

**ERO 019-3007**

**Submission to the Ministry of Energy, Northern Development  
and Mines  
Regarding Ontario's Long-Term Energy Planning Process**

**By**

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**On Behalf of**



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The Council for Clean & Reliable Energy (CCRE) is a federally incorporated non-profit organization that provides a platform for dialogue and analysis on subjects related to energy policy and governance. The CCRE was formed by a group representing academia, public and private sector business leaders, and labour. The Council understands the value of creating a broader and more inclusive public discourse.

The Mandate of the Council is to:

- Promote the generation, transmission, and distribution of clean, affordable, and reliable energy.
- Broaden public knowledge and understanding of the full range of available solutions and encourage fact-based reviews of the best available technologies on generation and emissions control.
- Encourage government action(s) regarding the generation, transmission and distribution of clean, affordable, and reliable energy that will enhance and sustain long-term economic growth and the environment.
- Encourage and promote ongoing independent research into policies and technologies that promotes clean, affordable, and reliable energy.

## I. Introduction and Overview

By letter dated January 28, 2021 the Minister of Energy, Northern Development and Mines solicited feedback on Ontario’s long-term energy planning framework, including how the long-term energy plan is developed and implemented. Notably, the minister is not seeking feedback on the content of the LTEP itself.

The ministry responsible for the energy sector in Ontario has had different names, and been headed by different individuals, over the period of time discussed in this Submission. Unless otherwise indicated, references to the minister are generic and apply to the person who, at various times, has held the position of the person responsible for the energy sector in Ontario. References to the long-term energy planning and implementation framework are called the “LTEP process”. The end result of that process is called the “LTEP “.

We believe that the LTEP process can, if designed to properly reflect and adhere to certain principles of good public governance, result in a plan that meets the government’s stated commitment to “promote transparency, accountability and effectiveness of energy planning and decision-making in order to increase investment certainty and to ensure the interests of ratepayers are protected”<sup>1</sup>. Our recommendations to design and implement an LTEP process that meets these principles are listed in the concluding section of this Submission.

This Submission is in five parts, the first part of which is the Introduction. In the second, we set out, by way of preliminary observations, what we believe the minister should disclose in order to ensure that this request for feedback yields meaningful advice. In the third, we outline the principles of good public governance that we believe should inform the LTEP process. In the fourth, we review what we understand to be the existing LTEP process, both the formal and informal processes, and the governance challenges therein. In the fifth and final part, we conclude with two observations, about the roles of the Ontario Energy Board (OEB) and the legislature in the LTEP process, and then set out our recommendations for a reformed LTEP process.

## II. Preliminary Observations

The minister’s January 28 letter asks for feedback without disclosing his position on how the existing LTEP process does not meet the objectives of transparency, accountability, and effectiveness. Over the past several years, and in particular since the passage of the Green Energy and Green Economy Act in 2009<sup>2</sup> there have been major changes in the LTEP process. Those changes have taken a number of forms, including legislative changes to the responsibilities of the relevant regulatory agencies, the Independent Electricity System Operator (IESO) and the Ontario Energy Board, the responsibilities of the minister, and changes, made in the form of directives

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<sup>1</sup> Ministry of Energy, Northern Development and Mines. Letter to Stakeholders. January 28, 2021.

<sup>2</sup> Green Energy and Green Economy Act, 2009, S.O. 2009.

and directions from the minister, to what the IESO and the OEB are to do in fulfilling their obligations in the LTEP process.

Some of the changes in the LTEP process were ostensibly made in response to concerns about the LTEP process made by the Auditor General (AG) in the 2015 report on electricity system planning<sup>3</sup>. This process suggests that the minister believes those changes were not sufficient to address the AG's concerns.

More broadly, there have been frequent changes in the electricity sector itself related to the price of electricity and the role of electricity generation, transmission, and distribution in promoting the government's policies on conservation, innovation, and climate change. The most recent of these changes was in the government's decision, embodied in its 2020 budget, to subsidize the price that commercial and industrial consumers pay for electricity, and in the process shift some of the burden of that price from consumers in those large user categories to taxpayers. What relationship, if any, these kinds of changes have to the LTEP process or to the existing LTEP is unclear.

