

ONTARIO ENERGY BOARD

BY-LAW #1

BE IT ENACTED as a By-law of the Board as follows:

**ARTICLE 1
INTERPRETATION**

Section 1.1 Definitions.

In this By-law, unless the context otherwise requires:

“**Act**” means the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

“**appoint**” includes “**elect**” and vice versa;

“**Board**” means the Ontario Energy Board continued as a corporation without share capital on August 1, 2003 under the name Ontario Energy Board in English and Commission de l'énergie de l'Ontario in French;

“**By-laws**” means this By-law and all other By-laws of the Board from time to time in effect;

“**Chair**” means the Member designated by the Lieutenant Governor in Council to be Chair of the Board pursuant to the Act, who shall also be Chair of the Management Committee;

“**Crown**” means Her Majesty in right of the Province of Ontario;

“**Director**” means the Chair or a Vice-Chair

“**employee**” means any staff member of the Board, including a probationary or temporary staff member, person employed on a fixed term contract by, or seconded to, the Board, or a Crown employee providing services to the Board pursuant to an agreement contemplated by Section 4.16(4) of the Act, but does not include a Member;

“**Management Committee**” means the board of directors of the Board, which is composed of the Chair and the Vice-Chairs of the Board;

“**Member**” means a member (including the Chair and the Vice-Chairs) appointed to the Board by the Lieutenant Governor in Council pursuant to the Act;

“**Minister**” shall have the meaning ascribed thereto in Section 3 of the Act;

“**signing officer**” means, in relation to any instrument, any person authorized to sign the same on behalf of the Board by or pursuant to Section 2.3; and

“**Vice-Chair**” means a Member designated by the Lieutenant Governor in Council to be a Vice-Chair of the Board pursuant to the Act.

Unless defined above, all terms that are contained in this By-law and which are defined in the Act shall have the meanings given to such terms in the Act. Words importing the singular number include the plural and vice versa, words importing gender include the masculine, feminine and neuter genders, and words importing a person include an individual, a sole proprietorship, a partnership, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trust, a body corporate and a natural person in his capacity as trustee, executor, administrator or other legal representative.

Section 1.2 Hearings.

Nothing in this By-law shall affect or govern procedures at hearings of the Board.

Section 1.3 Internal Affairs.

This By-law relates to the internal affairs of the Board, and, without prejudice to any right or remedy arising at law without regard to the provisions of this By-law, no failure by any Member, or employee to comply with any provision of this By-law shall affect the validity of any action taken by the Board or give rise to any rights or remedies by any person.

**ARTICLE 2
AFFAIRS OF THE BOARD**

Section 2.1 Head Office.

The head office of the Board shall be at such location in the Province of Ontario as the Management Committee may from time to time determine by resolution.

Section 2.2 Corporate Seal.

The seal of the Board shall be that adopted by the Management Committee from time to time, if any, by resolution, but any authorized agreement or other instrument on behalf of the Board is not invalidated simply because it does not have attached thereto the corporate seal.

Section 2.3 Execution of Instruments.

Except as otherwise required or permitted by the Act or regulations, and subject to any other limitations established by the Management Committee, documents requiring execution by the Board, other than cheques or other documents providing for the payment of a sum of money, may be signed on behalf of the Board by the Chair, the Chief Operating Officer or any other person authorized for such purposes by resolution of the Management Committee. In addition, the Management Committee may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments, including cheques or other documents providing for the payment of a sum of

money, may or shall be signed. Any signing officer may affix the corporate seal to any instrument.

Section 2.4 Banking Arrangements and Investing.

The banking business of the Board shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Management Committee. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Management Committee may from time to time prescribe or authorize.

The Management Committee may also invest surplus funds of the Board with the Ontario Financing Authority or RBC Dominion Securities. For the purposes of this by-law, "surplus funds" means funds that are not immediately needed by the Board to pay for operating expenses and capital expenditures. The Ontario Financing Authority or RBC Dominion Securities shall co-ordinate and arrange the temporary investment of the surplus funds but shall only invest the Board's surplus funds as directed by the Management Committee.

Section 2.5 Borrowing Power.

The Board may borrow as permitted in the Act.

Section 2.6 Policies.

Subject to the Act, the Management Committee may make, amend and repeal such policies as it deems advisable from time to time, including with respect to conflicts of interest.

**ARTICLE 3
DIRECTORS**

Section 3.1 Calling of Meetings.

Meetings of the Management Committee shall be held from time to time at such time and at such place as the Management Committee, the Chair, a Vice-Chair or the Chief Operating Officer may determine.

Section 3.2 Notice of Meeting.

Notice of the time and place of each meeting of the Management Committee shall be given in the manner provided in section 3.9 to each director not less than 72 hours (excluding Saturdays, Sundays and statutory holidays) before the time when the meeting is to be held. A director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the Management Committee and attendance of a director at a meeting of the Management Committee is a waiver of notice of the meeting.

Section 3.3 Adjourned Meeting.

Notice of an adjourned meeting of the Management Committee is not required to be given to directors present at the original meeting if the time and place of the adjourned meeting is announced at the original meeting.

