Mary Ellen Beninger

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To:	Karen Evans; John Bozzo; Neil Brodie; Martine Band
Cc:	Sylvia Kovesfalvi; Tara Brautigam; Alexandra Day; Paul Crawford
Subject:	EOD OEB Summary: Wednesday, April 18, 2018.
Attachments:	OEB Media Request -Globe and Mail- IESO Fees FINAL AND COMPLETE 04 18 2018.docx

Good Afternoon,
There was one Media Inquiry to the OEB today.
Matthew McClearn of the Globe and Mail asked about the OEB and IESO. "I have a few quick questions about the Independent Electricity System Operator (IESO). As you may know, the IESO holds itself as a rate-regulated entity.
Questions:

- **What regulatory authority concerning rates does the Ontario Energy Board wield over the IESO?**
- **What rates does it set?**
- **What is the Ontario Energy Board's role in the Fair Hydro Plan?**

Our response is attached.

And in the news-

- There was a pre-Cabinet scrum and Energy Minister Glenn Thibeault was questioned about the FAO report . (Transcript from scrum below; No media pick up yet)
- Lexology, an energy blog reported on the OEB's Draft Report on Corporate Guidance for Regulated Utilities (IN FULL BELOW); and
- BC plans to ask the Appeals Court to weigh in on the Trans Mountain pipeline jurisdictional battle (Full CBC article below)

Questions for Minister Thibeault:

- Q. (Joined in progress) …you know, again - I always look to you know, have conversation that continue to find ways to help ratepayers. But our market renewal process that is currently underway with the IESO is allowing for our neighbours to look at the system and be able to bid in to actually ensure that we can make sure to keep clean power coming to the province and making sure that it's affordable.

- Q. Reeves: Did the province have any cost estimates of what they were going to save with this kind of deal and where does 38 million in savings fit into the Government's expectations of what they get out of it?
- So, our initial estimates through the report from IESO said that we would have 70 million dollars in savings. The financial accountability officers talking about 38, he also said there's really no material difference between the two. But you know our initial assessment that we got from the IESO is 70 million.

- Q. Hains: Something like 32 million dollars between 70 and 38 sounds fairly material to a lot and to a lot of ratepayers. Where's that gap come from?
- So again, as you know, you need to talk to the IESO about all of those intricate details. They are the ones that were talking about 70 million, but we're not talking about costs to the system. What we're talking about here are savings to the system. And you know, what we were really looking for in this agreement was to find ways that we didn't have to fire up many of our natural gas plants during our summer seasons when things are hot. And so you know the financial accountability officer really recognize the importance of this. And when we can save one million GHGs by saving two point three terawatt hours that we can share with one another. It is a historic agreement that did provide the benefits that we wanted as a province.

Lexology: OEB Issues Draft Report on Corporate Governance Guidance for Regulated Utilities
On March 28, the Ontario Energy Board ("OEB") issued its Draft Report on Corporate Governance Guidance for Rate-Regulated Utilities (the "OEB Draft Report"). The OEB Draft Report is another milestone in the OEB's efforts to develop a "Guidance" on corporate governance for regulated utilities; specifically, Ontario Power Generation, electricity distributors and transmitters and natural gas distributors.
As noted in our previous article on the OEB's Draft Corporate Governance Guidance for Regulated Utilities, the OEB intends that the Guidance will deliver outcomes established in the Renewed Regulatory Framework, and that it will generate a more consumer-centric regulatory framework by promoting better planning and more efficient performance by utilities.
The OEB Draft Report follows publication of the KPMG Report, dated April 29th, 2015, commissioned by the OEB, which contained a jurisdictional review of leading corporate governance practices in the energy sector, as well as release of the Elenchus Report, which provided the OEB with a set of recommendations on guidance regarding corporate governance.
The OEB Draft Report is intended to encourage quality decision-making and accountability in areas of the utility business that the OEB considers crucial for achieving regulatory goals essential to the Renewed Regulatory Framework, namely: (i) alignment of shareholder and customer interests; (ii) prudent decision-making with proper consideration of customer interests; (iii) spending and investment discipline (capital spend, OM&A, major transactions); (iv) suitable financing; and (v) excellence and continuous improvement in utility performance.
To this effect, the OEB Draft Report sets out preliminary recommendations on the following four aspects of utility governance:
1. Degree of Board Independence
The OEB expects utility boards to be made up of a majority of independent directors, based on existing Affiliate Relationships Code ("ARC") requirements. The OEB's view is that the quality of governance is likely to be improved if a majority (over 50 percent) of directors are independent, which contrasts with the current requirement established by the ARC that one-third of directors be independent.
Notably, the OEB believes that a minimum of 5 directors is required to provide a meaningful number of independent directors.
Further, the OEB is concerned that if shareholders retain significant decision-making authority, there will be less scope for the board of directors to exercise independent judgment, particularly where restrictions affect the ability of directors to act in the best interests of the utility and its customers. Accordingly, the OEB Draft Report recommends that the inclusion of such restrictions in shareholder declarations or similar instruments be avoided.
2. Director Skills
The OEB Draft Report states in respect of director capabilities that the boards of rate-regulated utilities as a whole must possess the range of skills required to execute their governance function and effectively discharge their duties. Moreover, the OEB Draft Report recommends that a matrix approach be used to compile an inventory of director skills, as "[d]irectors with appropriate skills and experience provide greater confidence in the board's oversight of a utility's financial viability, effectiveness, reliability and safety, as well as in its ability to deliver desired outcomes."
3. Board and Committee Structures and Functions

The OEB Draft Report offers regulated utilities three recommendations regarding board and committee structures and functions: (i) boards should ensure that they are structured to provide oversight of key functions of the utility business; (ii) committees of the board are an effective means of achieving appropriate oversight of key functions; and (iii) committee members should possess the requisite skills to effectively discharge their responsibilities.

