

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINISTER OF ENERGY, NORTHERN DEVELOPMENT AND MINES
AND
THE CHAIR OF THE ONTARIO ENERGY BOARD

2021

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINISTER OF ENERGY, Northern Development and Mines
AND
THE CHAIR OF THE ONTARIO ENERGY BOARD**

1 PURPOSES OF THIS MEMORANDUM

1.1 The purposes of this Memorandum are to:

- (a) establish the accountability relationships between the Minister of Energy, Northern Development and Mines, and the Chair of the Ontario Energy Board;
- (b) clarify the roles and responsibilities of the Minister and Deputy Minister of Energy, Northern Development and Mines and the Chair, the Board of Directors, and the Chief Executive Officer of the Ontario Energy Board, and to record their mutual understanding in respect of these matters;
- (c) set out the expectations for the operational, administrative, communications, financial, auditing and reporting arrangements between the Ontario Energy Board and the Ministry of Energy, Northern Development and Mines.

1.2 This Memorandum shall be read together with the *Ontario Energy Board Act, 1998* and other applicable Legislation. 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, the Legislation shall prevail.

2 DEFINITIONS AND INTERPRETATION

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

“AAD” means the *Agencies and Appointments Directive*, approved by the Treasury Board/Management Board of Cabinet of the Government of Ontario, and as amended from time to time;

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

“Board of Directors” means the board of directors appointed by the Lieutenant Governor in Council to the Ontario Energy Board as set out under section 4.1 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 under the *Executive Council Act*;

“Chair” means the member of the Ontario Energy Board designated by the Lieutenant Governor in Council to be Chair of the Board of Directors pursuant to section 4.1(8) of the Act;

“Chief Commissioner” means the commissioner who is chief commissioner under section 4.3 of the Act;

“Chief Executive Officer” or CEO means the chief executive officer under section 4.2 of the Act;

“Commissioner” means a commissioner under section 4.3 of the Act;

“Deputy Minister” or “DM” means the Deputy Minister of Energy, Northern Development and Mines;

“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, including all regulations made under any such statute or statutes;

“MBC” means the Management Board of Cabinet;

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

“Minister” means the Minister of Energy, Northern Development and Mines;

“Ministerial Directive” means a directive, pursuant to the Act, issued by the Minister with the approval of the LGIC;

“Ministry” means the Ministry of Energy, Northern Development and Mines of the Government of Ontario;

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

“Parties” means the parties to this Memorandum, including the Ministry of Energy Northern Development and Mines as represented by the Minister, and the Ontario Energy Board as represented by the Chair;

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

“TB” means the Treasury Board of Cabinet; and

“Transition Period” means the two-year period beginning on the day Schedule 2 of the *Fixing the Hydro Mess Act, 2019* was proclaimed into force. For greater clarity, the Transition Period starts on October 1, 2020 and ends on September 30, 2022.

- 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.

3 LEGAL AUTHORITY AND MANDATE

- 3.1 The OEB exercises powers and authority under the Act. The OEB 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 key applicable Legislation to the OEB is set out in Appendix 1.
- 3.2 It is understood that Appendix 1 does not contain all of the statutes that apply to the OEB and that there are other statutes that apply to the OEB or give the OEB powers, duties, and / or responsibilities.
- 3.3 The objectives of the OEB, as set out in sections 1, 2 and 2.1 of the Act, establish the OEB’s statutory mandate.

4 AGENCY STATUS

- 4.1 The OEB is an agent of Her Majesty the Queen in right of Ontario, pursuant to section 4(4) of the Act. The OEB is a Crown agency within the meaning of the *Crown Agency Act*.
- 4.2 The OEB is a statutory corporation without share capital, governed by the Board of Directors. The OEB has the capacity, rights and power and privileges of a natural person for the purpose of exercising and performing its powers and duties under the

Act, except as otherwise provided in the Act.

- 4.3 The OEB is a regulatory agency, classified by MBC as a Provincial Agency with a governing board under the AAD.
- 4.4 The OEB is prescribed as a public body pursuant to Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies) made under the PSOA.

5 GUIDING PRINCIPLES

- 5.1 The Parties acknowledge that the OEB is empowered to fulfill its statutory mandate efficiently and effectively. The Parties share the goal of establishing and maintaining a co-operative relationship that facilitates the efficient administration of the OEB and fulfillment of its statutory responsibilities.
- 5.2 As a statutory entity, the exercise of the OEB's powers and duties is subject to limitations, constraints and conditions that flow from applicable Legislation or from the OEB's status as an independent quasi-judicial tribunal.
- 5.3 The Parties agree to promote regulatory excellence in the governance and operations of the OEB. The characteristics of regulatory excellence include independence; accountability; certainty; effectiveness and efficiency.
- 5.4 The Parties acknowledge that the OEB's adjudicative and regulatory decisions must be made, and be seen by the public to be made, independently and impartially.
- 5.5 The Parties recognize that the OEB plays a meaningful role in the development of the policies and programs of the Government, as well as in the implementation of those policies and delivery of programs.
- 5.6 The Parties acknowledge that the OEB is accountable to the Legislative Assembly, through the Minister, in exercising its mandate. The Parties acknowledge that accountability is a fundamental principle to be observed in the management, administration and operations of the OEB, consistent with its status as an agent of the Crown pursuant to section 4(4) of the Act.
- 5.7 The Chair shall ensure that the OEB conducts its affairs according to the management principles of the Government, as the Government may identify from time to time. As set out in the Minister's letter to the Chair dated October 1, 2020 these principles include: ethical behaviour; the prudent, effective and lawful use of public resources; fairness; high-quality service to the public; and openness and transparency to the extent allowed under the law.
- 5.8 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.

