

Electricity Sector— Regulatory Oversight

Follow-up to VFM Section 3.02, *2011 Annual Report*

Background

The Ontario Energy Board (Board) is charged with overseeing the electricity sector, which provides an essential commodity while operating as a near-monopoly. The Board is responsible for protecting the interests of Ontario's 4.7 million electricity customers, and for helping to see that the sector is run efficiently and cost-effectively, and that it remains sustainable and financially viable.

At the time of our follow-up, in May 2013, the Board had about 170 staff and its operating costs for the 2012/13 fiscal year were around \$36 million (\$35 million in 2010/11), all of which are paid by the entities that it regulates. The Board sets prices for electricity and its delivery, monitors electricity markets, and approves the administrative costs of the Ontario Power Authority and the Independent Electricity System Operator.

At the time of our 2011 audit, electricity prices for the average Ontario consumer had risen about 65% since the restructuring of the electricity sector in 1999, and prices were projected to rise another 46% by 2015. In light of this, the Board's role of protecting consumers while setting rates that would provide a reasonable rate of return for the industry was all the more important.

However, a number of factors limited the Board's ability to perform these duties to the extent that consumers and the electricity sector might have expected.

In our *2011 Annual Report*, some of our more significant observations were as follows:

- The criterion that electricity bills be just and reasonable applies only to areas over which the Board has jurisdiction—only about half of the total charges on a typical bill. The Board can set rates only for the nuclear power and some of the hydro power produced by Ontario Power Generation (OPG), along with transmission, distribution and certain other charges. The other half of a typical bill is based on government policy decisions over which the Board has no say, and these costs are not subject to Board oversight. This includes the 50% of the electricity sold to residential customers that comes from other electricity suppliers and that, in total, constitutes 65% of the cost of the electricity component of the typical bill.
- Consumers can purchase electricity through their utility at the Regulated Price Plan prices set by the Board or through an electricity retailer that sets its own price. As of May 2013, about 7% of residential customers had signed fixed-price contracts with electricity retailers. These consumers could be paying 35% to 65%

more for their electricity than they would pay had they not signed those contracts. In the last five years, the Board has received 16,200 complaints from the public, the overwhelming majority of them about electricity retailers. Issues included misrepresentation by sales agents and forgery of signatures on contracts. Although the Board follows up on complaints, it has taken only a limited number of enforcement actions against retailers.

- In areas in which it has jurisdiction, the Board sets rates using a quasi-judicial process that requires utilities and other regulated entities, such as OPG and Hydro One, to justify any proposed rate changes at a public hearing. Many small and mid-sized utilities say the cost of this process—\$100,000 to \$250,000 per application—can be as much as half the revenue increase sought in the first place. These costs, generally incurred every four years, are recovered from consumers.
- Individuals or organizations wishing to participate in the hearings on behalf of consumers can obtain intervenor status, and can qualify for reimbursement of their expenses. However, many of the utilities and other regulated entities that have to reimburse the intervenors say the number of requests that they receive can be onerous, the cost of providing detailed information to the intervenors is high, and they want the Board to better manage this process.

We made a number of recommendations for improvement and received commitments from the Board that it would take action to address our concerns.

Status of Action Taken on Recommendations

Substantial progress has been made on implementing almost all of the recommendations we made in our *2011 Annual Report*. For example, the Board completed an internal review of its current processes as we had recommended, examining things such as rate-setting, reporting, and communications with ratepayers and industry participants. Information available on its website has been improved as a result. The Board also has engaged consultants to assist in its process review. This review has yielded a number of additional recommendations (to, for example, establish a standard process for rate applications with the necessary controls to minimize the instances of deviations and exceptions), and the Board has developed action plans to address these. Some changes have already been implemented and more are planned throughout the 2013/14 fiscal year.

The status of the actions that the Board had taken at the time of our follow-up is summarized after each recommendation.

CHARGES SUBJECT TO REGULATORY OVERSIGHT

Recommendation 1

To enhance the cost-effectiveness of its rate-setting process, the Ontario Energy Board should:

- *work with the regulated entities to address their concerns about the cost and complexity of the current rate-setting filing requirements and the impact on their operations; and*
- *better co-ordinate and evaluate intervenor participation in the rate-setting process in an effort to reduce duplication and time spent on lower-priority issues.*

Status

The Board has taken action to substantially address both parts of this recommendation.