We believe it essential that, before taking steps to reform the LTEP process following the receipt of submissions in response to the January Letter, the minister state what his government considers the LTEP to be. What is the relationship of the LTEP to the government's energy policy? In what sense, if any, should changes in the electricity sector, such as changes with respect to the allocation of the burden of electricity prices, be related to the LTEP? In what sense, if any, does the government value stability in energy policy and therefore its commitment to the LTEP, once it has been established?

In addition, we believe that no changes should be made to the LTEP process unless, first, the minister discloses his position on how the LTEP process now operates, second, the minister discloses his views as to the deficiencies in that process, third, the minister discloses how he would propose to correct those deficiencies, and fourth the minister discloses the advice already received on the LTEP process and from whom. In the absence of disclosure on these matters, it is not clear why steps have been taken to initiate this apparent plan to reform Ontario's LTEP and what the plan entails. In addition, the absence of this disclosure violates one of the principles we submit should inform the LTEP process, namely transparency.

In particular, we submit that the minister should first answer the questions he has posed:

- 1) To what extent, and in what ways, does the minister believe that the existing LTEP process not promote transparency, accountability and effectiveness of energy planning and decision-making?

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<sup>3</sup> 2015 *Annual Report of the Office of the Auditor General of Ontario*, Section 3.05. "Electricity Power System Planning".

- 2) What overarching goals and objectives does the minister believe should be recognized in the LTEP process?
- 3) What respective roles does the minister believe each of the government, the IESO and the OEB should play in the LTEP process?
- 4) What kinds of decisions does the minister believe should be made by technical planners at the IESO and the OEB as regulators?
- 5) What types of decisions does the minister believe require government direction or approval?
- 6) What does the minister believe are the gaps in the IESO's and the OEB's mandates and objectives that limit their ability to effectively lead long-term planning?
- 7) What does the minister mean by having the IESO and the OEB "lead" long-term planning?
- 8) Does the minister believe that certain planning processes or decisions by the IESO, OEB, or by the government should receive additional scrutiny, and if so by whom, based on what criteria and by what processes?
- 9) How often and in what form does the minister believe government should provide policy guidance and direction to facilitate effective long-term energy planning? And,
- 10) How does the minister believe effective and meaningful Indigenous participation in energy sector decision-making can be achieved?

It follows that the submissions stakeholders might make would be affected by the answers the minister gives to those questions.

### **III. The Principles of Good Public Governance**

This Submission reflects the seminal and overarching principle that the government is at all times responsible for energy policy in the province and for the outcomes arising from the LTEP that enable the actualization of that policy.

The OECD, in its "Draft Policy Framework on Sound Public Governance", posits a key set of public governance values or principles that, in the OECD's words, "lie at the core of sound public governance: they constitute the indispensable means to engage in open, equitable and inclusive decision-making in the public interest and in partnership with citizens to enhance wellbeing and prosperity for all"<sup>4</sup>. The OECD also notes that sound public governance is not an end in itself, but a process to improve individual and societal outcomes.

Those principles include the following:

- 1) Integrity;
- 2) Openness and transparency;
- 3) Inclusiveness, participation, gender equality and diversity; and
- 4) Accountability and respect for the rule of law.

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<sup>4</sup> OECD (2018), *Draft Policy Framework on Sound Public Governance*, OECD Publishing, Paris. Page 23.

Although the OECD characterizes “equitable and evidence-informed decision-making” as an enabler of these principles, in the context of this Submission, we consider it a fifth and critical principle.

The OECD’s discussion of public integrity focuses on shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in public-sector behaviour and decision-making. Those considerations would apply to the LTEP process. In addition, we suggest that the principle of integrity would also require that the government adhere to the framework of the LTEP process, and only deviate from it in prescribed circumstances and based on publicly disclosed evidence.