6 ACCOUNTABILITY RELATIONSHIPS

6.1 Minister

The Minister is accountable:

- (a) to the Legislative Assembly of Ontario for the fulfillment by the OEB of its mandate, and its compliance with applicable Legislation and directives. For these purposes, the Minister reports to the Legislative Assembly on the OEB's affairs;
- (b) to Cabinet for the performance of the OEB and its compliance with applicable Legislation, directives and broad policy direction; and
- (c) for reporting and responding to TB/MBC on the OEB's performance and compliance with applicable TB/MBC directives and Government's policy directions;

6.2 Chair

The Chair is accountable to the Minister:

- (a) for the efficient administration of the business of the Board of Directors;
- (b) for the independence of persons and entities hearing and determining matters within the OEB's jurisdiction in their decision-making;
- (c) for the effective delivery of the OEB's objectives;
- (d) for reporting to the Minister, as requested, on OEB's activities; and
- (e) for carrying out the duties as assigned to the Chair by the Act, Ministerial Directives, OEB's by-laws, TB/MBC Directives and this Memorandum.

6.3 Board of Directors

The Board of Directors, through the Chair, is accountable to the Minister:

- (a) for the governance of the OEB;
- (b) for approving the goals, objectives and strategic direction for the OEB within its mandate;
- (c) for the oversight of OEB's performance in fulfilling its mandate; and
- (d) for carrying out such duties as may be assigned to the Board of Directors by the Act, Ministerial Directives, TB/MBC directives, OEB's by-laws, and

this Memorandum.

6.4 Deputy Minister

The Deputy Minister is accountable to the Secretary of Cabinet and to the Minister:

- (a) for the performance of the Ministry in its provision of administrative and organizational support to the OEB;
- (b) for carrying out the roles and responsibilities assigned to the Deputy Minister by the Minister, applicable TB/MBC directives, and this Memorandum; and
- (c) for attesting to TB/MBC on the OEB's compliance with applicable Legislation, applicable TB/MBC directives and the accounting and financial polices of the Ontario Ministry of Finance.

6.5 Chief Executive Officer (CEO)

The Chief Executive Officer is accountable to the Board of Directors:

- (a) for the management of the operations of the OEB;
- (b) for the approval of policies, codes, and rules for the energy sectors the OEB regulates under the Act or other applicable Legislation; and
- (c) for such duties as may be assigned to the CEO under the Act, OEB bylaws, and this Memorandum.

7 ROLES AND RESPONSIBILITIES

7.1 Minister

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 OEB;
- (c) reporting and responding to Cabinet and the Legislative Assembly of Ontario on the affairs of the OEB;
- (d) reporting and responding to TB/MBC on the OEB's performance and compliance with applicable TB/MBC directives and Government's policy

directions;

- (e) reviewing and approving, on a timely basis, the OEB's annual business plan;
- (f) receiving and approving the annual report from the OEB and tabling it in the Legislative Assembly in accordance with the requirements of the Act and the AAD;
- (g) receiving by-laws made by the Board of Directors, and approving, rejecting, amending, or returning, as applicable, those by-law(s) which require or allow Ministerial review under the Act;
- (h) meeting with the Chair regularly and as necessary to discuss issues relating to the effective discharge of the OEB's mandate;
- (i) consulting, as appropriate, with the Chair on significant new directions or initiatives affecting the energy industry and/or the OEB;
- (j) outlining expectations, key commitments, governance and performance priorities for the OEB through an annual mandate letter to the OEB; and
- (k) directing that a periodic review of the OEB be conducted as and when necessary, and making subsequent recommendations to TB/MBC; and
- (l) making recommendations to Cabinet for appointments and re-appointments to the OEB, pursuant to the applicable Legislation for the Transition Period and thereafter as appropriate, and in accordance with the process for agency appointments established by TB/MBC.

