

# ONTARIO ENERGY BOARD

## BY-LAW #1

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

### ARTICLE 1 CONSTRUCTION

#### 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;

**“Adjudication Committee”** means the adjudication committee required to be established by the Board of Directors under section 4.1(15) of the Act;

**“Adjudication Instrument”** means any instrument related to the filing of applications or the manner in which matters are heard and determined that is intended for use by third parties, including *Rules of Practice and Procedure*, filing guidelines, filing requirements and Handbooks, but does not include any instrument that under the Act is required to be made by the Board of Directors or the Chief Executive Officer;

**“Adjudication Policy”** means any instrument related to the hearing and determination of matters that is intended for the Board’s own internal use and not for use by third parties, and includes any policies regarding peer review and any performance standards established in relation to the hearing and determination of matters;

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

**“Board”** means the Ontario Energy Board continued under the Act 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;

**“Board of Directors”** means the board of directors of the Board under section 4.1 of the Act;

**“Business Corporations Act”** means the *Business Corporations Act*, R.S.O. 1990, c. B.16;

**“business day”** means any day other than Saturday, Sunday and any other day that is a holiday as defined in the *Legislation Act, 2006*, S.O. 2006, c. 21;

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

**“Chair”** means the Director appointed by the Lieutenant Governor in Council as Chair of the Board of Directors under section 4.1(8) of the Act;

**“Chief Commissioner”** means the Commissioner appointed as chief commissioner under section 4.3 of the Act;

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

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

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

**“Delegated Employee”** means an employee of the Board to whom a power or duty of the Board has been delegated to the employee under section 6 of the Act by the Chief Commissioner;

**“Deputy Chief Commissioner”** means a Commissioner designated as Deputy Chief Commissioner by the Chief Commissioner under section 4.3(12) of the Act;

**“Director”** means a member of the Board of Directors;

**“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 under an agreement contemplated by section 4.16(4) of the Act, but for the purposes of this By-law does not include a Member of the Board;

**“Management Committee”** means the Management Committee of the Board under section 4.2(1) of the Act as that section read immediately before October 1, 2020;

**“Member of the Board”** means the individuals who compose the Board under section 4(5) of the Act;

**“Minister”** has the meaning given to it in section 3 of the Act;

**“officer”** means the Chief Executive Officer and such other officers as may be appointed from time to time by the Board of Directors under section 5.2;

**“Panel”** means a panel constituted under section 4.3(7) of the Act by the Chief Commissioner or under section 4.3 of the Act as it read immediately before October 1, 2020;

**“Rules of Practice and Procedure”** means rules made under the authority of section 25.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, by the Chief Commissioner under section 4.3(13) of the Act, including any Practice Directions, and includes any rules made by the Management Committee under section 4.2(3) of the Act as it read immediately before October 1, 2020 except to the extent revoked or amended by the Chief Commissioner on or after that date;

**“signing officer”** means, in relation to any instrument or class of instruments, any person authorized to sign that instrument or class of instruments on behalf of the Board under section 2.5; and

**“Vice-Chair”** means a Director appointed by the Lieutenant Governor in Council as Vice-chair of the Board of Directors under section 4.1(8) of the Act, if any.

### **Section 1.2 Interpretation**

(1) In this By-law:

- (a) except as defined in section 1.1, 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;
- (b) words importing the singular number include the plural and vice versa;
- (c) words importing gender include the masculine, feminine and neuter genders;
- (d) 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;
- (e) a reference to the hearing and determination of a matter shall be construed in accordance with section 3.2 of O. Reg. 328/03;
- (f) a reference to any statute, regulation, proclamation, order in council, ordinance, by-law, resolution, rule, order or directive includes all statutes, regulations, proclamations, orders in council, ordinances, by-laws, resolutions, rules, orders or directives varying, consolidating, re-enacting, restating, extending or replacing it;
- (g) a reference to a document, including a statute, includes an amendment or supplement to, or replacement of, that document, as well as any schedule, appendix or other annexure thereto;

- (h) a reference to a document, including a statute, includes an amendment or supplement to, or replacement of, that document, as well as any schedule, appendix or other annexure thereto;
- (i) a reference to a statute includes any regulation made under that statute;
- (j) except where the context otherwise requires, a reference to the power to make an instrument includes the power to amend and revoke the instrument;
- (k) subject to the Act and except where the context otherwise requires, the power to appoint a person includes the power to reappoint or remove the person;
- (l) except where the context otherwise requires, a reference to an Article or a section number is to an Article or section in this By-law;
- (m) the expression “including” means including without limitation, and the expression “include”, “includes” and “included” shall be interpreted accordingly; and
- (n) a list of elements preceded by the word “includes”, “including”, “such as” or similar language shall not be interpreted as excluding any other element, whether of the same or a different nature or scope.

