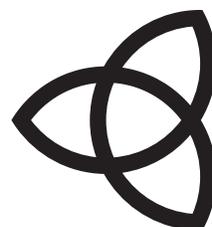




# TOP QUARTILE REGULATOR

## EXECUTIVE SUMMARY



ONTARIO  
ENERGY  
BOARD

# CONTEXT & SUMMARY OF INITIATIVES



This report follows on the work of the OEB Modernization Review Panel and was conceived as a way to stimulate conversation about what the OEB needs to do in order to become a Top Tier Energy Regulator. In preparing this report, the OEB reviewed best practices in other jurisdictions and also undertook a stakeholder survey (2020) to establish a baseline level of performance on which to improve going forward. The survey questions were designed to elicit stakeholder views on the OEB's performance in the areas of excellence identified in the OEB Modernization Review Panel Report.

When the Modernization Review Panel released its report two years ago, the global energy sector was in a historic state of flux. It still is today. Climate change, artificial intelligence, disruptive technology, decentralization of traditional command-and-control style energy grids, an abundance of cost-competitive renewable energy and increased use of energy storage are all creating unprecedented but necessary change in the energy sector. In order to harness -- and capitalize on these changes -- the Modernization Review Panel recommended a new governance model for the OEB, and gave it a mandate to modernize its outlook, its operations and its approach to regulation. The Panel called for significant changes in order to enable the energy sector to continue contributing to Ontario's long-term economic prosperity and earn the public's trust.

With this *Top Quartile Regulator Report* we build-on the conversation. By providing a brief review of regulatory best practices in Canada, the United States, Australia, and the United Kingdom, and then proposing a list of initiatives that could work in the Ontario context, the report is designed as a springboard

for reflection, discussion and ultimately for decision-making. It is not an action plan. Work still needs to be done to identify which initiatives are adaptable to Ontario, how they would be implemented, and tangible outcomes, milestones and metrics still need to be developed. This work would form the basis of Phase 2, and following that, the implementation of an action plan in Phase 3.

Top quartile regulators have much in common, including a strong sense of responsibility to continuously improve. They also share certain guiding principles, and in each section of The *Top Quartile Regulator Report*, one of the following principles is discussed in detail:



Different jurisdictions may interpret these principles differently. While there are regulators worth emulating, thought leaders indicated that best practice is a matter of context and perspective. And, therefore, a best practice must be *adapted*, not just adopted.

# Independence

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Independence is the most foundational and important attribute for any regulator. A regulator that is not perceived as independent is severely limited in its ability to build and maintain public trust and confidence in the legitimacy of its decisions, especially in a sector where decisions and issues are often difficult or polarizing. To continue being perceived as independent, and to continue performing its duties with an independent mindset, the OEB should consider ways to maintain the independence of its Commissioners, including:

- A robust and transparent merit-based appointment process; rigorous evaluation of candidates and ongoing Commissioner training and professional development; flexibility to extend and stagger Commissioner terms to better ensure adjudicative continuity, address workload issues and enable the OEB to attract excellent candidates by reason of security and length of tenure.
- Improving public understanding of the meaning and intent behind Ministerial Directives in order to ensure the OEB is perceived as an independent body operating at arms-length to the Minister.
- Developing a tightly defined and well-articulated Mission and Mandate statement that speaks to independence and other key values such as integrity, transparency and accountability.
- Building greater awareness of the expertise and independence of Commissioners including opportunities to showcase their expertise, engagement and knowledge of sectoral issues.

# Accountability



The OEB is accountable for its actions and advances the public interest in a transparent and accessible manner. In order to ensure that stakeholders understand the OEB's policy priorities, the OEB should consider the following:

- Develop an Engagement Guide for consultations including guiding principles and process options based on best practices; a New Stakeholder Advisory Approaches initiative that provides an opportunity for industry and consumer-oriented stakeholders to meet regularly with the OEB to discuss initiatives, process issues and emerging trends.
- A forward work program in support of the development of the Business Plan.
- Develop and post a framework for Cost-Benefit Analyses to demonstrate the link between requirements and overall objectives, and to communicate how regulatory policies and processes deliver on the OEB's mandate and responsibilities.
- Develop and maintain a list of generic emerging issues in order to help stakeholders to understand the OEB's policies for generic hearings.
- More rigorous reporting of compliance and enforcement activity and industry guidance, including enhancing the Annual Report to more fully reflect how outcomes track against the goals set out in the annual Business Plan.
- Develop an online tool to help stakeholders keep track of policy initiatives.
- Explain the methodology used to allocate costs and the process used to develop/justify the annual budget.

# Certainty



Regulatory certainty recognizes the importance of process predictability for both policy and adjudicative matters, while also recognizing that substantive regulatory outcomes will depend on the specific facts and circumstances that emerge in adjudication or through policy processes. Regulatory certainty allows entities to understand their obligations, as well as the processes that come into play in case of a breach.