7.2 Chair

The Chair is responsible for:

- (a) keeping the Minister advised of issues or events relating to the OEB that concern or can reasonably be expected to concern the Minister in the exercise of his or her ministerial responsibilities and advising the Minister of these issues or events in a timely manner;
- (b) ensuring that significant initiatives undertaken by the OEB that would be of importance or of particular interest to the Minister are brought to the attention of the Minister in a timely manner;
- (c) consulting with the Minister with respect to the OEB's roles and responsibilities in meeting Government public policy objectives, current priorities and initiatives;
- (d) providing strategic leadership to the OEB by working with the Board of Directors and CEO to set the goals, objectives and strategic directions

within its mandate;

- (e) chairing meetings of the Board of Directors, including the management of the Board of Directors meeting agendas;
- (f) ensuring members of the Board of Directors receive orientation and ongoing training and development as may be appropriate to promote continued competency and excellence.
- (g) ensuring attestation is provided to the Minister within 30 days after the end of each fiscal year on the OEB's compliance with applicable Legislation, the AAD and other applicable TB/MBC directives, this Memorandum, and Government operational policies as required or as requested by the Ministry;
- (h) notifying the Minister of upcoming vacancies in Order-in-Council appointments to the Board of Directors, and making recommendations to the Minister on persons appropriate to fill such vacancies; and
- (i) meeting with the Minister regularly, or as requested by either party, to discuss issues relating to the fulfillment by the OEB of its mandate and public policy direction.

7.3 Board of Directors

The Board of Directors is responsible for:

- (a) establishing the goals, objectives, and strategic directions for the OEB within its mandate;
- (b) approving business plans, budgets, annual reports, and financial statements;
- (c) establishing the adjudication committee; and
- (d) establishing any other committees of the Board of Directors or oversight mechanisms as may be required to advise the Board of Directors on effective management, governance or accountability procedures for the OEB.

7.4 Deputy Minister

The Deputy Minister is responsible for:

- (a) advising and assisting the Minister in discharging his or her delegated ministerial responsibility with respect to the OEB;
- (b) monitoring the activities of the OEB 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) reviewing and assessing the OEB's business plan and other reports, and advising on matters submitted to the Minister for review and approval;
- (d) actively evaluating the OEB's risks; and reporting on a quarterly basis to TB Secretariat on each risk determined to be high risk from the Ministry's perspective, and determining a plan to manage the risk.
- (e) ensuring that the OEB, 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;
- (f) attesting, reporting and responding to TB/MBC annually and as required, on the OEB's compliance with applicable Legislation, the AAD, other applicable TB/MBC directives and this Memorandum;
- (g) meeting with the CEO 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 CEO and OEB's senior management on a regular and as needed basis to discuss on-going issues.

7.5 Chief Executive Officer

The CEO is responsible for:

- (a) managing the day-to-day operational, financial, analytical and administrative affairs of the OEB in accordance with the mandate of the OEB, TB/MBC and government directives, accepted business and financial practices and this Memorandum;
- (b) advising the Chair on the requirements of and the OEB's compliance with the AAD, as well as other TB/MBC and government directives and policies, and OEB by-laws and policies, including annually attesting to the Chair on the OEB's compliance with mandatory requirements;
- (c) applying policies and procedures so that public funds are used with integrity and honesty;
- (d) providing leadership and management to the OEB staff, including human and financial resources management, in accordance with the approved business plan, accepted business and financial practices and standards, the OEB's constituting instrument, and government directives;
- (e) establishing and applying a financial management framework for the OEB in accordance with applicable Ontario Minister of Finance/TB controllership

directives, policies and guidelines;

- (f) supporting the Board of Directors in the development of the OEB's goals, objectives and strategic direction;
- (g) translating the goals, objectives and strategic directions of the OEB into operational plans and activities in accordance with the OEB's approved business plan;
- (h) ensuring that the OEB has the oversight capacity and an effective oversight framework in place for monitoring its management and operations;
- (i) keeping the Board of Directors, through the Chair, informed with respect to implementation of policy and the operations of the OEB;
- (j) establishing and applying systems to ensure that the agency operates within its approved business plan;
- (k) establishing and applying the OEB's risk management framework and risk management plan in place;
- (l) supporting the Chair and Board of Directors in meeting their responsibilities, as appropriate, including compliance with all applicable Legislation, directives, policies, procedures and guidelines;
- (m) carrying out in-year monitoring of the OEB's performance and reporting on results to the Chair;
- (n) keeping the Ministry and the Chair advised on issues or events that may concern the Minister, the Deputy Minister and the Chair in the exercise of their responsibilities;
- (o) seeking support and advice from the Ministry, as appropriate, on the OEB's management issues.
- (p) establishing and applying a system for the retention of agency documents and for making such documents publicly available when appropriate, for complying with the *Freedom of Information and Protection of Privacy Act* and the *Archives and Recordkeeping Act* where applicable;
- (q) consulting with the Deputy Minister as needed, on matters of mutual importance, including services provided by the Ministry, and on TB/MBC and government directives and Ministry policies;
- (r) preparing the OEB's annual report, budget and annual business plan for review by the OEB;
- (s) providing strategic oversight over policy development and approval of issuing codes and rules for the electricity and natural gas sectors according

to statutory requirements;

- (t) ensuring that the OEB has appropriate and effective measures and mechanisms related to the performance of the OEB;
- (u) ensuring that the OEB'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 or the Ministry are met;
- (v) ensuring the OEB responds to requests for information from the Ministry in a timely manner; and
- (w) such other duties as may be assigned by the Board of Directors.