(2) Headings are included in this By-law for reference purposes only and are not to be considered or taken into account in construing the terms of provisions of this By-law.

### **Section 1.3 Severability**

The invalidity or unenforceability of any provision of this By-law shall not affect the validity or enforceability of the remaining provisions of this By-law.

## **ARTICLE 2 AFFAIRS OF THE BOARD**

### **Section 2.1 Hearings**

Except as provided in Article 7, nothing in this By-law shall affect or govern procedures pertaining to the hearing and determination of any matter within the Board’s jurisdiction.

### **Section 2.2 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 of the Board or employee of the Board 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.

### **Section 2.3 Head Office**

The head office of the Board shall be in the City of Toronto or at such other location in the Province of Ontario as the Board of Directors may from time to time determine by resolution.

### **Section 2.4 Corporate Seal**

The seal of the Board shall be that adopted by the Board of Directors 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 2.5 Execution of Instruments**

(1) Except as otherwise required or permitted by the Act, and subject to any other limitations established by the Board of Directors, 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 Executive Officer or any other person authorized for such purposes by resolution of the Board of Directors.

(2) In addition, and except as otherwise provided in the Act, the Board of Directors may by resolution authorize any person or persons to sign on behalf of the Board, and direct the manner in which such persons shall sign any particular instrument or class of instruments, including cheques or other documents providing for the payment of a sum of money.

(3) If no person is authorized to sign any cheques or other documents providing for the payment of a sum of money on behalf of the Board under section 2.5(2), the Chief Executive Officer may sign such instruments on behalf of the Board.

(4) Except as otherwise provided in the Act, any officer, Director or the Corporate Secretary may sign certificates and similar instruments on behalf of the Board with respect to any factual matters relating to the Board's activities and affairs, including certificates verifying copies of the By-laws, resolutions and minutes of meetings of the Board of Directors.

(5) The signature of any signing officer may be written, printed, stamped or otherwise mechanically reproduced or may be an electronic signature. Anything so signed shall be as valid as if it had been signed manually, even if that person has ceased to hold office when anything so signed is issued or delivered, until revoked by resolution of the Board of Directors.

(6) Any signing officer under this section 2.5 may affix the corporate seal to any instrument.

## **Section 2.6 Banking Arrangements and Investing**

(1) 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 Board of Directors. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Board of Directors may from time to time prescribe or authorize by resolution.

(2) Except as otherwise restricted under section 4.6(1) of the Act, the Board of Directors may also invest surplus funds of the Board with the Ontario Financing Authority, RBC Dominion Securities or such other institution as the Board of Directors may from time to time authorize by resolution. 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, RBC Dominion Securities or other authorized institution 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 Board of Directors.

## **Section 2.7 Borrowing Power**

The Board may borrow as permitted under sections 4.6(1) and 4.11 of the Act.

## **Section 2.8 Policies**

Subject to the Act, the Board of Directors may make, amend and repeal such policies as it deems advisable from time to time, including with respect to procurement and codes of conduct that govern Members of the Board and employees of the Board.

## **Section 2.9 Transition**

Resolutions of the Management Committee and other arrangements that were in effect immediately before October 1, 2020 in respect of any of the matters referred to in sections 2.4 to 2.8 remain in effect as of October 1, 2020 until such time as they are revoked, amended or replaced by the Board of Directors.

# **ARTICLE 3 DIRECTORS**

## **Section 3.1 Powers, Duties and Functions of the Board of Directors**

(1) The mandate of the Board of Directors, as set out in section 4.1(1) of the Act, is to oversee the management of the Board's business and affairs, and perform such

other duties as are assigned to the Board of Directors under the Act or any other Act. The Board of Directors is therefore responsible for the governance of the Board, with a focus on ensuring that sound governance and management practices are in place to promote the achievement of desired results and outcomes and mitigate risk.

(2) Without limiting the generality of section 4.1(1) of the Act, the Board of Directors is, in overseeing the business and affairs of the Board, responsible for:

- (a) approving the strategic direction and strategic priorities for the Board on the recommendation of the Chief Executive Officer; and
- (b) approving the following on the recommendation of the Chief Executive Officer:
  - i. business plans, and monitoring the effectiveness and implementation of each business plan;
  - ii. annual reports in accordance with section 4.9 of the Act;
  - iii. budgets, and monitoring the Board's financial performance against the budget;
  - iv. financial statements in accordance with section 4.8 of the Act; and
  - v. processes for assessing the performance of employees of the Board, in a manner that respects, where applicable, their independence in the hearing and determination of matters.