Based on the skills and functions highlighted in the KPMG Report and Elenchus Report, the OEB Draft Report recommends that utility boards be involved in the following key functions:

Strategic planning;
Asset planning;
Audit;
Health and safety functions;
Executive compensation;
Risk assessment;
Regulatory and public policy activities;
Customer relations and human resources; and
Succession planning.

Although the OEB Draft Report does not provide specific guidance on governance structures, the OEB expects that utility boards will be able to demonstrate that the skill-sets of directors are adequate in accomplishing their roles and responsibilities. As well, the OEB expects that a utility board will be able to describe how it exercises oversight of each assigned committee.

4. Supporting Documentation and Practices

Lastly, the OEB Draft Report provides four recommendations in respect of supporting documentation and practices: (i) utility boards should have a written mandate and any committees of the board should have a written charter; (ii) the mandates of boards and any committees should be documented; (iii) boards should have a written code of conduct; and (iv) boards should provide orientation for new appointees and continuing education and/or other methods of enhancing the skills of all directors.

The OEB is confident that written definitions and expectations will provide clarity and a shared understanding of the roles and responsibilities of the board of directors, and will bring transparency to the utility's corporate governance.

<u>Comments</u>

The OEB Draft Report is consistent with the G20/Organisation for Economic Co-operation and Development's ("OECD") Principles of Corporate Governance, particularly in respect of the responsibilities of boards in exercising independent judgment regarding corporate affairs. For instance, the OEB's view that committees should be established to support the board in performing its functions echoes the recommendations of the OECD.

The OEB Draft Report also adopts the primary recommendations of the Elenchus Report. For example, the OEB Draft Report affirms the Elenchus Report's suggestion that a utility board should have a majority of independent directors, as well as its recommendation that utility boards adopt a written mandate, along with a written code of conduct for directors, officers and employees.

The Elenchus Report provides detailed guidance on implementing its recommendations for utility governance, such as the content that should be included in a board's written mandate and code of conduct, and which types of committees should be established. However, the OEB Draft Report provides high level recommendations without offering specifics.

In our view, the broad proposals set out in the OEB Draft Report are preferable from a stakeholder perspective, as they allow utilities to tailor the OEB's recommendations on corporate governance to their particular needs and priorities, depending on their mandate, size and the area that they operate within. Although the OEB's new reporting and record-keeping requirements will be mandatory for utilities, utilities will retain discretion over whether to adopt the OEB's guidance in their governance architecture and functions.

Overall, the OEB Draft Report continues to swing the pendulum away from shareholder control and more towards directors' independence. These guidelines do not distinguish between smaller utilities owned by a single municipality, larger utilities owned by multiple municipalities or, indeed, privately-owned but publicly-traded companies. Different balances between shareholder control and board independence may

be appropriate in different contexts.
Finally, there is little discussion in the OEB Draft Report regarding the governance structures between the regulated utility, on the one hand, and its holding company and unregulated affiliates, on the other. It may be time to revisit the Affiliates Relationships Code to modernize the governance principles contained in it.
Next Steps
Following the OEB's consideration of stakeholder comments on the OEB Draft Report, the OEB will develop its Final Report, and will issue detailed proposed amendments to the 3 Electricity Reporting and Record Keeping Requirements and the Natural Gas Reporting & Record Keeping Requirements: Rule for Gas Utilities, based on the Final Report.

CBC: B.C. to file reference case in fight against Trans Mountain pipeline project

British Columbia will file a reference case in the provincial Court of Appeal by the end of this month to determine if it has jurisdiction over the Trans Mountain pipeline expansion project.
Attorney General David Eby made the announcement Wednesday morning. "This process is about B.C.'s right under the Constitution to regulate against the deleterious impacts on the environment, on the economy, on the provincial interests — whether it's an inter-provincial project or a provincial project."
In Canadian law, governments submit a reference question to the courts to ask for an advisory opinion on a major legal issue. The filing is B.C.'s latest move in the ongoing deadlock between the western province and Alberta over the $7.4-billion project, which runs from Edmonton to Burnaby, B.C.
The federal and Alberta governments support the project, while B.C. says it's defending its coast from a potentially catastrophic oil products spill.
Earlier this month, Kinder Morgan — the U.S.-based pipeline builder — announced it was stopping any non-essential spending for the project. The company gave Prime Minister Justin Trudeau's government until May 31 to give a clear signal the project will proceed. After that, Trudeau called a last-minute meeting with Alberta Premier Rachel Notley and B.C. Premier John Horgan. The political leaders met Sunday in Ottawa to discuss the pipeline and the ongoing deadlock, but their positions remained unchanged.
The prime minister repeated Ottawa's commitment to ensure the project is finished, saying his government will hold private, financial talks with Kinder Morgan in order to move forward.
The federal government will be notified of B.C.'s intention to file a reference case, which will need to go through provincial cabinet before it's filed.
It's entirely up to the court to set a date for the hearing, so Eby couldn't say whether B.C. will have its day in court before Kinder Morgan's May 31 deadline.
However, the attorney general said the province deliberately chose to go to its own highest court in the interest of time — he said the government could have asked the federal government if it wanted to submit a joint reference question, in which case the issue could've gone straight to the Supreme Court of Canada, but that may have taken longer.
"One of the big factors in forming our decision to go to the Court of Appeal was our desire to get finality around this as soon as possible," Eby said. "As far as what we're able to do [on our own] by law, we're only able to go to the B.C. Court of Appeal."
Asked if B.C. would take the battle to the Supreme Court of Canada if it wasn't satisfied by the outcome in provincial court, Eby said the province would "cross that bridge when we come to it."

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