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Review of Independent Electricity System Operator's Technical Panel

Final Report

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Background

- In 2009, the corporate governance and structure of the IESO's Technical Panel (the "Panel") was first set out in Article 6 of the IESO's Governance and Structure By-Law (the "By-Law").
- The By-Law has not been updated since its inception.
- The Electricity Act, 1998, as amended, requires the IESO to establish one or more processes by which stakeholder representatives can provide advice and recommendations for consideration by the IESO.
- Through this means, the IESO Board of Directors (the "Board") established the Stakeholder Advisory Committee (the "SAC") as part the stakeholder engagement ("SE") process.
- In 2014, the IESO retained Power Advisory LLC and C2C Strategies ("PA/C2C") to conduct a study of the Panel. In October 2014, the IESO received a set of recommendations to align the Panel with the IESO's stakeholder engagement principles and processes.

Background

- On January 1, 2015, the OPA merged with the IESO to create a new organization combining the OPA and IESO mandates.
- Following the merger, the IESO indicated its intention to conduct a review of its SE principles and processes to ensure that they are aligned with the mandate of the merged organization.
- In April 2015, the Board adopted new Terms of Reference for the SAC to provide guidelines on its structure and operation.
- The SAC's new Terms of Reference were developed in a manner intended to better align the SAC with the IESO's new mandate.
- The IESO is now considering ways to better align the Panel with the SE principles and processes.

Objective and Methodology

- **Objective of This Report:** In August 2015, the IESO retained RCI Consulting (“RCI”) to identify issues and make recommendations relating to the Panel with the objective of better aligning the Panel with the SE Principles and Process, and in turn, better aligning the Panel with the IESO’s new mandate.
- **Methodology:** In preparation for this report, RCI reviewed materials pertaining to the IESO and its governance, including:
 - The IESO’s SE Principles and Process
 - The By-Law, the Electricity Act and the SAC Terms of Reference
 - The 2014 draft report on the Panel by PA/C2C
 - The collected feedback on the PA/C2C report (from the Panel, SAC and IESO Board)
 - Various documents outlining the market rule amendment (“MRA”) process
 - Other publicly available materials relating to the IESO, the Panel and the SE Process
- **Interviews:** RCI also conducted interviews with individuals from the IESO including: Robert Doyle, Mark Wilson, Terry Young, Tom Chapman and Tim O’Neil

Summary of Recommendations

- **1:** The By-Law governing the structure and operation of the Panel should be replaced with Terms of Reference similar to those developed for the SAC to provide flexibility to address the changing needs of Ontario's electricity sector.

- **2:** The following is a summary of recommended changes to be considered for the Panel's new Terms of Reference, each of which will be detailed further in this report:
 - a) Maintain the voting provisions of the Panel, but clarify that the Panel's primary purpose is as a group of individual advisors to the Board and not a decision-making power
 - b) Restructure the composition of Panel to better align with the structure given to the SAC
 - c) Enhance transparency
 - d) Maintain the "warrants consideration" vote, except in cases where a formal SE initiative has already been launched
 - e) Promote greater involvement with SEs
 - f) Coordinate communications with industry associations

1. Develop New Terms of Reference for Panel

Issue: The governing documents of the advisory bodies of the Board are in different formats and are not aligned.

- The Panel's By-Law was adopted prior to the establishment of the SAC and employs a more rigid structure and approach to governance.
- The Panel's By-Law has not been updated since the stakeholder process was adopted by the IESO.
- The SAC's Terms of Reference are intended to be pragmatic and reflect the Board's evolving needs and requirements.
- The SAC's Terms of Reference are generally prescriptive in nature and set the expectations for membership and the IESO (i.e., numbers of meetings per year, expenses, conduct of members, etc.)

1. Develop New Terms of Reference for Panel

- The SAC's Terms of Reference provide flexibility, and includes a means to update the Terms of Reference, in consultation with members, when there is a compelling reason to do so.
- The Panel's By-Law is not aligned with the SAC's Terms of Reference, and the mechanisms governing these bodies is not coordinated.