### **Section 3.2 Powers, Duties and Functions of the Chair**

(1) The Chair is accountable to the Minister for the effective delivery of the Board's mandate and the independence of Panels and Delegated Employees in hearing and determining matters.

(2) In addition to such other powers and duties as are assigned to the Chair under the Act, any other Act or the Memorandum of Understanding, the Chair is responsible for:

- (a) overseeing the efficient administration of the Board of Directors, and presiding over meetings of the Board of Directors;
- (b) ensuring new Directors receive effective orientation and such ongoing training and development as may be appropriate to promote continued competency and excellence;
- (c) leading an annual evaluation of the performance of the Chief Executive Officer having regard to the input of other Directors; and
- (d) working with the Chief Executive Officer to ensure alignment on the respective roles and responsibilities of the members of the Board of Directors and the Chief Executive Officer, including in relation to communications with government, regulated entities, other interested parties and the public.

### **Section 3.3 Directors' Standard of Care**

Under section 4.1(7) of the Act, every Director shall, in exercising and performing their duties as a Director:

- (a) act honestly and in good faith in the best interests of the Board; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

### **Section 3.4 Delegation**

(1) Under section 4.1(19) of the Act, the Board of Directors by resolution may, subject to any conditions or restrictions the Board of Directors specifies and the exceptions set out in sections 4.1(20) and 4.1(21) of the Act:

- (a) delegate any of its powers or duties to a committee of the Board of Directors or to one or more Directors; and
- (b) delegate any of its powers to oversee the management of the Board's business and affairs to the Chief Executive Officer or one or more other officers of the Board.

(2) It is understood that the powers and duties referred to in paragraph (a) of section 3.4(1) are those powers and duties expressly assigned to the Board of Directors in the Act or any other Act and the powers referred to in paragraph (b) of section 3.4(1) are the non-adjudicative powers of the Board that reside with the Board of Directors by virtue of section 4.1(17) of the Act.

(3) The Board of Directors shall require anyone to whom it has delegated a power or duty to report to it on the exercise of the power or duty at the times and in the manner that it may specify.

### **Section 3.5 Calling of Meetings**

(1) Meetings of the Board of Directors shall be held from time to time and at such time and at such place as the Board of Directors or the Chair may determine.

(2) In addition, a quorum of the Directors may, at any time, call a meeting of the Board of Directors for the transaction of any business the general nature of which is specified in the notice calling such meeting.

### **Section 3.6 Notice of Meeting**

(1) Except as permitted by section 3.7 or 3.8, notice of the time and place of each meeting of the Board of Directors shall be given in the manner provided in Article 6 to each Director at least three business days before the day when the meeting is to be held.



(2) Unless the By-laws provide otherwise, no notice of meeting need specify the purpose or the business to be transacted at the meeting.

(3) A Director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the Board of Directors. Attendance of a Director at a meeting of the Board of Directors shall constitute a waiver of notice of that meeting except where a Director attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting has not been properly called.

### **Section 3.7 Adjourned Meeting**

Notice of an adjourned meeting of the Board of Directors 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 3.8 Regular Meetings**

The Board of Directors or the Chair may appoint a day or days in any month or months for regular meetings of the Board of Directors at a place and hour to be named. A copy of any resolution of the Board of Directors or written statement of the Chair fixing the place and time of such regular meetings shall be sent to each Director forthwith after being passed by the Board of Directors or issued by the Chair. No other notice shall be required for any such regular meeting, except that, upon the appointment of a new Director, any notice of such regular meetings sent to the Directors prior to such appointment will be resent forthwith to such new Director.

### **Section 3.9 Chair to Preside**

Meetings of the Board of Directors shall be chaired by the Chair. If the Chair is absent or unable to act:

- (a) the Vice-Chair shall be chair of the meeting; and
- (b) if no Vice-Chair has been appointed or the Vice-Chair is also absent or unable to act, for the purposes of section 4.1(13) of the Act, the Directors present at the meeting shall appoint an acting chair from among themselves by majority vote.

### **Section 3.10 Quorum**

(1) Except as provided in this section 3.10 or under section 132 of the Business Corporations Act, a majority of the Directors constitutes a quorum at a meeting of the Board of Directors.

(2) A circumstance where all but one of the Directors then in office are absent or unable to act is prescribed as an emergency circumstance in which the quorum of the Board of Directors is one Director.

### **Section 3.11 Votes to Govern**

(1) At all meetings of the Board of Directors, every question shall be decided by a majority of the votes cast on the question.

(2) In case of an equality of votes, the chair of the meeting under section 3.9 shall be entitled to a second or casting vote.

(3) Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chair of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

### **Section 3.12 Action by the Board of Directors**

The powers of the Board of Directors 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 Board of Directors. The signature of a Director on a resolution in writing may be written, printed, stamped or otherwise mechanically reproduced or may be an electronic signature, and anything so signed shall be as valid as if it had been signed manually.