8 ETHICAL CONDUCT

- 8.1 The OEB is prescribed as a public body under subsection 8 (1.1) (a) of the PSOA pursuant to O. Reg. 146/10 (Public Bodies and Commission Public Bodies) and thus is governed by the ethical framework of the PSOA 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 and corresponding regulations made under that statute.
- 8.2 The ethics executive for public servants employed by the OEB is set out in O. Reg. 147/10 made under the PSOA. The designated ethics executive is responsible for ensuring the public servants employed by the OEB are informed of the ethical rules to which they are subject, including the rules on conflict of interest, political activity, and protected disclosure of wrongdoings that apply to the OEB.
- 8.3 In addition, in order to demonstrate its commitment to the highest standard of ethical conduct and governance, the OEB has also established conflict of interest rules which apply to:
- (a) current members of the Board of Directors and other employees of the OEB;
 - (b) former senior employees and former members of the OEB.

9 REPORTING REQUIREMENTS AND OTHER OBLIGATIONS

9.1 Business Plan

- 9.1.1 Each year, the Chair, on behalf of the Board of Directors, shall provide the Minister with the OEB's business plan for approval. The business plan shall

cover, at a minimum, the OEB's next three fiscal years.

9.1.2 The OEB shall consult, as and when appropriate, with stakeholders on the OEB's strategic directions, business plan objectives, priorities and key corporate performance measures.

9.1.3 The Chair shall ensure that the OEB's business plan meets the requirements of the AAD.

9.1.4 The Chair shall ensure that the OEB's annual business plan includes:

- a) a response to the broad government priorities and Minister's expectations for the OEB as articulated in the annual mandate letter, and how they will be implemented and monitored for performance and results;
- b) a system of performance measures and targets for the upcoming three years;
- c) a human resources plan;
- d) a risk assessment and risk management plan;
- e) projected revenues of the OEB and their sources; capital and operating expenditures of the OEB; and
- f) any other items required under AAD and other applicable TB/MBC directives.

9.1.5 Prior to submitting the business plan to the Minister, the CEO shall submit the OEB's draft business plan to the Ministry's Assistant Deputy Minister's Office for review three months prior to the start of the Fiscal Year. Ministry staff may request additional information and analysis from the OEB, as necessary, for the purpose of this review.

9.1.6 The business plan must be submitted to the Minister for approval no later than one month before the start of the Fiscal Year.

9.1.7 The Minister shall review the OEB's annual business plan in a timely manner, and shall advise the Chair in writing whether or not the Minister concurs with the direction proposed in the business plan. If the Minister does not concur with the direction proposed in the business plan, in whole or in part, the Board of Directors will reconsider the business plan and resubmit the business plan accordingly.

9.1.8 The Minister or TB/MBC may require the Board of Directors to submit the OEB's business plan to TB/MBC for review at any time.

9.1.9 The Board of Directors shall publish the approved business plan on the OEB's

website within 30 days of Minister's approval.

9.2 Annual Reports

- 9.2.1 The Chair, on behalf of the Board of Directors, is responsible for ensuring that the OEB's annual report, including its audited financial statements, is prepared and submitted to the Minister for approval and tabling in the Legislative Assembly.
- 9.2.2 The OEB shall provide the annual report to the Minister no later than 90 calendar days of completing the audited financial statements by Auditor general every year.
- 9.2.3 The Chair shall ensure that the OEB's annual report fulfills the requirements of the AAD and other applicable TB/MBC directives, and other requirements as described in this Memorandum.
- 9.2.4 The Chair shall ensure that the OEB's report include steps taken by the OEB to simplify or streamline practices and procedures in relation to the OEB's regulatory functions.
- 9.2.5 The Chair shall ensure that the results of the OEB's performance against its business plan objectives, including the priorities identified by the Minister and broad government priorities provided to the OEB in the Minister's Mandate Letter are tracked and reported in the annual report.
- 9.2.6 Prior to the Minister's approval of the annual report, Ministry staff may request additional information and analysis from the OEB, as necessary, for the purpose of this review.
- 9.2.7 The Minister shall approve the annual report within 60 days after the receipt of the annual report. The annual reports must be tabled in the Legislative Assembly and then be posted on the OEB's website within 30 calendar days of the Minister's approval.
- 9.2.8 After the annual report has been tabled in the Legislative Assembly, Ministry staff shall advise the OEB that the annual report has been tabled, and the Board of Directors shall ensure the annual report is published on the OEB's website.
- 9.2.9 When distributing annual reports, digital formats and channels for distribution must be used when possible to do so.

9.3 Performance Measurement Framework

- 9.3.1 The Board of Directors shall ensure that the OEB's business plan includes an effective system for performance measurement and a monitoring mechanism

for the OEB.

- 9.3.2 The Board of Directors shall ensure that the OEB seeks continuous improvement in its performance, including improvement in response to deficiencies noted or recommendations made by the independent auditor described below.
- 9.3.3 The Board of Directors shall ensure that the OEB establishes annual as well as longer-range performance standards for operating and financial results.
- 9.3.4 The Board of Directors shall ensure that an independent auditor reviews and reports on the OEB's past year's achievement of the performance standards contained in its business plan to ensure performance measurement aligns with best practices and support the integrity and transparency of the stated results.
- 9.3.5 The Board of Directors shall ensure that an independent auditor reviews and reports on the OEB's past year's achievement of the performance standards contained in its business plan
- 9.3.6 The Board of Directors shall provide the Minister with the auditor's report within 30 days after the auditor's report has been accepted by the Board of Directors.

