Mechanisms to protect the public interest and ensure appropriate transparency after changes to Hydro One ownership

ISSUE

- After broadening the ownership of Hydro One, government will continue to have oversight and governance mechanisms to protect the public interest.

HIGHLIGHTS

- Key areas of oversight and control over the post-IPO Hydro One would include:
  - *Regulatory Oversight:* the Ontario Energy Board (OEB) will continue to regulate Hydro One's rates and the powers of the OEB will be further strengthened to ensure customers remain protected.
  - *Governance:* In addition to government appointing the initial board, legislation and governance agreements will ensure that government will continue to nominate 40% of future boards and will have the power to remove the entire board. In addition the head office, key strategic decision making functions will remain in Ontario, and Hydro One would create a company specific Ombudsperson office. Finally, Hydro One would not be permitted to directly or indirectly sell, lease, divest or otherwise dispose of all or substantially all of the business, property or assets related to its transmission or distribution systems that are regulated by the Ontario Energy Board.
  - *Energy Policy:* The government has and will continue to have various mechanisms for building priority transmission projects.
  - *Planning Requirements:* Independent Electricity System Operator (IESO) can require the provision of information from transmitters and distributors, including Hydro One, necessary to carry out its planning functions.
  - *Business Corporation Act, Ontario Securities Exchange (OSC) and TSX requirements:* Hydro One as a business incorporated under the Business Corporation Act (Ontario), and listed on the TSX, regulated by the OSC will be required to meet stringent governance requirements and meet all disclosure standards.

BACKGROUND

Regulatory Oversight

- The OEB's mandate is to act as a fair, impartial, and independent regulator, and its objects and powers are set by the Ontario Energy Board Act, 1998 (OEBA), which include:
  - The objective to "protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service"
  - Responsibility to set just and reasonable rates and to licence electricity transmitters and distributors

- The ability to impose licence conditions on LDCs and transmitters, including the authority to make rules for electricity participants through codes and other guidelines
- The OEBA also requires OEB approval involving change in ownership or control of a distribution or transmission system
- The authority to impose administrative penalties and fines on LDCs and transmission companies

- The Ontario Energy Board (OEB) is a strong regulator, and the Government intends to further enhance its powers to ensure customers are protected:
  - Implementing the OEB's recommendations on enhancing the Energy Consumer Protection Act, with respect to energy retailers by banning door to door sales.
  - Strengthening emergency provisions to ensure continued reliable service to customers
  - Strengthening compliance tools by increasing penalty limits
  - Increase OEB's oversight of utility transactions by reducing the threshold for OEB review of transactions down from 20% to 10%
  - To ensure that critical transmission infrastructure is built, Government through an LGIC OIC could deem certain transmission infrastructure as a "public good"in the "public interest". This would mean that these projects would not need to undergo a "needs" test by the OEB
  - Allowing for greater consumer advocacy and consumer representation in rate hearings and other OEB proceedings

Governance

- A combination of new legislation and a shareholder agreement between government and Hydro One would include the following provisions:
  - Government could remove the Board: Government could vote to remove all, but no less than all, of the members of the Board (with or without removing the Chair) as long as the Province is the majority shareholder.
  - Post-IPO, Government could nominate 40 percent of Board: Government could nominate 40 percent, or 4 out of 10 of the members of the Board, or its pro-rata interest, whichever is less.
  - Government could reject other Board nominees: Government, acting reasonably, would be entitled to reject non-provincial nominees if it determines they do not meet the qualifications and it provides written reasons for that determination.
  - The Head Office, all strategic decision-making functions and control centre for Ontario operations would remain in Ontario.
  - 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.

- Hydro One would not be permitted to directly or indirectly sell, lease, divest or otherwise dispose of all or substantially all of the business, property or assets related to its transmission or distribution systems that are regulated by the Ontario Energy Board.

Energy Policy and Electricity System Planning

- The IESO requires detailed system information to undertake its electricity system planning role, including information held by transmitters and distributors (e.g. estimated service life of assets, detailed protection schemes etc.)
- There are a variety of mechanisms to ensure that sufficient information is provided by Hydro One (as well as other transmitters and distributors) to the IESO to support system planning.
- Information Sharing Tools include:
    - Subsection 70 (7) of The Ontario Energy Board (OEB) Act sets out that all licensees must provide such reasonable information to the IESO as the IESO may require, in the manner and form specified by the IESO.
    - This empowers the IESO to request information directly from Hydro One. The information would then be incorporated into the IESO's planning advice as it is provided to the Ministry, such as in an LTEP.
    - The Ontario Energy Board Act (OEBA) also allows the OEB to request any information they require from transmitters and distributors as a condition of their licence.
    - The OEB amended the Transmission System Code (TSC) in 2013 to require Hydro One to lead and participate in the regional electricity planning process, including gathering and providing planning information, participating in plan development, and monitoring and reporting activities.

Business Corporation Act, Ontario Securities Exchange (OSC) and TSX requirements:

- Disclosure Obligations Imposed Under Canadian Securities Laws and the *Business Corporations Act (Ontario)* include:
    - Quarterly and Annual Disclosure including board approved annual financial statements; Annual Information Form; and Management Discussion and Analysis (MD&A);
    - Event-driven disclosures in a timely manner; and
    - Executive compensation and information about senior management share ownership
- The company must meet rules established by the Toronto Stock Exchange:
    - Requirement that Board members receive majority of votes in favour to secure election;
    - Shareholder approval of transactions that materially affect control;
    - Material information disclosures and clarifying announcements; and
    - Notice of events such as issuance of capital, dividends, options.