In its discussion of the principles of openness and transparency, the OECD focuses on the accessibility of information, public resources and the public disclosure of information and data. The OECD notes that open government is a culture of public governance that promotes the principles of transparency, integrity, accountability, and stakeholder participation. Transparency speaks to the “opening up of government processes, proceedings, documents and data for public scrutiny and involvement, all of which are prerequisites to achieve better stakeholder engagement, inclusiveness, integrity and accountability”<sup>5</sup>. The OECD states that the government should make available clear, complete, timely, reliable, and relevant public sector data and information available free of costs in an open and non-proprietary electronic format.

OECD states that accountability and respect for the rule of law require the allocation of responsibility for the outcomes associated with the operation of government. The OECD notes that accountability has five dimensions: state, administrative, financial, social and policy outcome responsibility, all of which essentially speak to “who does what and reports to whom”<sup>6</sup>. In addition, respect for the rule of law is the basis for accountability.

The OECD also sets out what it describes as enablers of sound public governance, notably equitable and evidence-informed policymaking, and the instruments and tools that elaborate on the public policies and management practices for efficient governance and policy implementation.

For the purposes of this Submission, we suggest that, using the OECD analytical framework, the following enablers and tools are critical if the LTEP process is to operate as it should:

- 1) The minister, and more broadly the government should demonstrate commitment, vision, and leadership to the values of sound public governance and ensure that these values are implemented, over time, via the LTEP process.

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<sup>5</sup>Ibid. Page 34.

<sup>6</sup>Ibid. Page 42.

- 2) The minister should commit to equitable and evidence-informed decision-making. This requires disclosing the information on which decisions are made. It also involves preventing undue influence by vested interests. All stakeholders should have access to the information the government proposes to base its decisions on, and an opportunity to make submissions with respect to the accuracy, completeness, and relevance of that information. Unfortunately, policy capture has been a recurring feature of the making and implementation of energy policy. Policy capture results from access through lobbying of public officials, provision of manipulated or distorted technical data, and the use of personal connections that lead to conflicts of interest.
- 3) The minister should strengthen the capacities and skills of public employees to ensure the creation of a values-driven, trusted, capable, responsive, and adaptive public service, so that the Minister need not solely rely on the IESO for technical advice and recommendations with respect to the LTEP. The corporate governance structure of the IESO should be closely evaluated to ensure that its corporate governance processes align with sound public governance values.
- 4) The minister should strengthen government digital strategies to enable a more strategic use of government data, including the costs consequences of policy and the drivers of higher energy costs. A variety of “sunshine act” disclosures should also be considered to ensure that the public is aware in a timely way who is lobbying the Minister, political staff, or the public service, what is said or presented as part of that lobbying, and what action is sought.
- 5) The minister should put in place measures for policy performance monitoring to ensure proper implementation of public energy policy and adapt that policy in the face of evidence of unanticipated consequences or changed circumstances.

Adoption of these values and the implementation of these enablers and tools would help to address a number of the deficiencies identified in AG’s 2015 report on electricity system planning. It would also help to mitigate behaviours that have distorted energy policy in the past.

Energy prices are the “third rail” of Ontario politics – that is, public anger at rising energy prices is a sufficiently potent force that it can bring down a government. Fear of that force has led governments to, among other things, avoid or obscure the difficult choices inherent in energy policy, including the costs and benefits, and the environmental and GHG impacts of fuel mix choices and government contracting practices, to hide or disguise policy capture by vested interests, and to ignore the advice of public service experts.

Finally, improved public governance in the energy sector, and in the LTEP process in particular, would assist in the necessary de-politicization of both, an important objective given the energy

problems the province faces. Ontario's energy policy solutions do not change with changes in government.

As we have noted, adherence to the principle of integrity overlaps with adherence to the principles of transparency and accountability. How the minister complies with each component of the LTEP should be disclosed.

An important feature of the LTEP process in the past has been the use of directives and directions from the ministry to the IESO and the OEB on what the plan should contain and how it should be implemented. The use of directives and directions has one value: it makes it clear that it is the minister who is accountable for the development and implementation of the LTEP.