9.4 Other Reports

- 9.4.1 The CEO is responsible for:
 - (a) Ensuring that the reports and documents set out in Appendix 3 to this Memorandum are submitted for review and approval by the Minister or Ministry, and where applicable, subsequently published in a timely manner, in accordance with any timelines prescribed by applicable Legislation, the AAD, other TB/MBC directives and this Memorandum.
 - (b) Providing to the Ministry, in a timely manner, the OEB'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.
 - (c) Supporting the Chair in providing to the Minister an annual letter attesting to the compliance with applicable Legislation, TB/MBC directives, accounting and financial policies and this Memorandum within 30 days after the end of each fiscal year.
 - (d) Supplying specific data and other information, at the request of the Minister or the Deputy Minister, that may be required from time to time for the purpose of the Ministry's administration.

9.5 Labour Negotiations

- 9.5.1 In advance of commencing discussions for the renewal of its collective agreement with its union, the CEO shall seek advice from the Ministry on Government policy direction and relevant fiscal considerations affecting labour negotiations in the broader public and/or the energy sectors.
- 9.5.2 When a collective agreement has been negotiated, the OEB shall inform the Ministry of the results and details of the collective agreement prior to ratification. The Ministry shall advise the OEB on process for obtaining Treasury Board approval, as applicable.
- 9.5.3 When a collective agreement has been ratified, the CEO shall inform the Ministry of the final results and details of the collective agreement in a timely manner.

10 PUBLIC POSTING REQUIREMENTS

- 10.1 The CEO, shall ensure that the following approved governance documents are posted on the OEB's website within the specified timeline:
- (a) Memorandum of Understanding and any letter of affirmation – within 30 calendar days after signing
 - (b) Mandate letter – no later than the posting of the corresponding business plan
 - (c) Annual business plan – within 30 calendar days of Minister's approval
 - (d) Annual report – within 30 calendar days of the Ministry advising the OEB that the report has been tabled in the Legislative Assembly
 - (e) Audited financial statements – no later than 150 days after the fiscal year end (March 31).
- 10.2 The documents posted on the OEB's website must be in an accessible format in both official languages in English and French.
- 10.3 Posted governance documents should not disclose: personal information, sensitive employment and labour relations information, solicitor-client privileged information, Cabinet confidential information, trade secrets or scientific information, or information that would otherwise pose a risk to the security of the facilities and /or operations of the OEB.
- 10.4 Expense information for the Board of Directors and senior management staff shall be posted on the OEB's website, in accordance with the requirement of the MBC

Travel, Meal and Hospitality Directive.

10.5 The CEO shall ensure that any other applicable public posting requirements are met.

11 COMMUNICATIONS AND ISSUES MANAGEMENT

11.1 Communications between the Ministry and the OEB shall be conducted in an appropriate manner that respects the status of the OEB as an independent quasi-judicial regulator. Notwithstanding the communication protocol between the Ministry and the OEB, communications shall not include discussion or information exchange between OEB personnel and Ministry staff about current applications before the OEB.

11.2 Coordination on key public communications matters shall be the responsibility of the OEB and Ministry leads or their designates. The Communication lead in the Ministry is the Director of Communications. The Communication lead with the OEB is to be designated by the CEO.

11.3 The Parties recognize that the timely exchange of information on the operations and administration of the OEB is essential for the Minister to meet his/her responsibilities for reporting and responding to the Legislative Assembly on the affairs of the OEB. The Parties also recognize that it is essential for the Chair, on behalf of the Board of Directors, to be kept informed of the government initiatives and broad policy directions that may affect the OEB's mandate and functions. The Parties therefore agree that:

11.3.1 The Ministry shall endeavour to consult with the OEB in a timely manner, and as the Ministry determines as appropriate, on broad government policy initiatives or proposed legislation being considered by the Government that may impact the OEB's mandate or functions, or which otherwise will have a significant impact on the OEB or the entities regulated by the OEB.

11.3.2 The OEB shall keep the Ministry advised, in a timely manner, of key planned events or issues, including contentious matters that concern or can be reasonably expected to concern the Minister in the exercise of the Minister's or the Ministry's responsibilities.

11.3.3 The OEB shall endeavour to provide advance notice to the Ministry regarding the development of new or amending policies. Where possible to do so, the OEB shall generally endeavor to provide a draft of proposed policy, rules or codes to the Ministry prior to publication for public comments, and prior to the release of a final decision on policy-making. This information is for managing public communication purposes only and shall be done in a manner that respects the independence of the OEB to develop new or amending policies.

11.3.4 Upon the request of the Ministry, the OEB shall endeavour to provide the

Ministry advance notice of the impending release of a decision and order. This information is for managing public communication purposes only and shall be done in a manner that respects the independence of decisions made by the OEB.