### **Section 3.13 Meetings by Telephone or Electronic Facilities**

If all the Directors entitled to participate in a meeting consent thereto generally or in respect of a particular meeting, a Director may participate in a meeting of the Board of Directors or of a committee of the Board of Directors by means of such telephonic, electronic or other communication facilities as permit all participants to communicate with each other simultaneously and instantaneously, and a Director participating in such a meeting by such means is deemed to be present at the 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 Board of Directors or of a committee of the Board of Directors.

### **Section 3.14 Validity of Actions**

No act or proceeding of the Board of Directors, any individual Director, or any committee of the Board of Directors shall be deemed invalid or ineffective solely by reason of the subsequent ascertainment of any irregularity in regard to such act or proceeding.

### **Section 3.15 Conflict of Interest**

(1) A Director who is a party to, or who is a director or officer of or has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the Board, shall disclose in writing to the Board of Directors, or request to have entered in the minutes of the meeting of the Board of Directors, the nature and extent of their interest at the time and in the manner provided by section 132 of the Business Corporations Act. Such a Director shall not vote on any resolution to approve the same except as provided by section 132 of the Business Corporations Act.

(2) A Director who is a party to, or who is a director or officer of or has a material interest in any person who is a party to, or who has a direct material interest in the outcome of, a hearing or other matter over which the Board has jurisdiction or any other matter over which a Panel or a Delegated Employee then has jurisdiction, shall disclose in writing to the Board of Directors, or request to have entered in the minutes of the meeting of the Board of Directors, the nature and extent of their interest at the time and in the manner provided by Section 132 of the Business Corporations Act, applied as though such hearing or matter were a material contract or transaction. Such a Director shall not vote on any resolution of the Board of Directors, nor participate in any function of the Adjudication Committee, to the extent it relates to such hearing or matter.

(3) For the purposes section 3.15(2), a Director does not have a direct material interest in the outcome of a hearing or other matter solely by reason of being a consumer of electricity or natural gas.

### **Section 3.16 Remuneration**

Absent an Order in Council that establishes the remuneration and benefits of a Director, a Director shall be paid such remuneration for their services, and shall be entitled to such benefits, as shall be fixed by the Minister.

## **ARTICLE 4 COMMITTEES**

### **Section 4.1 Formation of Committees**

(1) Subject to section 4.2, the Board of Directors may by resolution appoint from their number one or more committees of the Board of Directors, however designated, specify the purpose and function of any such committee, and delegate to any such committee any of the powers or duties of the Board of Directors.

(2) Any committee member may be removed by resolution of the Board of Directors.

## **Section 4.2 Adjudication Committee**

- (1) The Board of Directors shall by resolution establish the Adjudication Committee.
- (2) The Adjudication Committee shall be chaired by such Director as may be named from time to time by the Chair.
- (3) The Adjudication Committee chair is responsible for identifying issues that should be considered by the Adjudication Committee and for the development of the agenda for each meeting of the Adjudication Committee.
- (4) The goal of the Adjudication Committee is to assist in ensuring tribunal excellence, in a manner that respects the independent hearing and determination of matters, by:
  - (a) receiving such information as the Adjudication Committee may require from the Chief Commissioner respecting the efficiency, timeliness and dependability of the hearing and determination of matters;
  - (b) monitoring the Board's Adjudication Instruments and Adjudication Policies having regard to the just, expeditious and efficient hearing and determination of matters by Panels and Delegated Employees;
  - (c) exercising such powers and performing such duties as may be delegated to it by resolution of the Board of Directors; and
  - (d) reporting to the Board of Directors on the above.

## **Section 4.3 Transaction of Committee Business**

- (1) The powers of a committee of the Board of Directors 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.
- (2) 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.
- (3) Minutes of all decisions of a committee shall be recorded in writing, and such decisions shall be reported to the Board of Directors at its next meeting.

## **Section 4.4 Committee Procedures**

Unless otherwise determined by the Board of Directors but subject to sections 4.2 and 4.3, each committee shall have the power to fix its quorum, which shall not be less than two members, to elect its chairperson, and to formulate its own rules of procedure, including procedures governing the time, place and method for holding its

meetings and the conduct of business at such meetings. To the extent that the Board of Directors or the committee does not establish rules to regulate the procedure of the committee, the provisions of the By-laws applicable to meetings of the Board of Directors shall apply with all necessary modifications.

#### **Section 4.5 Dissolution of Committees**

The Board of Directors may by resolution dissolve any committee of the Board of Directors other than the Adjudication Committee.