There are, however, a number of drawbacks to the use of directives and directions. A number of those drawbacks were identified in the AG's 2015 report, as follows:

- 1) The Ministry's use of directives and directions to make major decisions resulted in a process that is less than open and transparent – both to the key players in the electricity sector and to the public<sup>7</sup>;
- 2) The OPA (now the IESO), though mandated to be Ontario's technical planner with expert knowledge of the power system, often could not apply its expertise because the rationale behind many of the directions and directives was not apparent<sup>8</sup>; and
- 3) Ministerial directives and direction were not supported by public consultations or economic analyses disclosed to the public<sup>9</sup>.

As noted by the AG, there has been no public disclosure of the information or advice the directives and directions are based on. The absence of that information violates the principle of transparency. The use of directives and directions may distort the LTEP process by limiting the freedom of the IESO, in particular, to provide unfettered advice on what the LTEP should consist of and how it should be implemented. The minister, and more importantly the consumers of energy, should have the benefit of a comprehensive and unfettered technical review of energy needs, alternative energy supply options, and the costs associated with each alternative.

We acknowledge it is essential that the government set out its energy policies and how it proposes to pursue them. However, we do not believe that guidance on government policy should be disseminated via directives and directions, which must be followed, with no disclosure of the engagement process, advice, and evidence upon which the content in those directives and

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<sup>7</sup> 2015 *Annual Report of the Office of the Auditor General of Ontario*, Section 3.05 "Electricity Power System Planning". Page 223.

<sup>8</sup> *Ibid.* Page 223.

<sup>9</sup> *Ibid.* Page 223.



directions is based. In addition, we do not believe that directives and directions should be used to limit the ability of the IESO to undertake an unfettered examination of energy needs and to provide candid advice on the full range of energy supply options, including the costs, benefits, and risks of choosing among those options.

Alignment with the principles of accountability and transparency also require that the impact on consumers of the alternative ways energy needs may be met be disclosed in the technical reports that are prepared as part of the LTEP process and, indeed, throughout the LTEP process. The impact on consumers should also be disclosed as part of the contracting process to acquire energy supplies. The costs and benefits of how energy needs can be met must at all points be disclosed. Determining costs and benefits should be a required component of every aspect of the LTEP process. Notably, the responsibility to determine the impact of the LTEP on consumers is the obligation of government, as it is central to energy policy and the LTEP, both of which fall within the sole remit of government.

Adherence to the principles of transparency and accountability require that advice which the Minister receives from ministry staff, other ministries, and other stakeholders and proponents on any aspect of the LTEP process, including the terms of contracts for the acquisition of energy, be disclosed. There should be a clear delineation of how public decisions are made, what evidence is collected and relied on, how that evidence is collected, applied, and integrated into the decision-making process, who has influenced the information gathered and relayed, and how that influence has affected the decision-making process. Information about the trade-offs made as part of the LTEP process, and the reasons for the trade-offs, should be disclosed.

Adherence to the principles of integrity and transparency will help to ensure compliance with the principle of accountability.

#### **IV. The Existing LTEP Process**

In order to determine the nature and extent of possible changes to the LTEP process, the shortcomings of the existing LTEP process must first be analyzed.

The LTEP process has two components. One is the formal process set out in the Electricity Act<sup>10</sup> (the EA or the Act). The other is the informal process by which information may be gathered, advice given, and decisions made.

##### *The Formal Process*

The AG's 2015 report on Electricity Power System Planning was based on the LTEP process as it existed at that point. The Ministry's formal responses, as set out in the AG's report, to many if not all of the AG's findings was that identified deficiencies would be remedied in forthcoming

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<sup>10</sup> "The Electricity Act, 1998" S.O. 1998, Chapter 15, Schedule A.

amendments to the *EA*. The current version of the *EA* reflects those amendments. It is unclear whether, and if so to what extent, the 2016 amendments in fact remedied the deficiencies in the LTEP process identified by the AG.

