and lastly by the Minister within 3 months of TB/MBC
approval.

18.2.2 The Minister shall ensure an original signed copy of this Memorandum is
filed with the Legal Services Branch of the Ministry of Energy. The Minister
shall also ensure that a copy of the signed Memorandum is shared with
the Secretary, MBC.

18.2.3 The Management Committee shall publish this Memorandum on the
Board's website within 30 days after this Memorandum is signed by both
parties.

18.3 Review and Amendment

18.3.1 This Memorandum shall be reviewed upon the request of either party to it.

18.3.2 If a new Minister or Chair takes office before this Memorandum expires,
the parties must either sign a letter of affirmation to be attached to the
Memorandum or sign the existing Memorandum within 6 months of the
change.
19 SIGNATURES

Rosemarie T. Leclair, Chair
Ontario Energy Board

Date

Honourable Bob Chiarelli
Minister of Energy

Date
APPENDIX 1: STATUTES OF PARTICULAR APPLICATION

Accessibility for Ontarians with Disabilities Act, 2005
Archives and Recordkeeping Act, 2006
Auditor General Act
Broader Public Sector Accountability Act, 2010
Broader Public Sector Executive Compensation Act, 2014
Electricity Act, 1998
Energy Consumer Protection Act, 2010
Environmental Assessment Act
Financial Administration Act
Freedom of Information and Protection of Privacy Act
French Language Services Act
Management Board of Cabinet Act
Municipal Franchises Act
Oil, Gas and Salt Resources Act
Ontario Clean Energy Benefit Act, 2010
Ontario Energy Board Act, 1998
Public Accounting Act, 2004
Public Sector Expenses Review Act, 2009
Public Sector Salary Disclosure Act, 1996
Public Service of Ontario Act, 2006
Statutory Powers Procedure Act
Toronto District Heating Corporation Act, 1998
APPENDIX 2: APPLICABLE TB/MBC DIRECTIVES

Governance and Accountability
• Accountability Directive
• Advertising Content Directive
• Agencies and Appointments Directive
• General Expenses Directive
• Internal Audit Directive
• Open Data Directive (Effective April 1, 2016)
• Perquisites Directive

Business Planning and Financial Management
• Accounting Advice Directive
• Delegation of Authority Key Directive
• Indemnification Directive
• Realty Directive
• Travel, Meal and Hospitality Expenses Directive

Human Resources Management
• Disclosure of Wrongdoing Directive (for employees/appointees of public bodies)

Procurement
• Procurement Directive
• Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services

General
• Communications in French Directive
• Visual Identity Directive

Note: Amended, revised or successive versions of the directives listed above continue to apply to the Board. Where a directive applies, all associated policies, procedures and guidelines also apply.
## APPENDIX 3: SUMMARY OF KEY REPORTING REQUIREMENTS

<table>
<thead>
<tr>
<th>REPORT/ DOCUMENT</th>
<th>DUE DATE</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Business Plan</td>
<td>Annually, 90 days before the beginning of the new fiscal year to (by January 1) to the Ministry and 30 days (by Mar 1) before the new fiscal year to the Minister</td>
<td>For approval by the Minister</td>
</tr>
<tr>
<td>Public Sector Salary Disclosure (PSSD)</td>
<td>Annually, around February - March</td>
<td>PSSD related information and analysis due to the Ministry, PSSD reporting due to Ministry of Finance</td>
</tr>
<tr>
<td>Attestation of Compliance with Legislation and government directives</td>
<td>Annually, around May</td>
<td>For Deputy Minister's approval, and Ministry's report back to TB/MBC</td>
</tr>
<tr>
<td>Audited financial statements</td>
<td>Annually, around May - June</td>
<td>Submit to the Ministry for consolidation in the Public Accounts</td>
</tr>
<tr>
<td>Auditor's Report on the Board's achievements of its business plan</td>
<td>Annually, within 3 months after the end of fiscal year (by Jul 1)</td>
<td>For review by the Minister</td>
</tr>
<tr>
<td>Internal Trade Procurement Report</td>
<td>Annually, September - October</td>
<td>Submit to the Ministry for consolidation, the report back to the Ministry of Government Services</td>
</tr>
<tr>
<td>Annual Report, including audited financial statements</td>
<td>Annually, by October 1</td>
<td>For acceptance by the Minister and tabling in the Assembly</td>
</tr>
<tr>
<td>Financial information for Estimates</td>
<td>Annually, around November</td>
<td>Submit to the Ministry for review and inclusion in the Ministry's Results Based Plan</td>
</tr>
<tr>
<td>Reports on progress and results of Board’s public policy initiatives, including Conservation First, as identified in the business plan.</td>
<td>Annually, within 2 months after the fiscal year end, and as required by the Ministry</td>
<td>For Ministry’s information</td>
</tr>
<tr>
<td>Audit reports</td>
<td>Within 7 days of the release of the report</td>
<td>The audit report and the Chair’s response to the Ministers of Energy and Finance for review</td>
</tr>
<tr>
<td>Outstanding audit recommendations</td>
<td>Annually</td>
<td>Advise the Ministry on any outstanding audit recommendations</td>
</tr>
<tr>
<td>All By-laws, except remuneration and benefits by-law</td>
<td>Immediately after the by-law is passed by the MC</td>
<td>Advise the Minister of by-laws, including amending by-laws</td>
</tr>
<tr>
<td>Reports as required by Legislation and TB/MBC directives</td>
<td>As required</td>
<td>Submit to the responsible Minister, copy to the Minister of Energy as appropriate</td>
</tr>
<tr>
<td>Remuneration and Benefits By-law(s)</td>
<td>As soon as it is passed by the MC</td>
<td>For Minister’s approval, including amending by-law.</td>
</tr>
<tr>
<td>Pay for Performance Plan for the Chair and the full-time members</td>
<td>Prior to setting the Plan</td>
<td>For Minister's approval, including proposed changes</td>
</tr>
<tr>
<td>Other Reports and information requests</td>
<td>At the request of the Minister, Deputy Minister or designated staff</td>
<td>As required by the Ministry for the purpose of agency oversight and policy development</td>
</tr>
</tbody>
</table>