Section 3.4 Regular Meetings.

The Management Committee may appoint a day or days in any month or months for regular meetings of the Management Committee at a place and hour to be named. A copy of any resolution of the Management Committee fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting.

Section 3.5 Votes to Govern.

At all meetings of the Management Committee, every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the chair of the meeting shall not be entitled to a second or casting vote.

Section 3.6 Action by the Management Committee.

The powers of the Management Committee may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of the Management Committee.

Section 3.7 Meetings by Telephone.

If all the directors present at or participating in a meeting consent, a meeting of the Management Committee or of a committee of the Management Committee may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means shall be deemed to be present at that meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Management Committee or of a committee of the Management Committee.

Section 3.8 Remuneration and Expenses.

Absent an Order in Council that establishes the remuneration and benefits of the Members issued after June 29, 2003, the Members other than the Chair and the Vice-Chairs shall be paid such remuneration for their services, and shall be entitled to such benefits, as shall be fixed by the Management Committee and approved by the Minister at or below the recommendation of an independent third party consultant with expertise in compensation matters.

Absent an Order in Council that establishes the remuneration and benefits of the Vice-Chairs issued after June 29, 2003, the Vice-Chairs shall be paid such remuneration for their services, and shall be entitled to such benefits, as shall be fixed by the Chair and approved by the Minister at or below the recommendation of an independent third party consultant with expertise in compensation matters.

Absent an Order in Council that establishes the remuneration and benefits of the Chair issued after June 29, 2003, the Chair shall be paid such remuneration for his or her services, and shall be entitled to such benefits, as shall be fixed by the Minister at or below the recommendation of an independent third party consultant with expertise in compensation matters.

All Members shall also be entitled to be reimbursed for expenses properly and actually incurred by them in connection with the affairs of the Board.

All full-time Members shall also be entitled to be reimbursed for professional fees or dues provided that the professional fees or dues are directly related to their role as a Member.

Section 3.9 Notices.

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered, or served) pursuant to the Act, the regulations the By-laws or otherwise to a director, officer or member of a committee of the Management Committee shall be sufficiently given if delivered personally to the person to whom it is to be given; or if delivered to his or her recorded address; or if mailed to him or her at his recorded address by prepaid ordinary or air mail; or if sent to him or her at his or her recorded address by any means of prepaid transmitted or recorded communication (including without limitation telecopier or electronic mail). A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box and deemed to have been received on the fifth day after mailing; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched, or when delivered to the appropriate communication company or agency or its representative for dispatch. The Secretary may change or cause to be changed the recorded address of any director, officer or member of a committee of the Management Committee in accordance with any information believed by him or her to be reliable. In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, the date of giving the notice shall be excluded and the date of the meeting or other event shall be included. The accidental omission to give any notice to any director, officer or member of a committee of the Management Committee or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

Section 3.10 Validity of Actions.

No act or proceeding of any director, of the Management Committee or of any committee of the Management Committee shall be deemed invalid or ineffective solely by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding.

Section 3.11 Quorum of One.

A circumstance in which no more than one person has been designated by the Lieutenant Governor in Council as a Chair or Vice-Chair of the Board is prescribed as an emergency circumstance in which the quorum of the Management Committee is one member.

**ARTICLE 4
COMMITTEES**

Section 4.1 Formation of Committees.

The Management Committee may by resolution appoint from their number one or more committees of the Management Committee, however designated, and the chair of each such committee, and may by resolution specify the purpose and function of any such committee, provided that any panel created under Section 4.3 of the Act is not a committee of the Management Committee as contemplated herein.

Section 4.2 Transaction of Business.

The powers of a committee of the Management Committee may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. All committee decisions shall be made by simple majority of committee members present. Meetings of such committee may be held at such place in Canada as the committee may from time to time determine. Subject to this section, each committee shall have the right to establish such procedures as it sees fit governing the time, place and method for holding its meetings and the conduct of business at such meetings. Minutes of all decisions of a committee shall be recorded in writing, and such decisions shall be reported to the Management Committee at its next meeting.

Section 4.3 Dissolution of Committees.

The Management Committee may by resolution dissolve any committee of the Management Committee.

Section 4.4 Procedure.

Unless otherwise determined by the Management Committee, each committee shall fix its quorum, which shall be not less than two members.

**ARTICLE 5
OFFICERS**

Section 5.1 Appointment.

The Management Committee shall appoint from among the employees a Chief Operating Officer and a Secretary as officers of the Board, and such other officers as the Management Committee may determine, including one or more assistants to any of the officers so appointed. Subject to subsection 4.16(2) of the Act, an officer may but need not be a director and one person may hold more than one office.

Section 5.2 Chair.

The Chair is the chief executive officer of the Board. The Chair shall have such powers, functions and duties as are set forth in the Act and regulations, and shall carry out such other functions and duties as are assigned to him or her from time to time by the Management Committee.

Section 5.3 Vice-Chairs.

The Vice-Chairs shall assist the Chair in carrying out his or her functions and duties. A Vice-Chair shall have such powers, functions and duties as are set forth in the Act and regulations, and shall carry out such other functions and duties as are assigned to him or her from time to time by the Chair or the Management Committee.

