

Sent via email: BoardSec@oeb.ca

April 27, 2018

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
P.O. Box 2319
Toronto, Ontario
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Re: Draft Report of the Board on Corporate Governance Guidance for OEB Rate-Regulated Utilities (Board File No.:EB-2014-0255)

Dear Ms. Walli,

Thank you for the opportunity to comment on the above noted document. The shareholders/owners of many local utilities are municipal governments and as such have a responsibility for the running of these utilities under the *Ontario Business Corporations Act*. Local Distribution Company (LDC) Board members, who are also members of a local government, are accustomed to working in an environment where accountability, transparency, an understanding of legal obligations and standards for behaviour are the foundation of their actions. Therefore, as the Association of Municipalities of Ontario (AMO) evaluates this report, it leaves us with some consternation and many concerns.

Principally, AMO is unclear what problem the OEB is trying to solve through this exercise. A study completed by the Ivey School of Business in January 2018 indicates that 62% of LDC Board members are 'independent' and not council members. Likewise, this study shows that 48% possess the skills generally sought by "skills based" boards. Naturally, the smaller LDCs rely more heavily on municipal council as board members and have fewer members representing the various professional skills. Given that most LDC boards already reflect the governance document recommendations, one wonders if better board governance and composition is really the issue.

There may be a few LDCs that require improved practices but this broad-brush systemic approach seems heavy handed. It is important to assess the values that are driving each board that appears to be making poor choices to understand how to resolve specific issues. AMO suggests that if there are utility boards that are not demonstrating best management practices that the OEB address these particular entities rather than attempting to play some role in governance of all LDCs.

THE BOARD

The OEB document suggests a specific number of board members be required. Again, this places the OEB in a position of dealing with granular management details which is not an appropriate role. Regarding the question of 'independence' it should be acknowledged that any and every type of board member comes with biases but are charged to take seriously their duties to that board. There must be a balance between independence and shareholder input on the LDC Board. Shareholders bring a valuable perspective which brings balance to skill based appointees. This allows for robust debate of the public good relating to the delivery of service. This balance will allow for localized, social enterprise opportunities in a way that a uniform board could not facilitate.

The guidance document suggests that shareholder agreements should be prohibited. This would be a step backward as these agreements are in place to avoid conflicts, set high level priorities and ensure a clear division of roles. They also meet the test of providing a transparent relationship which protects the interests of municipal taxpayers and rate-payers.

The report suggests that the OEB should have influence over board composition in terms of both numbers and skills. It seems overly interventionist and disrespectful of local Board and Shareholder capabilities to suggest the OEB would determine who can sit on a LDC board. On the other hand, LDC's identifying their board members and their skills is a good practice that demonstrates accountability and reflects best practices in governance. We note that many already undertake this practice.

BOARD MEMBER SKILLS

Board member skills should be broad so that the mindset does not become solely risk management. The voice brought by shareholders who sit on the board is equally valuable technical skill as it brings customer concerns to the table.

What is most needed are boards that are best positioned to meet the challenges of a time of rapid change, by virtue of their agility and composition, and also reflect a culture of asset management and optimization, while maintaining the unique culture of municipal LDC's as economic development and service delivery partners.

The OEB document would require increased reporting on board skills. However, the degree of detail the report represents, in our view, an inappropriate regulatory overreach. This is especially the case if the OEB sees a role in approving these credentials. These credentials are not a measure of due diligence. That said, public reporting of skills and experience should be part of normal LDC practice.

BOARD COMMITTEES

The guidance document specifies committee structures and skills-based membership on these committees. We would suggest that the OEB should focus on outcomes and

allow the LDC board to focus on functional issues. If there are specific deficiencies in outcomes, then the OEB should address those issues individually.

SUPPORTING DOCUMENTATION

Finally, the guidance document would require evidence of codes of conduct, mandates and orientation programs. AMO agrees these documents should be in place and available. Conversely, AMO cannot support LDCs be required to submit these documents as part of an application. This is not the level of management that is appropriate for the OEB. This is particularly of concern if it is the OEB's intent to review or approve these documents.

While awareness and training on best management practices for governing local utilities, including those presented in the report, is very valuable, the implication that the OEB would be directly or indirectly supervising is not appropriate. Instead, the OEB should focus on outcomes related to its mandate. Furthermore, the OEB can fulfill its statutory mandate without undertaking any direction over LDC governance and should refrain from participating in local board issues.

We trust these comments will help guide the discussion of this document.

Sincerely,



Lynn Dollin
AMO President
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cc: The Honourable Glenn Thibeault, Minister of Energy
The Honourable Bill Mauro, Minister of Municipal Affairs