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MEMO

To: Serge Imbrogno **From:** Vince Brescia

Date: September 21, 2017 **CC:**

Subject: Long Term Energy Plan (LTEP) Directive and Regulatory Burden

Further to our recent meeting, the OEA has given some thought to the opportunity to offer recommendations on a possible LTEP Directive that will positively reinforce the government's objectives, as they relate to cost efficiencies in the electricity sector and reductions in undue regulatory burdens. Given the short timeframe remaining to finalize the LTEP, this note is deliberately brief. However, we would be happy to expand on any of the points and background should you find this to be of interest.

GOVERNANCE AND ACCOUNTABILITY FOR AGENCIES

At our meeting, you expressed concerns about prescriptive directives to independent agencies and regulators. The OEA is strongly supportive of good governance, maintaining and protecting the autonomy of regulators and agencies designed to be independent.

At the same time, we recognize that the government is responsible for setting public policy objectives, prioritizing those objectives for agencies and regulators, and in holding regulators to account for meeting stated public policy objectives. For example, in its recent report *Governance of Regulators' Practices*, the OECD states that "formal accountability is fundamental, as regulatory agencies have significant powers, and their decisions affect investment decisions, property rights, financial returns, fees and charges paid by users."[1]

Examples from Other Jurisdictions

The United States and the United Kingdom offer useful examples of how the government can issue direction to regulators regarding how they discharge their responsibility to ensure both the independence and accountability of the agencies.

The United Kingdom has the *Regulatory Enforcement and Sanctions Act 2008*. Part 4 of the Act, created a duty that requires regulators to review their functions, not to impose unnecessary burdens, and unless disproportionate or impracticable, to remove burdens that are found to be unnecessary. Regulators that are subject to the duty must report on progress annually. The duty

[1] OECD (2016). *Governance of Regulators' Practices: Accountability, Transparency and Co-ordination*. The Governance of Regulators, OECD Publishing, Paris.

applies to The Office of Gas and Electricity Markets (OFGEM) and other regulators. The Act has resulted in OFGEM undertaking annual Simplification Plans. In 2016, the UK government also undertook a *Cutting Red Tape Energy Review* that asked businesses, trade associations and industry experts to tell them "*where regulation causes barriers to growth, innovation and productivity in the energy sector*."

In the United States, regulatory reform has been undertaken by way of Executive Orders. For example, in the United States, Executive Order 12866—Regulatory Planning and Review, issued by President Clinton in 1993, stated the following:

> With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public.
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> In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.

In 2011, President Obama issued Executive Order 13563 -- Improving Regulation and Regulatory Review that was supplemental to and reaffirmed the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866. The order outlines how a regulator system should "identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends" and how "it must take into account benefits and costs, both quantitative and qualitative."

Avoid Prescriptive Directives

As mentioned, the OEA highly values the independence of regulators. Prescriptive directives are incompatible with an independent regulator. In the past, there have been occasions where the Ministry of Energy has issued prescriptive directives to energy sector agencies, such as the OEB and IESO. The stability of the sector is based on its ability to rely on the independence of the regulator. The oversight of the sector is highly disrupted by Ministerial directives that change the course of policy or introduce new policies.

For example, the MOE's 2010 Smart Grid directive to the OEB set out three objectives for the development and implementation of smart grid (with parameters for each objectives) as well as directing the OEB to be guided by ten policy objectives when evaluating smart grid investments. Prescriptive directives like the one cited above impede the independence of the regulator to discharge its statutory responsibilities.

GOVERNMENT DIRECTION / POLICY RATIONALE

In keeping with good governance, it is appropriate for the provincial government to outline social, environment and economic policies and hold its agencies to account for meeting the objectives of those policies.

Ontario Fair Hydro Plan (OHFP)
With the recently released OFHP, the government outlined its desire to pursue cost efficiencies:

> The OEB will identify opportunities for cost efficiencies by…reviewing business cases behind its regulatory requirements to reduce red tape and eliminate costs that LDCs indicate are creating pressures on operating expenses.

To date, with respect to the "Energy Sector Efficiencies" component of the OHFP, no further direction has been issued by the government to the OEB nor has the OEB initiated any processes directly in response to the OHFP. It would be appropriate for the government to issue a directive setting out its objectives and expectations for the "Energy Sector Efficiencies" component of the OHFP through the LTEP.

Red Tape Reduction
The Ontario government has outlined a clear objective to reduce red tape in Ontario. The Red Tape Challenge is a clear example where the government has outlined the objective of improving regulations to better support businesses and protect consumers in Ontario.

Related to this, the recently introduced *Reducing Regulatory Costs for Business Act, 2017* is enabling legislation and the legislation would enable the Government to make regulations to require ministries and other prescribed entities to do a number of things to reduce the burden on business, including, offsetting any new administrative costs imposed on business, creating less onerous compliance frameworks for small business and using international standards when developing new regulations.

These two initiatives further reinforce the government's desire to ensure regulations are efficient and effective.

System Cost Savings
The government has indicated publicly that it is reviewing all aspects of our energy system to find cost savings – for opportunities to "bend the cost curve". Regulatory oversight, left unchecked or unassessed, can increase costs in the system and reduce access for consumers to the most cost efficient options.

OUR PROPOSAL

The OEA proposes that any LTEP directive to the OEB, consistent with good governance principles by being high level and not prescriptive, contain the following request:

- To meet the government's policy objectives for cost efficiency in the energy sector and for reduction of red tape, the OEB should annually provide a public report on its regulatory efficiency. This report should detail the OEB's implementation plan, efficiency and effectiveness in the following areas:
    - Applying cost-benefit analysis to any new proposed policy or regulation, including disclosure of the data and methodology used;
    - Assessing and reporting on the cost to businesses, stakeholders and consumers of existing regulations and assessment for their ongoing necessity;
    - Identifying and utilizing the most effective, most innovative, and least burdensome tools for achieving regulatory objectives;
    - Reviewing the volume and complexity of information requests and impact on regulated businesses;
    - Discussing measurements of engagement of stakeholders on new policy and regulatory initiatives; and
    - Providing a summary of the stakeholdering process used to develop the above-mentioned annual regulatory efficiency report.

Thank you for your consideration of these recommendations.