OEB Issues Corporate Governance "Best Practices" for Rate-Regulated Utilities

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On December 20, 2018, the Ontario Energy Board (OEB) issued its Report of the Board - Best Practices regarding Governance of OEB Rate-Regulated Utilities (EB-2014-0255) (the Report). The Report covers a wide range of Ontario utilities, including natural gas distributors, electricity distributors, electricity transmitters and Ontario Power Generation.

In the Report, the OEB outlines what it views as "best practices" in four key areas related to utility governance:

1. Director Independence
    1. Utilities have a board of directors at the utility level and a majority of those directors are independent of the shareholder and any affiliate
    2. The board comprises no less than five directors
    3. Shareholder agreements or directions do not limit the board of directors from exercising its independent judgment
2. Director Skills
    1. The board as a whole possesses the complete range of skills necessary to execute its governance function and discharge its responsibilities effectively
    2. A matrix approach is used to compile an inventory of director skills
3. Board and Committee Structures and Functions
    1. Boards are structured to provide oversight of key functions of the utility business
    2. Committees of the board are used as a means to achieve appropriate oversight of key functions
    3. Committee members possess the requisite skills to effectively discharge their responsibilities
4. Supporting Documentation and Practices
    1. Utility boards have a written mandate and any committees of the board have a written charter
    2. Boards have a written code of conduct
    3. Boards provide orientation for new appointees and continuing education and/or other methods of broadening the skills of all directors

The Report identifies these areas of governance that are of interest to the OEB, however, the OEB is not mandating adoption of any minimum governance standards. Rather, the OEB states that best practices are provided "to assist utilities in assessing their own governance practices against broad standards of excellence that are considered to be best practice".

These same OEB requirements are designed to obtain information about utility governance that can be considered, as needed, in the context of regulatory reviews, including rate applications, compliance and performance audits, etc.

The OEB notes that it will also provide expanded Reporting and Recordkeeping Requirements to give utilities the opportunity to explain their governance practices and supplement the information filed with additional discussion. The OEB expects a utility to explain how its approach to governance, if it does not appear to represent best practice, nevertheless assures appropriate control and decision-making with due consideration for customers' interests.

How BLG Can Help

BLG has been advising Ontario rate regulated utility boards of directors, committees of boards, management, shareholders and other stakeholders since market opening. We have in-depth experience advising the boards and shareholders of Ontario municipal utilities on a wide range of governance issues that are unique to Ontario rate-regulated utilities, including those under municipal ownership.

BLG's Electricity Markets Group offers extensive experience, along with thorough, up-to-date knowledge of current developments in the corporate governance area, both in Canada and internationally. As part of our corporate governance advisory practice, we can assist you with identifying potential issues and devising proactive solutions. The group also has access to the multidisciplinary expertise of professionals across our full-service firm.

We regularly assist clients with corporate governance issues relating to board and committee mandates and processes, governance policies, investigations, reviews and reports, director and officer liability issues, conflict of interest matters, and compliance with the OEB's Affiliate Relationships Code.

Please contact John Vellone, Rob Blackstein or Bernadette Corpuz to discuss regulatory issues and how your organization can address the OEB's approach to "best practices" related to utility governance.

By

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