ONTARIO ENERGY ASSOCIATION

FINDING EFFICIENCIES AND LOWERING COSTS IN ONTARIO'S ENERGY SYSTEM

Red Tape And Regulatory Reduction Options

November 7, 2018

To shape our energy future for a stronger Ontario.

Ontario Energy Association

ABOUT

The Ontario Energy Association (OEA) is the credible and trusted voice of the energy sector. We earn our reputation by being an integral and influential part of energy policy development and decision making in Ontario. We represent Ontario's energy leaders that span the full diversity of the energy industry.

OEA takes a grassroots approach to policy development by combining thorough evidence based research with executive interviews and member polling. This unique approach ensures our policies are not only grounded in rigorous research, but represent the views of the majority of our members. This sound policy foundation allows us to advocate directly with government decision makers to tackle issues of strategic importance to our members.

Together, we are working to build a stronger energy future for Ontario.

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INTRODUCTION

The Ontario Energy Association (OEA) welcomes the opportunity to put forward ideas that reduce and streamline red tape and regulations in Ontario in a way that lowers costs in the energy system, lowers the costs of utilities and businesses in the energy sector, and ultimately lowers costs for Ontario's energy consumers.

The OEA has made a separate submission to the province with ideas on how electricity system costs can be lowered for consumers, because the government has asked specifically for feedback in this area. One element of that submission suggests that reducing red tape can also contribute to lowering electricity bills. This companion submission lists a variety of proposals to reduce red tape to help reduce costs for all energy bills, not just electricity bills.

RED TAPE REDUCTION IDEAS

Mandatory Regulatory Impact Assessment

New regulations are often introduced without any consideration to the full impact of the costs and benefits of the regulation. The OEA believes that any new regulation introduced by the government or an agency of the government should include a publicly disclosed regulatory impact assessment, with transparent statements regarding the assumptions that underlie the assessment.

One-In One-Out Policy

One way to ensure that costly regulations do no proliferate is to require a one-in one-out policy for new regulation. A requirement should be put in place that any new regulation or regulatory policy that is introduced by an agency of the government be accompanied by the elimination of another regulation or regulatory policy.

Digital by Default

Government ministries and agencies of the government should be required to become "digital by default". This means that wherever possible, requirements for paper submission, forms, etc. are eliminated and replaced with a digital option. In this day and age, paper should not be required.

OEB Annual Regulatory Simplification Plan & Independent Review

The OEB should be mandated through legislation to provide an annual Regulatory Simplification Plan. This plan would report on the regulatory impact the organization is

having, including costs, benefits, effectiveness and efficiency of its regulations. The simplification plan should also provide an assessment of any service quality metrics that are redundant and a plan for their elimination. The plan should contain metrics demonstrating that the costs the OEB assesses on regulated entities to fund its expenditures are just and reasonable. Finally, as part of the Simplification Plan, the OEB should be required to eliminate any reporting requirements that are not being used to develop policy or to evaluate utility performance. Reporting requirements for utilities have continued to grow, and are not pared back even when not being utilized.

To ensure this new process delivers the maximum level of efficiencies to energy system, the OEA believes it should be kicked off with an independent review. An independent review should set the parameters for the annual Regulatory Simplification Plan. This review would begin by researching the collective regulatory burden on the energy sector, set measurable targets to reduce it, and provide guidance to the OEB as to where it needs to streamline its regulatory instruments (e.g. guidance documents and mandatory codes) to ensure clarity, consistency and relevance on a regular basis. Progress could be tracked through annual OEB scorecards and benchmarking to demonstrate improvements.

In setting up the plan, the provincial government should legislate a standard of performance for the OEB to ensure that regulatory activities are transparent, accountable, proportionate, consistent and efficiently targeted only in situations where action is required, similar to the UK Electricity Act which sets out the principle objective and general duties of the Minister and the regulator [excerpt below]. Burden increases where there are inconsistencies and uncertainty in regulation.

> In carrying out their respective functions under this Part in accordance with the preceding provisions of this section the Secretary of state and the authority mush have regard to—
>
> a) The principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed: and
> b) Any other principles appearing to him or, as the case may be, it to represent the best regulatory practice[1]

[1] U.K. *Electricity Act,* 1989, Article 3A(5A).