11.4 The Parties shall meet regularly with an aim to facilitate a cooperative and supportive relationship. The Parties therefore agree that:

11.4.1 The Minister and the Chair shall meet at least bi-annually, and as requested by either party to discuss issues relating to the fulfillment of the agency's mandate and broad Government priorities.

11.4.2 The Deputy Minister and the CEO shall meet monthly or on a regular basis to discuss issues relating to the Transition Period and the delivery of the OEB's mandate and the efficient operation of the OEB.

11.4.3 Ministry senior staff and OEB staff shall meet quarterly or more frequently as needed to discuss on-going and new issues relating to business plan progress, agency accountabilities, policy initiatives and any arising operations or stakeholders' risks and mitigation measures.

11.5 The CEO shall ensure that the OEB consults the Ministry on matters of public policy beyond the OEB's jurisdiction or expertise. The Ministry will facilitate engagement with other government Ministries, as appropriate, to provide the OEB with information and advice.

12 REPORTING AND OBLIGATIONS DURING TRANSITION PERIOD

12.1 The CEO shall provide reports, on a quarterly basis or as may be requested by the Ministry, outlining the progress that the OEB has made in fulfilling the priorities set out in the Chair's mandate letter relating to the OEB Modernization initiatives.

12.2 Senior management of the OEB shall provide to the Ministry a detailed performance measurement framework for review. The performance framework shall include measurement service standard metrics, and a system of performance indicators for measuring and tracking the progress of meeting the business plan objectives and broad Government priorities.

12.3 The CEO and Deputy Minister shall communicate and work together to develop a detailed transition plan prior to the end of the Transition Period stipulated in the Act.

12.4 The transition plan shall address the scope of activities, including any governance and organizational support, time frame and risk management activities that the Ministry and OEB shall collaborate on and implement to support the OEB.

13 STAFFING AND APPOINTMENTS

13.1 Staffing

13.1.1 The OEB is staffed by persons employed by the OEB and are accountable to the management of the OEB. Employees of the OEB are subject to provisions of the PSOA and its regulations as are made applicable thereby.

13.2 Appointments

13.2.1 The Board of Directors is appointed by the LGIC pursuant to section 4.1(2) of the Act. The maximum number of members within the Board of Directors, including the Chair is ten (10).

13.2.2 The LGIC must designate a member of the Board of Directors as Chair, and may appoint a Vice-Chair from among the Board of Directors.

13.2.3 Until the end of the Transition Period, the appointment and reappointment of the CEO, Chief Commissioner and other Commissioners are made by the LGIC pursuant, to the Act.

13.2.4 After the Transition Period, the appointment and reappointment of the CEO, Chief Commissioner and other Commissioners are made by the Board of Directors, pursuant to the Act.

13.3 Remuneration

13.3.1 Remuneration of members of the Board of Directors is set by an Order-in Council approved by the LGIC.

13.3.2 Until the end of the Transition Period, the remuneration of the CEO, Chief Commissioner and other Commissioners is made by an Order-in Council approved by the LGIC.

13.3.3 The Board of Directors shall make by-law(s) governing the remuneration and benefits of the Chief Commissioner and other Commissioners appointed by the Board of Directors after the Transition Period.

13.3.4 Any remuneration by-law must be submitted to the Minister for review and approval in accordance with the applicable process under the Act.

13.3.5 The compensation policies for senior executives of the OEB set by the Board of Directors shall be consistent with any applicable Legislation, including the *Broader Public Sector Executive Compensation Act, 2014*, regarding executive compensation and reflect, as appropriate, current Government policies, as communicated to the OEB or to energy sector entities generally, as well as any relevant fiscal considerations for or relating to public sector compensation.

14 AUDIT ARRANGEMENTS AND OTHER REVIEWS

14.1 Audit Arrangements

- 14.1.1 The OEB is subject to reviews and value-for-money audits by the Auditor General of Ontario under the *Auditor General Act*.
- 14.1.2 The Ontario 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.
- 14.1.3 The Chair, on behalf of the Board of Directors, may request an external audit of the financial transactions or management controls of the OEB, at the OEB's expense.
- 14.1.4 Regardless of any annual external audit, the Minister may direct that the OEB be audited at any time.
- 14.1.5 The Board of Directors and the CEO shall cooperate in any audit of the OEB.
- 14.1.6 The Chair shall provide a copy of every report from an audit to the Minister and the Ontario Minister of Finance within 7 days of the release of the report. 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 Ontario Minister of Finance.
- 14.1.7 The Chair shall advise the Minister annually on any outstanding audit recommendations.

14.2 Other Reviews

- 14.2.1 At the request of the Minister, the Board of Directors shall prepare and submit a report on the OEB's effectiveness in meeting the objectives set out in sections 1, 2 and 2.1 of the Act. The Minister shall then submit the report to the LGIC and table the report in the Legislative Assembly, pursuant to section 128.1 of the Act,
- 14.2.2 The OEB is subject to a mandate review once every six years.
- 14.2.3 The OEB is also subject to periodic reviews initiated at the discretion and direction of TB/MBC or the Minister. The review may cover such matters relating to the OEB that are determined by TB/MBC or the Minister, and may include the mandate, powers, governance structure and/or operations of the

OEB.