The Board completed a comprehensive review of its rate-application processes with a view to improving their effectiveness and efficiency. The review considered the respective roles of staff, Board members, applicants and intervenors.

During the 2012/13 fiscal year, the Board identified a need for additional improvements to its rate-application process and engaged a consultant to assist with a review. The consultant met with groups of regulated entities, intervenors, Board members and staff to identify the most pressing issues. The consultant's recommendations were delivered in October 2012 and the Board has developed an action plan to address them.

Some initiatives the Board has under way that specifically address the concerns we raised in our 2011 Annual Report include the following:

- The Board created a checklist to help rate-applicants ensure that electricity cost-of-service applications are complete when they are filed. Having properly completed applications at the time of hearings should reduce the number of interrogatories and other rounds of discovery. The Board was also working on amendments to its filing requirements that would make clearer what must be filed and to eliminate filing requirements that are not material. The revised filing requirements were scheduled to be released in late 2013.
- The Board has been testing a number of different approaches to the discovery process for rate applications to help it determine the most efficient processes to use under different sets of circumstances. For example, it completed a pilot project where Board staff file interrogatories first, then responses are received from the applicants, and then intervenors file interrogatories. It found that this approach is most appropriate when there are significant technical issues on which Board staff would be taking the lead. Another pilot tested having Board staff submit their interrogatories once the applicant has provided a response to intervenors' interrogatories.

CHARGES NOT SUBJECT TO REGULATORY OVERSIGHT

Recommendation 2

To help ensure that the interests of consumers are protected with respect to those charges not subject to Ontario Energy Board (Board) oversight and regulation, the Board should:

- *encourage the Ministry of Energy (Ministry) and the Ontario Power Authority (OPA) to consult with it on a more timely basis with respect to the interests of consumers in all energy-supply and pricing undertakings by the Ministry and the OPA;*
- *work more proactively with the Independent Electricity System Operator (IESO) to address the high-priority recommendations from the Market Surveillance Panel (MSP); and*
- *clearly explain the reason for each charge on consumer power bills, identify the entity receiving the proceeds from each charge, and disclose whether the Board has any oversight role relating to the charge.*

Status

All three aspects of this recommendation have been substantially implemented.

The Board has been meeting with the Ministry on a monthly basis and with the IESO and OPA on a quarterly basis to review issues of common interest, including all energy supply and pricing undertakings of interest to consumers, and to share ideas and perspectives on energy supply and related issues. In addition, the IESO and OPA are included on several Board-sponsored working groups and other forums where their participation has been deemed appropriate.

In 2011, the Board began a correspondence with the IESO regarding the recommendations the MSP made in its report. It requested and received in writing the following information from the IESO:

- steps the IESO intends to take in response to any recommendations made to it in the MSP report;

- estimated timelines for completion of those steps; and
- whether, in the IESO's view, any actions or market rule amendments beyond those noted in the MSP's report should be taken.

The Board has undertaken a similar correspondence with the OPA regarding any MSP recommendations directed at that agency. Board correspondence with the IESO and the OPA regarding MSP reports and recommendations is available on the Board's website.

The Board has also taken steps to better educate consumers about the charges on their electricity bills. Following our recommendation, it has updated the explanation for each line item on the sample electricity bill on its consumer website to include the reason for the charge, the entity receiving the proceeds from the charge, and whether the Board has any oversight role relating to the charge.

CONSUMER PROTECTION

Recommendation 3

To ensure that consumers are protected and that they have the information they need to understand their electricity bills, the Ontario Energy Board should:

- *review its current educational and communication programs and make the appropriate adjustments to meet consumer information needs;*
- *consider initiating limited proactive compliance reviews focusing on high-risk areas;*
- *work with utilities to streamline reporting requirements, including the timing and frequency of reporting; and*
- *determine whether appropriate deterrent actions in those areas that have generated frequent legitimate consumer complaints can be implemented.*

Status

The Board has completed its review and is in the process of implementing appropriate adjustments to its consumer information materials. In 2012,

it reviewed its current communications strategy, examining best practices in the areas of regulatory and adjudicative communication, consumer education and engagement, and internal processes for dealing with consumer inquiries and feedback. The Board also engaged a consultant to conduct a review of its communications role as well as its external and internal communications tools and practices. The consultant delivered recommendations in January 2013 and the Board developed an action plan to address them. The Board implemented the first set of recommended changes during the 2012/13 fiscal year, adopting plain language for external communications and a visual storytelling approach to explain complex concepts. The Board expected many of the remaining changes to its communications approach to be implemented during 2013/14, though some changes, such as the redesign of the website, may take longer.