### **ARTICLE 5 OFFICERS AND OTHERS**

#### **Section 5.1 Chief Executive Officer**

- (1) As of and after October 1, 2022, the Board of Directors shall appoint and may reappoint a person to the position of Chief Executive Officer of the Board for such term as the Board of Directors may in its discretion determine.
- (2) No person shall be appointed or reappointed to the position of Chief Executive Officer if that person is not eligible to be appointed under section 4.2(3) of the Act.
- (3) No person shall be appointed as the Chief Executive Officer unless such person has entered into such agreement with the Board as the Board of Directors determines appropriate in order to give effect to the provisions of this By-law.
- (4) The Board of Directors shall develop a competency matrix that identifies the core competencies, skills, attributes, experience, and qualifications required for the Chief Executive Officer.
- (5) The Board of Directors will use a competitive process that is open, transparent, and merit-based to recruit the Chief Executive Officer. For greater certainty, this section does not apply to the reappointment of a Chief Executive Officer.
- (6) As of and after October 1, 2022, the Chief Executive Officer shall be paid such remuneration for their services and shall be entitled to such benefits as shall be fixed by the Board of Directors at or below the recommendation of an independent third party consultant with expertise in compensation matters.
- (7) The Chief Executive Officer shall be entitled to be reimbursed for expenses properly and actually incurred by them in connection with the performance of their duties to the Board and in accordance with the policies of the Board.
- (8) The Chief Executive Officer 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 Chief Executive Officer.

(9) The Chief Executive Officer is an officer of the Board. As set out in section 4.2(2) of the Act, the Chief Executive Officer is responsible for the efficient and effective management of the operations of the Board. To that end, the Chief Executive Officer is responsible for leading the executive team in developing, implementing and reporting to the Board of Directors on the Board's operations.

(10) Without limiting the generality of section 4.2(2) of the Act, the Chief Executive Officer is responsible for:

- (a) ensuring that the Board has the staff and facilities needed to exercise its powers and perform its duties and functions in accordance with the legislative and other requirements that apply to its work;
- (b) making recommendations to the Board of Directors on the strategic direction and strategic priorities for the Board, including through the preparation of documents referred to in paragraph (d), and advising the Board of Directors on emerging trends and issues;
- (c) providing the Board of Directors with regular updates on Board operations, and on any corrective action taken or needed to be taken;
- (d) preparing the following for approval by the Board of Directors:
  - i. business plans;
  - ii. annual reports in accordance with section 4.9 of the Act;
  - iii. budgets;
  - iv. financial statements in accordance with section 4.8 of the Act; and
  - v. processes for assessing the performance of employees of the Board;
- (e) overseeing the development and maintenance of human resources, financial management, reputation management, risk mitigation and other operational processes and policies;
- (f) working with the Chair to ensure alignment on the respective roles and responsibilities of the members of the Board of Directors and the Chief Executive Officer, including in relation to communications with government, regulated entities and other interested parties; and
- (g) ensuring that the Board of Directors and any committee of the Board of Directors have such information as the Chair or the committee chair may from time to time request regarding the business and operations of the Board.

(11) The Chief Executive Officer reports and is accountable to the Board of Directors for the efficient and effective management of the Board's operations.

## **Section 5.2 Appointment of Other Officers**

The Board of Directors may from time to time designate other offices and appoint such other officers from the employees of the Board as the Board of Directors may

determine, including one or more assistants to any of the officers so appointed. One person may hold more than one office. Subject to the Act, the Board of Directors may specify the duties of such officers.

### **Section 5.3 Corporate Secretary**

(1) The Board of Directors shall appoint a Corporate Secretary. The Corporate Secretary shall, unless otherwise determined by the Board of Directors, attend and be the secretary of all meetings of the Board of Directors and of committees of the Board of Directors (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. The Corporate Secretary shall be responsible for issuing all notices to Directors, officers, and members of committees of the Board of Directors of all meetings for which those individuals are entitled to attend. Subject to any provision to the contrary in the Act, the Corporate Secretary 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.

(2) The Corporate Secretary shall report to the Chief Executive Officer, and shall have such powers, functions and duties as are assigned to the Corporate Secretary from time to time by the Chief Executive Officer.

### **Section 5.4 Registrar**

The Chief Executive Officer shall appoint a Registrar from among the employees of the Board, and may appoint an assistant to the Registrar, to perform such duties as are assigned to the Registrar under the Act or any other Act, and such other duties as may be assigned to the Registrar from time to time.

### **Section 5.5 Assistants**

Subject to the Act and regulations, any of the powers and duties of an officer or the Registrar to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board of Directors or, in the case of the Registrar, the Chief Executive Officer, otherwise directs.