The LTEP process is set out in Part II.2 of the *EA*.

Subsection 25.29 (1) provides that the minister shall issue a LTEP. Subsection (2) provides that the LTEP “may” include goals and objectives regarding listed matters. The subsection makes it clear that the minister is responsible and accountable for the LTEP.

Subsection 25.29 (3) provides that the minister, before issuing a LTEP, shall require the IESO to submit a technical report. That report is to be on the adequacy and reliability of electrical resources with respect to anticipated electricity supply, capacity, storage, reliability, and demand, and on “any other matters the Minister may specify”. Unless the minister otherwise specifies, the IESO is not required to address the costs and benefits of how demand for electricity is met or any other impact on consumers, including the possible transfers of risk between categories of ratepayers or between ratepayers and taxpayers.

Subsection 25.29 (4) requires the minister to consult with, among others, consumers, before issuing the LTEP and to consider the results of the consultation in developing the LTEP. The minister is not required to disclose, for example, the results of the consultation or how those results have affected the content of the LTEP.

Subsection 25.29 (6) requires the minister to take steps to promote participation by groups with whom the minister is to consult, including scheduling meetings in person or through electronic means. The subsection leaves it in the minister’s discretion which groups he consults with. And again, the minister is not required to disclose the results of the consultations, or how they may affect the content of the LTEP.

Section 25.29 is silent on the issue of advice the minister may receive from ministry staff or other ministries with respect to the content of the LTEP. It is also silent on the advice the minister may receive from stakeholders outside of the formal consultation process. The section is silent on how advice in those categories may affect the content of the LTEP.

Section 25.30 permits the minister to issue directives to the IESO and to the OEB setting out the government’s requirements with respect to implementation of the LTEP.

Section 25.31 requires the IESO and the OEB to prepare implementation plans to meet the requirements of the directives issued to them. In its implementation plan the IESO, if the directive to it so requires, must set out the steps it intends to take with respect to entering into procurement contracts.

Section 25.32 obligates the IESO, if required to do so under an implementation plan, or a directive or a direction, and if an implementation plan provides it with authority to do so, enter into contracts for the procurement of, among other things, electricity supply. Subsection 29.32 (5) permits the minister to issue a directive to the IESO requiring it to undertake any request for proposal or any other form of procurement solicitation. The subsection would permit, for example, the minister to issue a directive to the IESO requiring that all procurement contracts be based on competitive bids. However, the Minister is not required to do so. This subsection allows the minister to control the procurement process. Procurement contracts should thus be seen as having the minister's implicit or explicit approval.

A number of observations can be made about these provisions.

First, the provisions make it clear that the minister and more broadly the government are responsible for the LTEP.

Second, the provisions do not require that, for example, contracts to procure supply comply with the LTEP, including the implementation plans. How much, if anything, is disclosed about how the contents of the LTEP are determined, how the procurement contracts are entered into, how the various the terms of the contracts were decided, the costs and benefits of those contracts, and their impact on consumers, is left entirely to the minister. Put simply, the LTEP process as described in the EA provides for limited, and therefore largely ineffective, transparency.

Third, while it does make the minister, and more broadly the government, responsible for the LTP process, there are no penalties for failing to comply with any aspect of the LTEP process or the LTEP itself.

We acknowledge that the minister must, as a matter of law and in the public interest, retain the discretion to make decisions about, for example, energy procurement in response to changed circumstances, and do so even when those decisions deviate from the LTEP. What sound public governance requires is that the reasons for the deviation, and the information on which it is based, be disclosed and subject to stakeholder consideration.

The AG found that the minister did not follow the LTEP procedure as set out in the Act, did not to accept the advice of experts on, for example, the terms of supply contracts, and did not engage in competitive pricing. Nothing in the 2016 amendments to the Act would remedy those deficiencies because of the discretion left to the Minister to bypass the LTEP process. In addition, nothing in the 2016 amendments addressed the AG's concern with what she regarded as the excessive prices paid for procuring supply. Similarly, nothing in the 2016 amendments would prevent that from happening again.