The Board also has made substantial progress in addressing our recommendation that it consider limited proactive compliance reviews focusing on high-risk areas. It engaged a consultant in September 2012 to support the development and implementation of a risk-based approach to compliance intended to increase consumer confidence by ensuring that retailers and marketers are following customer service and consumer protection rules. Under this approach, the Board should, for example, develop key performance indicators to ensure that actions taken to combat non-compliance in areas of high-priority risks are effective. The Board was also developing a compliance plan outlining initiatives for 2013/14 based on the high-priority risks that were identified in the risk assessment. Examples of the initiatives include certificate inspections, in-person sales inspections and review of marketing materials. It expected to complete the compliance plan by the end of 2013.

The Board has substantially implemented our recommendation that it work with utilities to streamline reporting requirements. In 2012 it completed a review of its reporting and record-keeping requirements for electricity distributors,

which looked at possible ways to make the process more efficient by reducing the amount of data that distributors are required to file with the Board. The review considered issues such as the timing and frequency of reporting, areas of potential redundancy, and areas needing clarification. In December 2012, the Board implemented a number of amendments to the requirements that resulted from this review that are available on its website.

Released in October 2012, the Renewed Regulatory Framework for Electricity report is to help guide the Board in setting rates for electricity distributors and transmitters, balancing the need for significant investment in the sector with consumer expectations for reliable service at a reasonable price. The Board's review of distributor performance and benchmarking in the context of the Renewed Regulatory Framework for Electricity is still ongoing, and at the time of our follow-up the Board was in the process of developing a scorecard to measure the performance of each distributor in several key areas, which it expected to implement by the end of 2013.

The Board has made substantial progress with respect to our recommendation on deterrence. In 2011, it created a dedicated complaints group within its Compliance & Consumer Protection business unit to analyze complaint data and identify areas or practices that are the subject of frequent complaints. A summary of complaint numbers and key issues is available on the Board's website.

The Board has also been using complaint analysis to identify best practices—for example, in cases where consumers whose requests to cancel their contracts were ignored by suppliers. According to the *Energy Consumer Protection Act* and the Board's code of conduct, the supplier must notify the energy distributor to cancel a consumer's contract within 10 days of receiving the consumer's notice of cancellation. The complaint analysis has also been used to prepare a procedural manual documenting the process analysts are to use to address instances of non-compliance, which the Board expected to complete by the end of 2013.

After the *Energy Consumer Protection Act* came into force in January 2011, the Board completed inspections of all active retailers and marketers in 2011 and 2012 to assess their compliance with applicable consumer protection rules. Where those inspections identified instances of non-compliance, the Board undertook enforcement action, which has resulted in administrative penalties totalling \$273,500. Information on enforcement proceedings that the Board has initiated is available on its website.

Performance Measures

Recommendation 4

To improve the reporting of the effectiveness and costs of its regulatory activities, the Ontario Energy Board (the Board) should develop more results-based or outcome-based performance measures that are aligned with its strategic objectives and mandate, and summarize and report all of the costs associated with the Board's regulatory processes.

Status

The Board has made some progress in improving the reporting of the effectiveness and costs of its regulatory activities by developing more outcome-based performance measures. It provided examples of initiatives to identify specific performance outcomes and determine how to best monitor them:

- The Board has included in its business plan a vision statement regarding the outcomes it seeks to achieve in the sector, a clear statement of the strategic objectives for each year of the three-year planning period, and a balanced scorecard. The scorecard is to focus on strategic initiatives and its results are to be determined by an independent auditor and published in the Board's annual report.
- The Board completed a policy evaluation and, at the time of our follow-up, was in the process of developing a systematic framework to monitor and evaluate the effectiveness of its policies.

Costs associated with regulatory processes were being summarized, reported and made publicly available on its website:

- Regulatory costs in respect of intervenors and the Board's incremental costs of proceedings are summarized in the Board's annual reports.
- Aggregate costs for intervenors are published every year. Costs for the 2011/12 fiscal year were posted on the Board's website in July 2012; costs for 2012/13 will be published by the end of 2013.
- Regulatory costs incurred by distributors are included under administration costs reported in the Board's annual yearbooks of electricity distributors.