To provide greater certainty for the entities it regulates, the OEB might consider:

- Updating performance standards and key performance indicators for all application types and establishing corporate targets for key performance measures, including stretch targets so that timelines are more predictable.
- Providing a better definition for what constitutes a “substantial interest” for intervention in OEB proceedings.
- Revising the timing for issues lists in rate applications to better scope the proceeding at an earlier stage.
- Establishing issues lists for leave to construct applications.
- Developing process guides and providing more assistance to stakeholders who are not familiar with OEB processes.
- Providing applicants with the implications of requests for deadline extensions or for filing updated evidence.
- Allowing for focused discussion with applicants in the pre-application phase in order to explain what they should expect, what elements in their applications could require more information or be a cause for potential delays.
- Debriefing with applicants following the conclusion of major applications.
- Establishing a new forum for dialogue with utilities in order to allow for generic feedback to be provided by decision makers.
- Providing more public reporting of the OEB’s Adjudicative Performance, including decision writing time, a summary of the key themes or major decisions, current and forecast caseloads, and posting information about the pilots for the Status of Applications Initiative.
- Standardizing and updating the models used for applications.

# Effectiveness

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Effective regulators assess baseline performance, set improvement goals, implement remedial measures and measure progress in order to ensure optimum effectiveness over time. The most successful regulators consistently ask themselves whether they are improving or declining.

In order to improve its overall effectiveness, the OEB might consider some of the following initiatives:

- Conduct a yearly stakeholder survey and including one-on-one interviews and focus groups to gauge external input and validation on performance.
- Conduct an annual self-assessment exercise that is externally validated.
- Develop a way to measure the total value delivered to consumers (overall effectiveness of the OEB's activities in a given year relative to its spending).
- Determine what would constitute evidence of better performance.
- Review the OEB's mission statement to ensure it is clear in its intent to drive a culture of continuous improvement.
- Learn about best practices through more ongoing staff and commissioner engagement with regulatory colleagues, academic and think-tank research, educational events, and conferences.
- Investigate a benchmarking exercise against other regulators or internal peer review of performance.

# Efficiency



Stakeholders have expressed concern about cycle time and the time taken for decision writing. To address these, and other efficiency issues, the OEB should consider:

- Reviewing the Notice process to explore more efficient and timely ways to constitute a proceeding, by considering whether notice could be provided in advance of application filing.
- Limiting oral submission time limits and considering written material limits.
- Improving the existing process for mechanistic applications by considering conversion to an online format rather than relying on utilities to populate spreadsheet models.
- Exploring the continued use of virtual hearings in certain circumstances post-pandemic.
- Reducing overlap and duplication in applications by reviewing who has a substantial interest in an application, and look for areas for improvement.
- Maintaining a central repository of documents to leverage more of the material regulated entities file in the normal course through reporting and record-keeping requirements, for use in their applications. This initiative would potentially reduce duplication.

# Innovation

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There is pent up demand in the sector for guidance on the regulatory treatment of innovation. Regulated entities have said they lack clarity as to how the OEB will view investments in innovative technology and the evaluation and approval criteria that will be applied to innovative proposals. It is also unclear whether a focus on modest improvements is appropriate, or whether a more ambitious, yet riskier, outlook toward innovation support is called for.

To deal with these innovation related issues, the OEB should consider:

- Modifying the OEB Innovation Sandbox, including giving thought to the prospect of partnerships.
- Developing innovation justification criteria that would assist utilities in the development of investment cases for novel or innovative approaches to be included in rate applications. These criteria could also assist Commissioners in assessing utility proposals.
- Revising the OEB's planning guidance for regulated utilities, in order to provide clear expectations for consideration of innovation in system planning, including consideration for the use of distributed energy resources and other emerging technologies.
- Developing a set of practices and attributes that are exemplified by economic regulators who most effectively support innovation among the entities in the sectors they regulate, and formulating a plan for the OEB to develop and adopt these same traits and policies.
- Researching opportunities to support the deployment of distributed energy resources and their participation in markets through use of blockchain.
- Defining ways to assess the costs and benefits of alternatives to meeting distribution needs.
- Investigating the feasibility of partnerships or other means that can provide financial support for innovations that involve novel regulatory arrangements.

# NEXT STEPS



Following a discussion of each of the above-noted guiding principles, readers will find a series of Appendices which include resources on thought leader interviews, best practices and a select bibliography.

As a next step, OEB should continue its deep and meaningful engagement with the sector and working together with stakeholders, set near- and longer-term priorities. As well, shining a light on regulatory processes and the evolution of thinking on policy issues will drive intentional and transparent continuous improvement.

Taking action to embody the attributes of excellence identified in this report will position the OEB as a trusted regulator that contributes to Ontario's long-term economic prosperity and improved quality of life for all Ontarians.