

Hydro One Oversight

April 16, 2015

Hydro One is subject to requirements of the *Business Corporations Act (Ontario)* (OBCA) and the *Securities Act* (Ontario). This regime would continue to apply to Hydro One after the initial public offering (IPO).

In addition, the government intends to place restrictions on Hydro One and outline the relationship between the province and Hydro One with respect to the Hydro One board of directors through a governance agreement and proposed legislation.

Ontario Energy Board Enhancements

The Ontario Energy Board (OEB) is a quasi-judicial economic regulator of the province's energy sector, including economic regulation of privately held utility companies. The OEB's roles and responsibilities include consumer protection, reviewing and approving distribution and transmission rates, and licensing distribution and transmission companies, including Hydro One.

The government intends to introduce legislation that would enhance the OEB's powers to continue to protect electricity ratepayers with respect to cost, consumer protection and reliability. These changes would provide the OEB with:

- Stronger compliance and enforcement powers by increasing penalties to companies that are not complying with the OEB's rules and directions
- Enhanced ability to ensure reliability and continuity of service if distribution or transmission companies are unable to fulfil their licence obligations
- Enhanced oversight for ensuring best practices on utility consolidation activities
- Stricter oversight of retailers and more protection for consumers who sign energy retail contracts.

The OEB is also planning to move forward with an initiative to increase consumer advocacy by giving consumers a direct voice in OEB hearings and proceedings.

Dedicated Hydro One Ombudsperson

The province would require Hydro One to create a dedicated Ombudsperson, similar to those found at other public companies. The Ombudsperson would be able to receive and investigate customer complaints.

Governance Agreement and Legislative Provisions

In order to strengthen long-term performance and generate value for Ontarians, the government intends to broaden ownership of Hydro One through an initial public offering. The Ontario government would remain the largest shareholder and no other shareholder or group of shareholders would be permitted to own more than 10 per cent. As a result the government would retain de facto control. In addition:

- The Government of Ontario would be prohibited by law from taking steps to reduce its common share ownership below a 40 per cent threshold.
- Hydro One's head office, Ontario grid control centre, CEO, and substantially all strategic decision-making management and functions would be maintained in Ontario.

- At least 25 to 30 per cent of the IPO would be made available to individual and retail investors.
- Hydro One could not sell substantially all of either the transmission or distribution assets regulated by the OEB.

Board of Directors

The governance agreement between Hydro One and the province would provide the government with the authority to:

- Elect the Hydro One board of directors prior to the IPO.
- Nominate 40 per cent of the Hydro One board of directors post-IPO.
- Remove the entire board of directors with or without removing the board chair.
- Reject board nominees if they do not meet the requirements outlined in the governance agreement.

OBCA and Canadian Securities Law Requirements

As an OBCA company subject to Canadian Securities law, Hydro One would continue to comply with rigorous governance requirements that include:

- Disclosure of board-approved annual financial statements along with quarterly updates
- CEO and CFO Certifications and Associated Controls certifying that there are no misrepresentations in the annual or quarterly materials
- Shareholders' meetings requirements and rules
- Disclosure requirements with respect to management circulars (including information about senior management, such as share ownership, any indebtedness to the company and any interest in material transactions) as well as compensation circulars (executive compensation disclosures including shares awarded, perks and incentives)
- Event-driven disclosure requirements to issue material change reports.

Securities Act (Ontario) Requirements

Hydro One is on the Ontario Securities Commission's list of reporting issuers of debt securities. It is also subject to the continuous disclosure standards and requirements of the *Securities Act* (Ontario). Under this act, it is required to file financial, management and compensation information with the Ontario Securities Commission.

OEB Rate Filing Process

The OEB's objects and powers are set by the *Ontario Energy Board Act, 1998* (OEBA).

One of the OEB's key goals is to protect the interests of consumers with respect to prices and the reliability and quality of electricity and natural gas service across Ontario.

It fulfils this mandate by reviewing and approving the rates charged by local distribution companies (LDCs) and transmitters. LDCs and transmitters must submit rate filings regularly with the OEB to ensure that their costs are prudent and allocated appropriately and that the rates they charge consumers are adjusted as needed. In reviewing costs and setting rates, the OEB uses an open and transparent process that allows the public and interveners to review and provide input to the rate filing process.

Transition of Oversight

The transition period from a government business enterprise to a publicly held company for independent Officers of the Legislature will be clearly and transparently described in proposed legislation. This would ensure that independent Officers of the Legislature could continue any work they have currently underway. In order to implement this transition, amendments to the certain acts would be required. Specifically:

- The Ontario Ombudsman's oversight would cease at Royal Assent, and the Ombudsman would have six months after Royal Assent to conclude outstanding investigations.
- New *Freedom of Information and Protection of Privacy Act* requests would cease at Royal Assent, but Hydro One and the Information Privacy Commissioner would have six months after Royal Assent to conclude any outstanding requests and appeals.
- The Ontario Auditor General's oversight would cease at Royal Assent, and the Auditor General would have six months after Royal Assent to conclude any outstanding special audits and investigations. The Auditor General would also continue to receive information for the purpose of preparing the audit report included in the province's Public Accounts.

Governance Enhancements

As the single largest shareholder the government could exercise the following powers:

Board of Directors: The government has the power to unilaterally remove all (but no less than all) of the members of the board. This does not include the chair, which the Government may remove at its discretion.

Board Nominations: The government can nominate 40 per cent of the members of the board. Board members must meet pre-defined qualifications that include independence, commercial experience and commensurate expertise. The government would be entitled to reject non-provincial nominees if it determines they do not meet these qualifications. Once elected, these members have a duty to act in the best interests of the company.

Modernizing Controls: Officers of the Legislature do not have jurisdiction over publicly traded companies, and so would not have jurisdiction over Hydro One. The government would require a new dedicated Hydro One Ombudsperson to protect the interests of consumers.