Section 5.4 Chief Operating Officer.

The Chief Operating Officer is subject to the direction of the Management Committee, and shall report to the Chair. Subject to the Act and regulations and to the authority of the Management Committee and the Chair, the Chief Operating Officer shall have general supervision of the financial and other affairs of the Board. The Chief Operating Officer shall have such powers, functions and duties as are set forth in the Act and regulations, and shall carry out such other functions and duties as are assigned to him or her from time to time by the Chair or the Management Committee. Unless otherwise determined by the Management Committee, the Chief Operating Officer shall be entitled to attend all meetings of the Management Committee and of all committees of the Management Committee.

Section 5.5 Secretary.

The Secretary shall, unless otherwise determined by the Management Committee, attend and be the secretary of all meetings of the Management Committee and of committees of the Management Committee (or arrange for another employee to so act), and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings at such meetings; he or she shall give or cause to be given, as and when instructed, all notices to directors, officers, auditors and members of committees of the Management Committee; and he or she shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Board and of all books, papers, records, documents and instruments belonging to the Board, except when some other person has been appointed for that purpose. The Secretary shall report to the Chief Operating Officer and the Chair or such other person as the Management Committee may from time to time determine. The Secretary shall have such powers, functions and duties as are set forth in the Act and regulations, and shall carry out such other functions and duties as are assigned to him or her from time to time by the Chair, the Vice-Chairs, the Chief Operating Officer or the Management Committee.

Section 5.6 Assistants.

Subject to the Act and regulations, any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Management Committee, the Chair, one of the Vice-Chairs or the Chief Operating Officer otherwise directs.

Section 5.7 Term of Office.

The Management Committee, in its discretion, may remove any officer of the Board (other than the Chair or a Vice-Chair), without prejudice to such officer's rights under any employment contract. Each officer appointed by the Management Committee shall hold office until his or her successor is appointed or until his or her earlier resignation, retirement or removal.

Section 5.8 Terms of Employment and Remuneration.

The terms of employment and remuneration of the Chief Operating Officer shall be settled by the Management Committee from time to time, and the terms of employment and remuneration of other officers appointed by the Management Committee shall, unless settled by the Management Committee, be determined by the Chair or the Chief Operating Officer from time to time.

Section 5.9 Agents and Attorneys.

The Board, by or under the authority of the Management Committee, shall have power from time to time to appoint agents or attorneys for the Board with such powers of management, administration or otherwise (including the power to sub-delegate) as may be thought fit, subject to the provisions of the Act and regulations.

Section 5.10 Fidelity Bonds.

The Management Committee may require such officers, employees and agents of the Board as the Management Committee deems advisable to furnish bonds for the faithful discharge of their powers and duties, in such form and with such surety as the Management Committee may from time to time determine.

**ARTICLE 6
PROTECTION OF MEMBERS, OFFICERS AND OTHERS**

Section 6.1 Indemnity.

- (1) Subject to any limitations contained in the Act, the Board shall indemnify a Member or officer, a former Member or officer, or a person who acts or acted at the Board's request as a director or officer of a body corporate of which the Board is or was a shareholder or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a Member or officer of the Board or a director or officer of such body corporate, if:
 - (a) he or she acted honestly and in good faith with a view to the best interests of the Board; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

- (2) Despite anything in this section, a person referred to in Section 6.1(1) is entitled to indemnity from the Board in respect of all costs, charges and expenses reasonably incurred by him or her in connection with the defence of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a director or officer of the Board or body corporate, if the person seeking indemnity:
 - (a) was substantially successful on the merits in his or her defence of the action or proceeding; and
 - (b) fulfils the conditions set out in Section 6.1(1)(a) and (b).
- (3) This section shall apply only to Members or officers, former Members or officers, and persons acting at the Board's request as directors or officers of a body corporate of which the Board is or was a shareholder or creditor, who occupy such positions or act in such capacities on or after August 1, 2003.
- (4) Nothing in this By-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this By-law.

Section 6.2 Proceedings.

In the event any proceeding is instituted involving any person in respect of which indemnification is sought pursuant to Section 6.1 and a court of competent jurisdiction subsequently finds that indemnification is not available under Section 6.1, the person shall be responsible for reimbursing the Board for all costs, charges and expenses incurred by the Board in defending the claims on behalf of the person.

Section 6.3 Insurance.

Subject to the Act, the Board may purchase and maintain insurance for the benefit of any person referred to in Section 6.1, or other persons, against such liabilities and in such amounts as the Management Committee may from time to time determine.

**ARTICLE 7
AUDITORS**

Section 7.1 Auditors.

Subject to the Act, the Management Committee shall annually appoint one or more auditors to hold office and, if an appointment is not so made, the auditor in office shall continue in office until a successor is appointed. The remuneration of an auditor so appointed shall be fixed by the Management Committee.

**ARTICLE 8
EFFECTIVE DATE**

Section 8.1 Effective Date.

Subject to the need for Ministerial approval of section 3.8 under section 4.10 of the Act, this By-law shall come into force on August 1, 2003.