Recommendation: The By-Law that governs the structure and operation of the Panel should be eliminated and replaced with Terms of Reference similar to those developed for the SAC.

2 (a) Clarify Role of Panel as Advisors to Board

Issue: While the Board has, in the past, considered the collective advice of the Panel, the Board also relies upon each Panel member's advice and the reasons underpinning their respective views.

- Panel is intended to be advisory: The Panel is charged with reviewing and proposing MRAs on an ongoing basis.
- Panel members generally acknowledge that individual advice from members, with reasons, is the most meaningful approach to providing advice. At times, the vote of the Panel conveys the sense that a collective decision is being made, when it is not the intention of the Panel members to put forward a collective consensus-based decision.
- Proposals to restructure the Panel's composition may be perceived as affecting the Panel's balance of power (e.g., an increase in the number of generator representatives could be perceived as reducing the influence of consumers). A solution is needed that allows the composition of the Board to evolve, without affecting the balance of members of the Panel in an undesirable manner.

2 (a) Clarify Role of Panel as Advisors to Board

Recommendation: Maintain the voting provisions of the Panel, but clarify that the Panel's primary purpose is as a group of individual advisors to the Board, and not as a decision-making power.

- Retain each members' right to vote and provide advice on whether they are for or against MRAs, and require each member to provide reasons for their advice on contentious MRAs.
- Establish that the purpose of the Panel is of an advisory nature to the Board, and although the Panel members retain the right to vote, the Panel's purpose is not as an independent decision-making body.
- The Panel Chair's role should be primarily as a facilitator, and the Panel Chair's right to vote should be eliminated. The Panel Chair should retain the power to provide advice and comments.
- Rename the Panel the "Technical Advisory Panel" to emphasize the advisory power of the Panel and to better align it with the SAC.

2 (b) Restructure Composition of Panel to Align with SAC

Issue: The current formula for appointing members to the Panel does not adequately accommodate the evolving nature of the electricity sector.

- **The composition of the Panel is determined by a formula in the By-Law:** The composition of the Panel is currently governed by a formula contained in the By-Law, which mandates membership representing designated groups, and provides an option to appoint other representatives from other identified areas, with the option to appoint independents.
- **Current Panel composition rules are balanced yet restrictive:** The By-Law provides a formula that identifies specific groups that must be represented on the Panel. However, some of these groups may no longer be essential to the Board. What's more, the current By-Law does not easily permit the Board to appoint members to represent additional areas of technical expertise that may be useful to Board decision-making, such as:
 - New and emerging technologies
 - Conservation and demand management

2 (b) Restructure Composition of Panel to Align with SAC

Recommendation: Adopt a new formula governing the composition of the Panel ensuring certain groups are represented, while affording flexibility to select additional members deemed essential.

- The Board should appoint a core group of sectors to be represented on the Panel to provide multiple perspectives on the work of the Panel
- The Board should appoint the IESO CEO or his/her delegate as Chair, and an additional member representing the IESO
- The core group of sectors should provide the flexibility to select additional members deemed essential to meet the evolution of the electricity sector, in a manner similar to the make-up of the SAC representation: For example:
 - Persons representing generators
 - Persons representing consumers
 - Persons representing transmitters/distributors
 - Persons representing energy and other market-related sectors (i.e., marketers/traders, gas, financial)

Rationale: This approach ensures that identified areas will always be represented on the Panel, while providing flexibility to appoint additional members representing areas that are deemed essential.

2 (c) Enhance Transparency

Issue: There is, at times, insufficient transparency when the Panel conveys advice and rationale to the Board.

- **Panel Chair currently conveys Panel's views to Board:** Following each Panel meeting, the Chair provides the Board with a formal report outlining the Panel's views on all MRAs brought before it. Until recently, Panel members did not have an opportunity to vet and approve summaries of their comments contained in the Chair's package to the Board.