The gravamen of the AG's critique is that the LTEP process was not conducted according to good public governance practices. The 2016 amendments to the EA, while ostensibly improving the LTEP process, do not require the Minister to implement and follow those practices.

### *The Informal Process*

That there is also an informal LTEP process must be understood. The AG's 2015 report noted, for example, that OPA (now the IESO) provided advice to the minister, as did ministry staff, advice which the Minister rejected. What the minister's decisions, in rejecting that expert advice, were based on is unknown. Whether the Minister was given informal information and advice, and by whom, what that advice might have been, and what effect it had on either the LTEP or its implementation, cannot now be known. The important point is that all components of the informal process should be disclosed and subject to equitable and informed debate.

The OECD's observations on this point are relevant. The OECD notes that "managing decision-making effectively and efficiently in the public interest and preventing unbalanced influence lies at the core of sound public governance. How public decisions are made, which interests lie behind these decisions and what their goals are define all reform efforts<sup>11</sup>".

Adherence to the principles set out in this Submission will, we believe, bring the informal LTEP process into the sunlight and control its impact.

The question, then, is what is required of the LTEP process to ensure it delivers the required outcomes for the benefit of all Ontarians? We suggest that the focus in all aspects of the LTEP process should be on how public decisions are made, whether the process is open and equitable, what evidence is collected and relied on, how the evidence is integrated into the decision-making process, how biases are identified and eliminated, what interests, public or private, influenced the evidence or how it is relied on, and the costs and benefits of the options considered and adopted.

As we understand it, the objectives of the LTEP process were, first, to obtain independent, expert advice on the province's energy needs and the options for how those needs might be met, second, to obtain, in an open and transparent process, public input into the needs and how they might be met and, third, to present a statement of the government's plan (the LTEP) on how, and at what cost, the needs would be met. That third step necessarily required, in our view, the candid disclosure of the costs and benefits of choosing among the various ways the needs might be met.

It is apparent that the LTEP process to date has not met those objectives.

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<sup>11</sup>OECD (2018), *Draft Policy Framework on Sound Public Governance*, OECD Publishing, Paris. Page 16.

The failure of the LTEP process to meet its objectives is reflected in the most recent of the LTEPs, presented in 2017. We refer to three examples from that LTEP, as follows:

- 1) The LTEP begins with an extended defence of the Fair Hydro Plan, a group of measures intended to correct earlier mistakes, analyzed by the AG in her 2011 and 2013 reports, in how electricity was procured. But in defending the Fair Hydro Plan, the document does not acknowledge those mistakes or indicate how the LTEP process has been changed to avoid them. In addition, the LTEP does not disclose that the Fair Hydro Plan disguises the reality that the manner in which environmental and climate change objectives were pursued resulted in higher electricity prices that consumers cannot avoid paying;
- 2) Each section of the LTEP begins with a highlighted list, under the heading “What We Heard from You”, of the measures the government proposes to take in response to public input. That creates the misleading impression that all of the public’s preferences can be met without costs and trade-offs; and
- 3) The LTEP relies on the promise of the IESO’s “Market Renewal” exercise to “transform Ontario’s wholesale electricity markets and ultimately result in a more competitive and flexible marketplace”<sup>12</sup>. What that promise might mean in practice, and how it would correct or avoid the mistakes that have characterized the electricity sector over the past decade, is not disclosed.

Put simply, the 2017 LTEP violates the core principles of integrity, transparency and accountability.

The recommendations set out in the concluding section of this Submission will help to correct the deficiencies in the LTEP process.

## **V. Conclusion and Recommendations**

Two final points need to be made.

Our first point is that the OEB should play no role in the LTEP process. In the past the OEB was asked to review the LTEP to determine its impact on consumers. Fulfilling that role would require the OEB to duplicate the work done by the IESO and government. Unless the OEB’s findings were binding on the government there would be little rationale for this review, and it would largely be viewed as a “rubber stamp”. Most importantly, however, we reiterate that the government is, at all times, responsible for whether the consumer impact is appropriate from a policy perspective and accountable for that impact.