14.2.4 The Parties shall cooperate in any reviews of the OEB.

15 FINANCIAL ARRANGEMENTS, BORROWING, AND INVESTMENT POWERS

15.1 Powers to Borrow and Invest

15.1.1 The OEB shall not engage in the following 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.

15.1.2 Financial procedures of the OEB must be in accordance with applicable Legislation, applicable TB/MBC directives and other Ontario Ministry of Finance directives, policies and procedures.

15.2 Funding

15.2.1 The OEB is a self-funded regulator. The operations of the OEB are funded by fees payable under section 12.1 of the Act, assessments payable under section 26 of the Act, costs payable to the OEB under section 30 of the Act, and administrative penalties payable under section 112.5 of the Act.

15.3 Taxation Status: Harmonized Sales Tax (HST)

15.3.1 The OEB is responsible for complying with its obligations as a supplier under the federal *Excise Tax Act* to collect and remit HST in respect of any taxable supplies made by it.

15.3.2 Pursuant to the Canada-Ontario Reciprocal Taxation Agreement (RTA), the OEB is responsible for paying HST where applicable, in accordance with the federal *Excise Tax Act*. The OEB is not entitled to claim HST government rebates provided under the RTA. The OEB is expected to claim any refunds, input tax credits or other rebates under the federal *Excise Tax Act* for which it is eligible.

16 ADMINISTRATIVE ARRANGEMENTS

16.1 Applicable TB/MBC Directives

- 16.1.1 The Chair, on behalf of the Board of Directors, is responsible for ensuring that the OEB operates in accordance with all applicable TB/MBC directives as set out in Appendix 2 of this Memorandum.
- 16.1.2 Where the same matters dealt with in the directives referred to in article 16.1.1 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.
- 16.1.3 The Chair and the Minister acknowledge that TB/MBC may amend directives, operational policies and guidelines that apply to the OEB from time to time over the duration of this Memorandum. The OEB is responsible for complying with all TB/MBC directives, operational policies and guidelines to which it is subject.
- 16.1.4 The revised or successive versions of the TB/MBC directives listed in Appendix 2 continue to apply to the OEB. Where a TB/MBC directive applies, all associated policies, procedures and guidelines also apply.

16.2 Administrative and Organizational Support

- 16.2.1 The CEO is responsible for ensuring the OEB has all the administrative and organizational support services it needs to deliver on its mandate.
- 16.2.2 The OEB is encouraged to participate in Government-wide shared services or administrative arrangements, where appropriate and is mutually agreed upon by the Government.

16.3 Agreements with Third Parties

- 16.3.1 The OEB may enter into agreements with third parties, subject to any limitations provided for in the Act or in any other applicable Legislation or in any TB/MBC directive applicable to the OEB.
- 16.3.2 Upon request, and to the extent permitted by law, the OEB shall provide the Minister with information about any agreement, memorandum of understanding or arrangement between the OEB and a third party, as soon as practicable.

16.4 Creation, Collection, Maintenance and Disposition of Records

- 16.4.1 The CEO is responsible for ensuring that the OEB has a system in place for the creation, collection, maintenance, and disposal of records.
- 16.4.2 The CEO is responsible for ensuring that the appropriate oversight framework

is in place in order to ensure that the OEB complies with all applicable Legislation, TB/MBC directives related to information and records management.

16.4.3 The CEO shall protect the legal, financial and other interests of the OEB by implementing reasonable measures to ensure the ongoing viability, integrity, preservation and security of all official records in its custody or control. This includes, but is not limited to, all electronic records, such as emails, information posted on the OEB's website, database data sets, and all records stored on personal computers and shared drives.

16.4.4 The CEO is responsible for ensuring measures are implemented requiring the OEB's employees to create full, accurate and reliable records that document and support significant business transactions, decisions, events, policies and programs.

16.5 Freedom of Information and Protection of Privacy

16.5.1 The Parties acknowledge that the OEB is responsible for following the requirements set out in the *Freedom of Information and Protection of Privacy Act*, in relation to collection, retention, security, use, distribution and disposal of records.

16.5.2 For the purposes of the *Freedom of Information and Protection of Privacy Act*, the head of the OEB is designated by regulation.

16.5.3 The head of the OEB as designated by regulation for this purpose shall ensure that the OEB 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.

16.6 Intellectual Property

16.6.1 The CEO shall ensure that the legal, financial and other interests of the Government related to intellectual property are protected in any context the OEB may enter into with a third party that involves the creation of intellectual property.

16.7 Procurement Arrangement

16.7.1 The OEB is subject to the Ontario Public Service (OPS) Procurement Directive and its Interim Measures.

16.7.2 Any procurement policy and procedures established by the OEB shall be consistent with the OPS Procurement Directive.

16.7.3 As a Provincial Agency, the OEB may participate in the Government's

enterprise-wide Vendor of Record arrangements.