- **S. 6.12 of the By-Law provides as follows:**
 - **All decisions of the Technical Panel relating to the amendment of the market rules...together with the reasons therefore and the votes cast in favour of and against the decision, shall be reported to the Board.**

2 (c) Enhance Transparency

- Recently, the Chair has begun to poll each Panel member and record their respective votes and the reasons for their vote whenever addressing a contentious MRA. After each Panel meeting the Chair prepares a summary of each members' votes and the reasons from each respective member. The Chair then provides each member with a copy of a memorandum summarizing each member's votes and reasons, and asks each member to vet and approve the section that outlines their respective votes and reasons. Once approved, the memo is forwarded to the Board.
- To date, the Chair has not provided Panel members with copies of the Chair's memo to the Board pertaining to MRAs.

2 (c) Enhance Transparency

Recommendation: The Board needs to be informed in a transparent manner on whether each Panel member supports or opposes any MRA, and the reasons behind each members' advice. Every Panel member should have the opportunity to vet and approve their own advice prior to their advice being conveyed to the Board.

- In any case where the Panel addresses an MRA:
 - The Chair should ask each member for the reasons behind their advice, and make a record of each member's advice and the reasons underscoring them. The Chair should provide each member with an opportunity to vet and approve the record containing the reasons underpinning their advice.
 - The Chair should provide a memorandum to the Board which should include: the IESO position on the MRA, the vetted and approved advice and reasons of each of the members.
 - Once submitted to the Board, the Chair should provide copies of his or her memo to the Panel members.

2 (d) Keep “Warrants Consideration” Vote with Exceptions

Issue: The procedural step of asking Panel members to vote on whether an MRA “warrants consideration” is beneficial, but can, at times, be unnecessary.

- The “warrants consideration” vote was introduced to help manage a larger volume of MRAs that no longer exists today
- One of the benefits of the “warrants consideration” vote is that it alerts stakeholders of upcoming issues or proposed rules
- However, a “warrants consideration” vote is not necessary when a formal SE initiative has been launched on a particular rule or issue, since an SE initiative would necessitate that the rule or issue be considered by the Panel

Recommendation: Maintain the “warrants consideration” vote, except in cases where a formal SE initiative has already been initiated.

2 (e) Promote Greater Involvement with SEs

Issue: Current By-Law does not provide a means by which Panel members can gain a sufficient understanding of the depth of prior discussions in Stakeholder Engagements and the Stakeholder Advisory Committee.

- While policy discussions are not up for debate in Panel meetings, it would be desirable for Panel members to better understand the policy thinking and decisions within SEs.
- It would also be helpful for Panel members to receive copies of standing agenda items relating to applicable SEs.
- Panel members should be encouraged – but not required -- to attend SE meetings, and Panel members should provide input on relevant issues relating to MRAs when practicable.

Recommendation: Provide Panel members with standing agenda items from ongoing Stakeholder Engagements. Panel members should be encouraged to be more actively involved within Stakeholder Engagements, however this should not be mandatory.

2 (f) Coordinate Communications with Industry Associations

Issue: The By-Law does not provide a requirement that industry associations be made aware of proposed MRAs that might affect their memberships.

- Panel members are encouraged to notify their sector constituents, including industry associations, of proposed MRAs
- The IESO should make its best efforts to notify industry associations about all MRAs that pertain to each association.
- Examples of applicable industry associations include: Electricity Distributors Association (EDA), Association of Major Power Consumers in Ontario (AMPCO), Association of Power Producers of Ontario (APPrO)

Recommendation: Whenever possible, adopt a process where the Panel is charged with notifying and communicating with industry associations about MRAs facing the Panel that are likely to have an impact on relevant and identified industry association memberships.

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RCI Consulting is a full-service communications and strategy firm that helps organizations develop and communicate ideas in creative, credible and consistent ways.

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