### **Section 5.6 Term of Office**

The Chief Executive Officer, the Corporate Secretary, and any other officer appointed by the Board of Directors shall hold office for such term as the Board of Directors shall determine or until their successor is appointed or until their earlier resignation, retirement, removal or death.

### **Section 5.7 Terms of Employment and Remuneration**

Subject to any Order in Council in effect before October 1, 2022, the terms of employment and remuneration of the Chief Executive Officer, of the Corporate Secretary and of any other officers appointed by the Board of Directors shall be settled by the Board of Directors from time to time.

### **Section 5.8 Conflict of Interest**

(1) An officer who is a party to, or who is a director or officer of or has a material interest in any person who is a party to a material contract or transaction or proposed material contract or transaction with the Board, shall disclose in writing to the Board the nature and extent of their interest at the time and in the manner provided by section 132 of the Business Corporations Act. Such officer shall not participate in discussions, deliberations or meetings at which such matters are discussed.

(2) An officer who is a party to, or who is a director or officer of or has a material interest in any person who is a party to, or who has a direct material interest in the outcome of, a hearing or other matter over which the Board has jurisdiction or any other matter over which a Panel or Delegated Employee then has jurisdiction, shall disclose in writing to the Board the nature and extent of their interest at the time and in the manner provided by section 132 of the Business Corporations Act, applied as though such hearing or matter were a material contract or transaction. Such officer shall not participate in discussions, deliberations or meetings at which such matters are discussed.

(3) For the purposes of section 5.8(2), an officer does not have a direct material interest in the outcome of a hearing or other matter solely by reason of being a consumer of electricity or natural gas.

### **Section 5.9 Agents and Attorneys**

The Board, by or under the authority of the Board of Directors, 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.

## **ARTICLE 6 NOTICES**

### **Section 6.1 Method of Giving Notice**

(1) Any notice (which term includes any communication or document) to be given (which term includes sent, delivered, or served) pursuant to the Act, the By-laws or otherwise to a Director, officer or member of a committee of the Board of Directors shall be sufficiently given:

(a) if delivered personally to the person to whom it is to be given or if



delivered to such person's last recorded address in the records of the Board;

- (b) if mailed to such person's last recorded address in the records of the Board by prepaid ordinary or air mail; or
- (c) if sent to such person's last recorded address in the records of the Board by telephonic, electronic or other communication facility (including, without limitation, telecopier or electronic mail).

(2) 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. 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.

(3) The Corporate Secretary may change or cause to be changed the recorded address of any Director, officer or member of a committee of the Board of Directors in accordance with any information believed by the Corporate Secretary to be reliable. The declaration by the Corporate Secretary that notice has been given pursuant to this By-law shall be sufficient and conclusive evidence of the giving of such notice.

### **Section 6.2 Computation of Time**

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.

### **Section 6.3 Omissions or Errors**

The accidental omission to give any notice to any Director, officer or member of a committee of the Board of Directors 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.

## **ARTICLE 7 COMMISSIONERS AND DELEGATED EMPLOYEES**

### **Section 7.1 Powers, Duties and Functions of Commissioners and Panels**

(1) Commissioners are responsible for the hearing and determination of matters to which they are individually assigned as a Panel member. In so doing, Panels are responsible for deciding all procedural aspects of a proceeding to hear and determine

a matter (including whether to hold a hearing, the manner of hearing and all procedural steps and associated timelines) to the extent that such procedural aspects have not been delegated to a Delegated Employee.

(2) Commissioners may also participate in policy development and other activities of the Board with the prior consent of the Chief Commissioner.

(3) Commissioners shall report and are accountable exclusively to the Chief Commissioner for the timely and efficient administration of their caseload.

## **Section 7.2 Establishment and Composition of Panels**

(1) The Chief Commissioner is responsible for assigning one or more Commissioners to a Panel under section 4.3(7) of the Act. In doing so, the Chief Commissioner shall consider:

- (a) the experience and expertise of the Commissioners;
- (b) the current and forecasted workload of the Commissioners;
- (c) the avoidance of a conflict of interest or the appearance of a conflict of interest; and
- (d) any other factor the Chief Commissioner considers relevant for the just, expeditious and efficient hearing and determination of matters.

(2) A Panel may include the Chief Commissioner.

## **Section 7.3 Panel Independence**

Independence in the hearing and determination of matters is a key element of the Board's mandate. A Panel shall hear and determine a matter independently.

## **Section 7.4 Additional Powers, Duties and Functions of Chief Commissioner**

(1) The Chief Commissioner is responsible for ensuring the efficiency, timeliness and dependability of the hearing and determination of matters by Panels and Delegated Employees, and for reporting to the Chief Executive Officer on the efficiency, timeliness and dependability of the hearing and determination of matters by Panels and Delegated Employees.