16.8 Service to Stakeholders and the Public

16.8.1 The OEB shall have one or more formal processes in place for responding to complaints about the quality of the OEB's services received by the public and stakeholders.

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

16.8.3 The OEB 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.

16.9 Protection Insurance

16.9.1 The Board of Directors acknowledges that the OEB 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.

16.9.2 The Board of Directors shall conduct periodic reviews of its insurance portfolio and report to the Minister on any material changes.

17 EFFECTIVE DATE, REVIEW AND AMENDMENT

17.1 This Memorandum shall be in effect for three years from the date of execution by the Minister, and the Parties shall endeavour to renew or revise this Memorandum by the expiry date, or earlier, as required.

17.2 Despite section 17.1, the provisions of this Memorandum, as may be amended from time to time, shall continue to be in effect until the renewed or revised Memorandum is executed by both parties.

17.3 This Memorandum shall be reviewed at the end of the Transition Period to determine if any changes are required at that time. This Memorandum may also be reviewed at any time upon the request of either Party to the other in writing.

17.4 The Memorandum shall be published on the OEB's website within 30 days after this Memorandum is signed by the Parties.

17.5 If a new Minister or Chair takes office before this Memorandum expires, the parties shall either sign a letter of affirmation to be attached to the Memorandum or establish a new Memorandum within six months of the change.

18 SIGNATURES



Richard Dicerri
Chair of Ontario Energy Board

February 11, 2021

Date



Honourable Greg Rickford
Minister of Energy, Northern Development and Mines

February 11, 2021

Date

APPENDIX 1: KEY APPLICABLE LEGISLATION

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

Note: This list of statutes is not an exhaustive list

APPENDIX 2: APPLICABLE TB/MBC DIRECTIVES

Governance and Accountability

- Accountability Directive
- Advertising Content Directive
- Agencies and Appointments Directive
- General Expenses Directive
- Internal Audit Directive
- 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

- Ontario Public Service Procurement Directive
- Procurement Directive on Advertising, Public and Media Relations, and Creative Communications Services

Information and Information Technology Management

- Open Data Directive

General

- Communications in French Directive
- Visual Identity Directive

Note: Amended, revised or successive versions of the directives listed above continue to apply to the OEB. Where a directive applies, all associated policies, procedures and guidelines also apply.

APPENDIX 3: SUMMARY OF KEY REPORTING REQUIREMENTS

REPORT/ DOCUMENT	DUE DATE	NOTES
Annual Business Plan	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	For approval by the Minister
Public Sector Salary Disclosure (PSSD)	Annually, around February - March	PSSD related information and analysis due to the Ministry, PSSD reporting due to Ministry of Finance
Attestation of Compliance with Legislation and government directives	Annually, around May	Chair must submit a letter of attestation to the Minister. Attestation is required for DM review and report back to TB/MBC
Audited financial statements	Annually, around June	Submit to the Ministry for consolidation in the Public Accounts Additional financial information reporting and communication occur starting January and extend to Public Accounts release in September
Auditor's Report on the OEB's achievements of its business plan	Annually, within 30 days after acceptance by the Board of Directors	For review by the Minister
Annual Report, including audited financial statements	Annually, within 90 calendar days of completing the audited financial statements by Auditor General (around September)	For acceptance by the Minister and tabling in the Assembly
Financial information for In-year reporting and multi-year planning	Annually, set my annual instruction	Submit to the Ministry for review and inclusion in the Ministry's Quarterly Reporting or Multi-Year Plan
Audit reports (see section 14.1 – audit arrangements)	Within 7 days of the release of the report	The audit report and the Chair's response to the Ministers of Energy and Finance for review
Outstanding audit recommendations	Quarterly, annually or upon request (dependent on individual audit requirements)	Advise the Ministry on any outstanding audit recommendations
All By-laws passed by the Board of Directors	Immediately after the by-law is passed by the Board of Directors	Advise the Minister of by-laws, including amending by-laws
Reports as required by Legislation and TB/MBC directives	As required	Submit to the responsible Minister, copy to the Minister of Energy as appropriate
By-law regarding requirements regarding Commissioner and Chief Commissioner Remuneration and Benefits	To be effective after the Transition Period) As soon as it is passed by the Board of Directors	For Minister's approval. The Minister may amend the by-law if legislative requirements have not been met.
By-law regarding the appointment and reappointment of the Chief Executive Officer, the Chief Commissioner and other Commissioners	To be effective after the Transition Period) As soon as it is passed by the Board of Directors	For Minister's approval. The Minister may approve, reject or return the by-law to the Board of Directors for further consideration.

REPORT/ DOCUMENT	DUE DATE	NOTES
Regular report on OEB Modernization efforts	Quarterly	CEO to submit to the Deputy Minister
Memorandum of Understanding	Reviewed every three years or upon request of either party	For approval by the Minister and the Chair
Other reports and information requests	At the request of the Minister, Deputy Minister, Ministry designated staff, or TB Secretariat	As required by the Ministry for the purpose of agency oversight and policy development