Review OEB Intervenor Process

The OEA believes that the OEB's current intervenor process is due for a review to ensure that the objectives for representation of consumer interests in the regulatory process are being met in an efficient and effective manner.

Many Intervenors have duplicative interests and it is not necessary to grant Intervenor status to multiple stakeholders with common interests. It is not necessary nor cost effective to have multiple interests performing the same function (e.g. several groups who represent rental providers and numerous groups intervene on behalf of environmental organizations). Sometimes utilities are asked to push for disallowances to intervenor cost claims when this should be OEB staff's responsibility. The Board allows intervenors to participate regardless of whether their interest are applicable to the issues within a given case.

The OEA recommends that an independent targeted review of the OEB intervenor process should be undertaken in order to recommend improvements to:

1. Encourage self-regulation of intervenor activity by implementing a shared funding of intervenor costs or fixed envelope cost recovery; and
2. Preserve the OEB consumer protection function, but move consumer advocacy and education activities outside of the OEB as these functions are already performed by intervenors and utilities

This review could be combined with the independent review described in the previous section.

OEB Interpretation Bulletins and Advisory Functions

Similar to the Ontario Securities Commission, the OEB should be required to perform an advisory function for utilities and market participants to promote compliance and efficient outcomes. The OEB should also be required to publish interpretation bulletins to avoid ambiguity which increases burden and regulatory lag. An independent review of similar cases and outcomes may help to reduce red tape and provide greater certainty for investment in energy infrastructure.

One example is in the area of Section 74 of the Ontario Energy Board Act as it relates to Service Area Amendments (SAAs). The OEB's last review of the filing guidelines of SAA's was in 2003. Since then much has changed in the distribution sector, specifically, the increased focus on sector consolidation.

The OEB initiated a consultation to discuss Mergers, Acquisitions, Amalgamations and Divestitures (MAAD) rate-making filing requirement and SAA's (EB-2014-0138), but no

changes were made to the SAA filing requirements. Many SAAs have been bogged down with multiple iterations to offers to connect, inaccurate comparable costs, and distributors that have different understandings as to what is included in "fully-allocated" costs to assess economic efficiency, thereby resulting in regulatory approval delays, at times up to a year in length. The delays frustrate the customer and hinder economic development on LDC boundaries.

Initiate a Review of the Affiliate Relationships Code

The OEB should undertake a review of the Affiliate Relationships Codes (ARC) for Distributors and Transmitters as well as the ARC for Gas Utilities. The last review of this regulation was in 2010, before the Renewed Regulatory Framework was put in place. Further, in the case of the ARC for electric utilities, many of the current rules have not changed substantially since Ontario's original market restructuring/opening in 2002. Over this period, there have been significant changes in Ontario's energy market, and the ARC was designed for a situation and structure that does not exist anymore.

The objective of the review should be to provide greater clarity and certainty for both utilities and non-utility energy services providers that all parties are competing on a level playing field and that customers are protected and can achieve optimum potential benefits in rapidly changing and increasingly competitive energy markets.

Materiality for Asset Divestitures

Section 86 of the OEB Act requires that a distributor make an application to the Board for the disposition of any asset used to serve the public. This type of application can take several hours to prepare and review and requires more resources to obtain regulatory approval at times than the asset is worth. It would be helpful to amend the statute by specifying a dollar amount materiality threshold for asset sales, as there is in section 2.0.8 of the OEB's Chapter 2 Filing Requirements for Electricity Distribution Rate Applications.

Cancel OEB Governance Initiative

The OEB is currently in the process of implementing new mandatory governance reporting and record-keeping requirements for rate-regulated utilities, including natural gas distributors, electricity distributors, electricity transmitters, and Ontario Power Generation.[2]

[2] https://www.oeb.ca/industry/policy-initiatives-and-consultations/development-corporate-governance-guidance-oeb-rate

This new area of regulation is duplicative of other existing government requirements through the Ontario Business Corporations Act, the Environmental Protection Act, and, and in some circumstances with Securities and Exchange Commission governance requirements.