(2) The Chief Commissioner shall perform the duties assigned to the Chief Commissioner under section 4.3(11) of the Act. In performing those duties, the Chief Commissioner shall be accountable exclusively to the Chief Executive Officer.

(3) The Chief Commissioner is responsible for providing such information to the Adjudication Committee regarding the efficiency, timeliness and dependability of the hearing and determination of matters as may be requested by the Adjudication Committee, within the time and in the manner specified by the Adjudication

Committee.

- (4) The Chief Commissioner is also responsible for:
  - (a) making such Adjudication Instruments and establishing such Adjudication Policies as the Chief Commissioner considers appropriate to enhance the Board's adjudicative process and promote the just, expeditious and efficient hearing and determination of matters;
  - (b) ensuring that processes for assessing Commissioner performance are in place and engaged on at least an annual basis; and
  - (c) ensuring the orientation of new Commissioners and providing training and professional development opportunities for Commissioners to promote ongoing competency and excellence.
- (5) The Chief Commissioner may from time to time designate a Commissioner as Deputy Chief Commissioner for such term as the Chief Commissioner considers appropriate provided that such term is no longer than the term of the person's appointment as Commissioner. The Deputy Chief Commissioner may exercise the powers and perform the duties of the Chief Commissioner if the Chief Commissioner is absent or unable to act, or if the position of Chief Commissioner is vacant.

#### **Section 7.5 Delegation of the Board's Powers and Duties to Hear and Determine Matters**

- (1) Under section 6 of the Act the Chief Commissioner, with the approval of the Chief Executive Officer, may delegate powers and duties of the Board with respect to the hearing and determination of matters to an employee of the Board.
- (2) A delegation shall be subject to such conditions and restrictions as the Chief Commissioner may specify in writing.
- (3) The Chief Commissioner may at any time, following consultation with the Chief Executive Officer, revoke a delegation or amend the conditions or restrictions to which it is subject.
- (4) Independence in the hearing and determination of matters is a key element of the Board's mandate. A Delegated Employee to whom the authority to hear and determine a matter has been delegated shall:
  - (a) exercise their responsibilities as a Delegated Employee independently and in accordance with any applicable conditions or restrictions referred to in section 7.5(2); and
  - (b) be responsible for determining whether to hold a hearing and, if so, for determining the manner of hearing and for providing any procedural directions.

(5) A Delegated Employee shall report to the Chief Commissioner on their performance in that capacity and on the efficient administration of their caseload.

### **Section 7.6 Rules Made by Board of Directors**

Before making any rules under section 121(a) of the Act, the Board of Directors shall consult with the Chief Commissioner.

### **Section 7.7 Appointments and Reappointments**

(1) As of and after October 1, 2022, the Board of Directors shall, on the recommendation of the Chief Executive Officer, appoint and may reappoint Commissioners, including the Chief Commissioner.

(2) The Chief Commissioner shall make recommendations to the Chief Executive Officer for the appointment and reappointment of Commissioners.

(3) No person shall be appointed or reappointed as a Commissioner if that person is not eligible to be appointed under section 4.3(2) of the Act.

(4) No person shall be appointed or reappointed as a Commissioner unless such person has entered into such agreement with the Board as the Board of Directors, on the advice of the Chief Executive Officer, determines appropriate in order to give effect to the provisions of this By-law.

(5) The Chief Commissioner shall develop a competency matrix that identifies the core competencies, skills, attributes, experience, and qualifications required for Commissioners.

(6) The process for recruiting Commissioners and the Chief Commissioner will be competitive, open, transparent, and merit-based. For greater certainty, this section does not apply to the reappointment of a person as Commissioner or Chief Commissioner.

(7) In appointing and reappointing Commissioners, including the Chief Commissioner, the Board of Directors will consider the overall mix of skills, attributes, qualifications and experience of Commissioners, and the anticipated caseload for Commissioners, in order to ensure the Board has an appropriate complement of Commissioners.

### **Section 7.8 Terms of Appointment and Reappointment and Removal**

(1) The first term of office for a Commissioner or Chief Commissioner shall not exceed two years. For greater certainty, the first term of a Commissioner or Chief Commissioner includes their first term regardless of whether their first term was served

on or before October 1, 2022 or after October 1, 2022.

(2) Following a first term, a Commissioner or Chief Commissioner may be reappointed for one or more terms of up to five years each.

(3) The maximum cumulative term of appointment for a Commissioner (including any term(s) as Chief Commissioner) shall be ten years. Any term served by a Commissioner or Chief Commissioner before October 1, 2022 shall be included in determining the cumulative term of appointment.

