

February 1, 2019

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
P.O. Box 2319  
Toronto, Ontario  
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Dear Ms. Walli:

**Re: EB-2018-0287 – Report of the Advisory Committee on Innovation (AIC)**

We represent the Consumers Council of Canada (Council). We have reviewed the Report of the Advisory Committee on Innovation (AIC) dated November 22, 2018 (the Report). In addition, we attended the Stakeholder Meeting at the Ontario Energy Board (OEB) on January 16, 2019, where the recommendations of the AIC were discussed and the OEB announced the launch of its “Innovation Sandbox”.

The Council is writing to express a numbers of concerns about the AIC and its Report, the stakeholder consultation process regarding the Report, and the launch of the Innovation Sandbox.

**Advisory Committee on Innovation and the Report:**

The AIC was established in early 2018. And although the “ask” of the Chair of the OEB was to, “identify actions the regulator could take to create an environment to support innovation that brings value to customers”<sup>1</sup>, there was absolutely no customer representation on the committee. That void sends a strong message that the focus of the AIC was not on customers, and that the voice of customers was not relevant to the committee. From the Council’s perspective the main focus of the Report was to identify ways to either relax regulatory burden for utilities or change the ways they are compensated in order accommodate new “innovation”. The following recommendations are not about what is best for utility customers, but rather what is best for utilities:

- Re-examine regulatory restrictions on utility business activities and review the separation of regulated and competitive services in light of new technology and service expectations. (1D)
- Remunerate utilities to make them indifferent to conventional or alternative solutions, including when other parties own and provide the alternative solution. Considerations will include, among other things, meaningful incentives and moving away from traditional rate base regulation. (2A)

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<sup>1</sup> The Report, p. 2

<sup>2</sup> The Report, p. 19

- Provide a means by which both utilities and unregulated entities are encouraged to discuss specific regulatory obstacles with the OEB, in order to allow for near-term deployment of innovations while longer-term regulatory reforms are implemented. (4A)
- Explore the use of self-executing processes that use transparent, pre-approved criteria to allow streamline regulatory review. (4C)
- Further examine OEB decision timelines to determine whether they can be shortened without compromising the effectiveness of stakeholder participation. (4D)

Although the Council is not necessarily opposed to all of the recommendations set out in the Report, we are of the view that if the AIC had a more balanced representation in terms of its membership, those recommendations may well have been different, and more focussed on ensuring the interests of consumers were sufficiently considered and addressed going forward.

#### **Funding for Ratepayer Groups:**

Not only did ratepayer groups get excluded from being represented on the committee, they have been effectively denied the ability to comment in a meaningful way on the recommendations in the Report. Although many ratepayer groups attended the Stakeholder Meeting on January 16, 2018, the OEB has indicated that there will be no funding for participation at that meeting or for commenting on the Report. This creates yet another imbalance as the utilities have the resources to fully participate in this consultation, resources that are funded through rates, which are paid for by customers.

It is unclear as to whether there will be funding available to ratepayer groups (those who require funding to participate) during the next phases of the OEB's consultation regarding innovation going forward. An absence of funding would signal that the OEB, in the context of exploring innovation, is not focussed on customers.

The Council encourages the OEB to provide funding for cost eligible stakeholders for the next stages in this consultation process. To proceed without customer input would ultimately result in innovation policies that favour the utilities and are counter to the OEB's objective of "creating an environment to support innovation that brings value to customers."

#### **Innovation Sandbox:**

One of the recommendations of the AIC is:

- Provide a means by which both utilities and unregulated entities are encouraged to discuss specific regulatory obstacles with the OEB, in order to allow for near-term deployment of innovations while longer-term regulatory reforms are implemented.

The Report refers to the creation of a venue in which proponents – regulated utilities or competitive service providers – can bring forward innovative projects, identify regulatory constraints and illustrate the benefits if a regulatory barrier were addressed. This is commonly referred to a "regulatory sandbox".<sup>2</sup>

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<sup>2</sup> The Report, p. 19

Rather than seeking input at the meeting regarding if, and how, such a concept could proceed, the OEB simply announced that it had created its own OEB Innovation Sandbox. It is unclear what stakeholders were consulted in the development of the Innovation Sandbox, but clearly there was no ratepayer input.

The Innovation Sandbox provides a forum for “innovators” – utilities or third party providers to pitch an idea and work with OEB Staff to test those ideas. It will not be a transparent process. It is our understanding that under its delegated authority OEB Staff could then offer regulatory relief from an established regulatory requirement in order to move projects forward.

The Council is concerned about these proposals for a number of reasons. Customers will be paying for the cost of these initiatives, which include the costs of those proposals that fail. A lack of transparency will prevent customers from assessing the risks and rewards and whether the proposals are likely to bring value. In addition, once one utility is given “regulatory relief”, what is preventing other utilities from seeking the same relief? How does OEB Staff determine what is acceptable “regulatory relief”?

The Council respects the fact that at times the OEB Staff’s delegated authority is useful and allows for regulatory efficiency in many cases. In this case, however, OEB Staff will be making decisions in a black box, and the Council is of the view this is a dangerous precedent. Will the OEB Staff Decisions be guided by established policies? Will they provide a clear justification for the projects they approve? Will those decisions ultimately be made public? None of this is clear, as all we have seen about the Innovation Sandbox is what was presented on January 16, 2019, and what can be found on the new website.

#### Next Steps:

The Council submits that the OEB should proceed in the following way:

- Establish a consultation process regarding innovation that allows for funding for cost eligible stakeholders so that ratepayers, utilities and third-party providers can participate on an equal footing. This could be followed by a generic hearing to ensure all proposals are tested through an adjudicative process;
- Before accepting any project proposals make changes to the OEBS Innovation Sandbox to ensure accountability, transparency, and the protection of customers; and
- Work with the Independent Electricity System Operator to coordinate how innovation is facilitated in Ontario.

It is regrettable that the OEB has decided to proceed with development of policies needed to support innovation in the Ontario energy sector without due consideration of the interests of Ontario consumers. The fact that so many ratepayer groups (the Association of Major Power Consumers in Ontario, Canadian Manufacturers and Exporters, the School Energy Coalition, the Vulnerable Energy Consumers Coalition, the London Property Management Association and the Industrial Gas Users Association) have expressed significant concerns about this overall process cannot be ignored by the OEB. This initiative is important and before proceeding further a more balanced process must be established.

Yours truly,

*Julie E. Girvan*

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CC: Ken Whitehurst, Consumers Council of Canada