A recent paper by Robert Warren provides an excellent critique of this proposed new addition to regulations. Among his findings are the following:

- The OEB's jurisdiction with respect to guidance on governance is, at best, questionable
- At the most basic level, playing any role with respect to governance would serve no purpose
- The OEB has no expertise in governance which would enable it to add anything useful to what is already well established
- Playing some role in the governance of rate-regulated utilities would serve no public policy goal. On the contrary, playing such a role would be contrary to good public policy[3]

Update OEB's Leave-to-Construct Thresholds

Currently, the legislative (Sections 90 (gas) and 92 (electricity) of the OEB Act) and regulatory (Section 6.2 of Ontario Regulation 161/99 (electricity) and Section 3 of Ontario Regulation 328/03 (gas)) thresholds for having a leave-to-construct (LTC) proceeding are based on factors such as projected cost ($2 million), length of transmission line (20 km for gas; 2 km for electricity), pipe size (12") and pressure (operating at over 2,000 kPa).

The OEA recommends an increase the thresholds to, for example for a gas pipeline, $10 million in cost, line length to 50km, and the pipe size requirement to 16" to reduce the number of regulatory applications required, reducing the regulatory burden on the utilities, ratepayers and the OEB. This could be bolstered by delineating higher thresholds only for "proven operators" with an established track record of safe delivery (e.g. $5 million threshold for operators with $100-$500 million in annual distribution revenues and $10 million threshold for operators with annual distribution revenues above $500 million). These could also be automatically subject to periodic reviews of threshold levels (e.g. every 3-5 years), which could help counteract inflationary pressures over time. The OEB would maintain oversight on all capital projects but

[3] Robert B. Warren. *Regulating Utility Governance: An Analysis Of The Ontario Energy Board's Role.* Mowat Energy. University of Toronto. September 2016.

smaller projects would be managed on a post construction basis rather than having a public proceeding.

Reduce Frequency of CDM/DSM EM&V Reviews

Currently Evaluation, Measurement & Verification (EM&V) costs for conservation and demand management programs can add up to 3 to 5 percent of costs. The OEA believes that program costs can be reduced by reducing the frequency of EM&V reviews for stable programs where savings benefits are already highly accepted. The OEA estimates that annual EM&V costs for the current conservation framework could be reduced by about $10 million with a rescaling of EM&V costs to better match the benefits they provide.

Customer Rate Structure Flexibility

Ontario's current regulatory system does not give LDCs the flexibility to offer choice in rate structure to customers based on customer engagement and behavior. This regulatory restriction should be reviewed to allow LDCs to offer more choice to customers to lead to greater customer satisfaction.

Streamline Environmental Assessments

Individual and class environmental assessment processes should be streamlined in order to reduce timelines and improve clarity on what is required from proponents at the outset. An efficient process is necessary for proponents to plan – both for new builds and upgrades to existing facilities – and to ensure that critical infrastructure is placed into service in a timely manner, in order to serve businesses and customers across the province.

Remove Barriers to Early Access to Land

Section 98 of the OEB Act, (Right to Access Land) allows access to land only to someone who has either obtained s. 92 (leave to construct) approval or has applied for s. 92 approval for a project on a specific route that has been established through approval of the MOECC. Those requirements prevent early access for the purpose of conducting environmental studies (geo-technical studies, species studies, land-surveys, etc.) that would be helpful to determine the best route. The OEA therefore recommends that s. 98 authorization be granted to transmitters who have not yet applied for leave to construct, provided that they undertake to apply within two years after accessing the land.

Facilitate Incremental Customer Growth

Currently, the Distribution System Code (DSC) and Transmission System code (TSC) prescribes that a customer pay up front for their connection costs. The OEA recommends that LDCs and transmitters be given the option and flexibility to offer customers alternative connection cost payments choices. For example, this could be done through the application of a time bound fixed rate surcharge applicable to only the customer being connected until such time as the equivalent value is recovered with the proviso that utilities can be assured of cost recovery. Removing this prescriptive regulatory requirement would help boost economic activity in Ontario and also increase load, which has the benefit of lowering costs for other customers.