(4) Despite section 7.8(3), a Commissioner or Chief Commissioner may be reappointed beyond the maximum of ten years in exceptional circumstances if the Board of Directors determines that such reappointment is in the public interest.

(5) Where possible, the Board of Directors shall ensure that the terms of appointment and reappointment for Commissioners do not all end at the same time.

(6) The Board of Directors has no obligation to reappoint Commissioners or the Chief Commissioner for subsequent terms at the conclusion of any term of their appointment.

(7) Subject to resignation or death, the appointment or reappointment of a person to the position of Commissioner or Chief Commissioner shall be for a fixed term and may not be revoked without cause.

(8) For the purposes of section 7.8(7) and section 4.3(4) of the Act, cause includes without limitation:

- (a) ineligibility for appointment under section 4.3(2) of the Act; and
- (b) violation of the conflict of interest rules and ethics framework applicable to Commissioners.

## **Section 7.9 Performance Assessments**

(1) The Chair, with input from the Adjudication Committee and the Chief Executive Officer, will assess the performance of the Chief Commissioner at least once annually with respect to the powers, duties and functions of the Chief Commissioner set out in sections 7.2(1) and 7.4 and in section 4.3(11) of the Act.

(2) The Chief Commissioner shall consider the assessments made under section 7.4(4)(b) when making recommendations to the Chief Executive Officer under section 7.7(2).

(3) The performance assessment process for Commissioners, including the Chief Commissioner, will be conducted in a manner that respects their independence in the hearing and determination of matters.

## **Section 7.10 Remuneration**

- (1) As of October 1, 2022, the Chief Commissioner, the Deputy Chief Commissioner and other Commissioners shall be paid such remuneration for their services and shall be entitled to such benefits as shall be fixed by the Board of Directors at or below the recommendation of an independent third party consultant with expertise in compensation matters.
- (2) Commissioners shall be entitled to be reimbursed for expenses properly and actually incurred by them in connection with the performance of their duties to the Board and in accordance with the policies of the Board.
- (3) All full-time Commissioners 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 Commissioner.

## **ARTICLE 8 PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

### **Section 8.1 Indemnity**

- (1) Subject to any limitations contained in the Act or section 136 of the Business Corporations Act, the Board shall indemnify a Director, Commissioner or officer, a former Director, Commissioner or officer, a Former Board Member, or an individual who acts or acted at the Board's request as a director or officer of another entity, and such person's 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 them in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with the Board or other entity.
- (2) The Board shall advance moneys to any individual referred to in section 8.1(1) for the costs, charges and expenses of a proceeding referred to in that section. The individual shall repay the moneys if the individual does not fulfil the conditions of section 8.1(3).
- (3) The Board shall not indemnify an individual under section 8.1(1) or 8.1(2) unless the individual:
  - (a) 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, the individual had reasonable grounds for believing that their conduct was lawful.
- (4) The Board shall also indemnify any individual referred to in section 8.1(1) in

such other circumstances as the Act, section 136 of the Business Corporations Act, or law permits or requires. Nothing in this By-law shall limit the right of any individual entitled to indemnity to claim indemnity apart from the provisions of this By-law.

(5) In this section 8.1, “Former Board Member” means an individual appointed as a member of the Board by the Lieutenant Governor in Council on or after August 1, 2003 under section 4.1(2) of the Act as it read on that date.

### **Section 8.2 Agreements**

Subject to the Act and section 136 of the Business Corporations Act, the Board may execute agreements evidencing its indemnity in favour of any individual referred to in section 8.1(1), or other individuals, against such liabilities as the Board of Directors may from time to time determine.

### **Section 8.3 Insurance**

Subject to the Act and section 136 of the Business Corporations Act, the Board may purchase and maintain insurance for the benefit of any individual referred to in section 8.1(1), or other individuals, against such liabilities and in such amounts as the Board of Directors may from time to time determine.

## **ARTICLE 9 AUDITORS**

### **Section 9.1 Auditors**

The Board of Directors 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. The remuneration of an auditor so appointed shall be fixed by the Board of Directors. The Auditor General of Ontario may also audit the financial statements of the Board.

## **ARTICLE 10 EFFECTIVE DATE**

### **Section 10.1 Effective Date**

This By-law shall come into force on October 2, 2020. It supersedes and replaces By-law #1 made by the Board as at August 1, 2003 and By-law #2 made by the Board as at February 6, 2004.

### **Section 10.2 Amendments**

This By-law was amended on February 24, 2022 to add in provisions to address the requirements of sections 4.10(2)(b) to 4.10(2)(d) of the Act. These amendments

included adding in sections 7.7 to 7.10 as well as amendments to sections 1.1, 2.5, 5.1, 5.6, 5.7, 7.1, and 7.4. These amendments are effective October 1, 2022.