Allow Suite Metering of Heat for Electrically Heating Buildings

Section 40 (3) (b) of Regulation 389/10 under the *Energy Consumer Protection Act, 2010* explicitly prevents a suite meter provider from billing for electric heat where the primary heat source is electricity. Suite metering is widely accepted to lead to significant reductions in electricity consumption when residents become responsible for their own consumption. This regulation makes it impractical to suite meter many electrically heated buildings, as the wiring structure of the buildings does not allow for cost effective separation of heat and other electricity consumption in the suite. In addition, the exclusion of heat from metering means the behavioral change benefits associated with suite meter do not accrue to the largest source of energy consumption in the suite, the heat. This OEA recommends that this restriction be removed.

Remove Building Code CHP Limitations

Ontario Building Code Supplementary Standard SB-10 (SB-10) came into force on January 1, 2017. SB10 embedded emissions requirements in the building code, whereas previously the code was based on safety. These changes, made in conjunction with Green Energy Act initiatives, restricted the ability to use combined heat-and-power (CHP) for energy efficiency and cost effectiveness purposes. This equates to a barrier for investment in critical infrastructure that communities rely on. For example, using clean and affordable natural gas, Markham District Energy (MDE) has provided heating, cooling and electricity service to the southern Ontario city since 2001. MDE's heating and cooling system reliability rate exceeds 99.998%, and the company hasn't experienced one moment of natural gas interruption during those 15 years of operation. During Ontario's 2013 ice storm, which left 300,000 Ontario households without power, seniors and neighborhood residents stayed at the Hilton Markham—which, as an MDE customer, saw no disruption in power. The OEA is very supportive of initiatives designed to reduce emissions at a low cost. However, CHP

can be part of a strategy to in fact reduce GHG emissions while bolstering critical infrastructure resilience in Ontario and help customers lower their costs at the same time. For this reason, the OEA recommends that these changes be removed.

Remove Onsite Operating Engineer Requirement

Ontario Regulation 219/01 under the *Technical Standards and Safety Act, 2000* currently requires the presence of an onsite operator engineer creates a financial barrier to the adoption of CNG as it adds significant incremental cost to station operations. These requirements are outdated and do not reflect the automated systems in use today. Ontario is one of the last North American jurisdictions that has not amended these regulations. Amendments are already drafted with TSSA that would allow for multiple options (e.g. increased technology solutions rather than operators). The OEA recommends that the regulations be amended to incorporate advances in systems / technology and align with other jurisdictions.

Clarify the Intent of the Ontario Energy Board Act with respect to Competition

Under the Ontario Energy Board Act the Board's objectives include, among other items:

1. To facilitate competition in the sale of gas to users.

2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.

3. To facilitate rational expansion of transmission and distribution systems.

In recent years, the Board has conflated the competition in the sale of gas, which is intended to reference the sale of the competitively-priced gas commodity, with the rational expansion of transmission and distribution systems, which are natural monopolies that benefit consumers through economies of scale. In support of this, see the October 31, 1985 *Agreement on Natural Gas Markets and Prices*, signed by the Government of Canada and the gas producing provinces of B.C., Alberta and Saskatchewan. This replaced government-controlled natural gas pricing with market-determined prices, and separated sales of gas from sales of transmission services by establishing open access for shippers on natural gas pipelines. Restrictions on exports from Canada were also relaxed, further opening the U.S. market to Canadian natural gas producers.

As well, it is difficult to understand how, on the one hand, the Ontario Government is actively encouraging consolidation of the electric LDC's, while the Board is

encouraging the opposite with respect to gas. The current process to compete for gas franchises is time consuming, not necessarily equitable, expensive and there is no evidence that the process benefits the consumer. In particular, incumbent utilities are prevented from including the economies of scale and lower incremental costs they incur to serve the customer, and are required to use fully allocated costs, so that new entrants can more easily compete with them. The OEA recommends that if competition for gas distribution franchise areas is to continue that OEB be required to run truly equitable competitions that provide a realistic opportunity for overall ratepayer benefit while enabling all competitors to act as they would in a real competitive market.

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Let's unravel complex energy challenges, together.