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<sup>12</sup> “Delivering Fairness and Choice”, Ontario’s Long-Term Energy Plan. 2017. Page 52.

The use of the OEB to determine whether the policy formation process of government met certain criteria is inconsistent with the roles and responsibilities of a government and its regulator. The government has delegated certain authorities to the OEB and is responsible for overseeing the operation of the regulator. It is inconsistent with the principles of sound public governance for the government to invert the accountability structure inherent in the government/regulator relationship. The regulator is ultimately accountable to the government. Not the other way around. Doing so is inconsistent with the principle of accountability and would potentially compromise the independence of the OEB, by directly involving it in a political process.

An additional consideration is that the OEB has a statutory obligation to determine, in a quasi-judicial process, whether some of the cost consequences of the electricity supply procured pursuant to the EA and LTEP are just and reasonable and should be recovered in customer rates. The OEB's ability to carry out that function should not be impaired or compromised by participation in the LTEP process. The OEB is not a market participant and is not a consumer advocate, promoter or facilitator. Successive amendments to the sections 1 and 2 of the OEB Act<sup>13</sup> have obfuscated the mandate of the regulator and reduced its role to implementing the policies of government, without the ability to exercise its independent judgement on these matters when they come before the it.

In this Submission we have emphasized the importance of making the LTEP process subject to the OECD's framework of sound public governance. One of principles at the core of those rules is transparency. We have argued that transparency requires, among other things, that the evidence upon which energy decisions be made be disclosed so that the public will know the hard choices, the trade-offs, that are inevitably required in developing energy plans.

This consideration leads us to a second and larger point, namely the role of the legislature in the LTEP process. As we have noted, the energy sector in Ontario, and in particular the electricity portion of that sector, has been characterized by frequent changes. Those changes have in almost all cases resulted in higher electricity prices. While increases in electricity prices are caused by many things, there has been one major contributor to the increases in the past decade, and that is the effect of the Feed-In Tariff (FIT) contracts for renewable energy supply entered into after the enactment of the Green Energy Act. Those contracts, and their adverse effect on electricity prices, were the subject of critiques in the AG's reports of 2011 and 2013 and underlay a large part of the AG's critique of the electricity planning process in its 2015 report. The increase in prices has led to attempts by governments to shift the burden of higher prices to taxpayers, residential customers, and to future customers. They have also led to attempts by governments to change the responsibilities of the relevant regulatory agencies, the IESO and the OEB, for energy-related decision-making. There is an argument that shifting the responsibilities of regulatory agencies is an attempt to disguise the burden of responsibility for essential policy choices.

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<sup>13</sup> "The Ontario Energy Board Act, 1998", S.O. 1998, Chapter 15, Schedule B.

The difficult choices that inevitably lie at the core of energy policy, and in particular the effects of the choices on electricity prices, should have been disclosed and debated before the FIT contracts were entered into. They should have been disclosed and debated in the legislature. There is a danger in supporting the pretext that the LTEP process is a substitute for that necessary disclosure and debate that would occur in the legislature. It is essential, for the reasons set out in this Submission, that the LTEP process be subject to the principles of sound public governance.

Those principles also require that the end product of the LTEP process, the LTEP itself, be placed before the legislature for approval.

### *Recommendations*

Notwithstanding the absence of the minister's views on the matters set out in the January Letter, we believe that the request for submissions provides an important opportunity to consider, as it were from the ground up, how the LTEP process should be structured and implemented. In light of the importance of this opportunity, we make the following recommendations:

1. The process to design a new LTEP should reflect the OECD principles of integrity; openness and transparency; inclusiveness, participation, gender equality and diversity; and accountability and respect for the rule of law.
2. The LTEP process should reflect the following enablers and tools to ensure that the LTEP process operates as it should:
  - a. The Minister, and more broadly the government should demonstrate commitment, vision, and leadership to the principles of sound public governance and ensure that these principles are implemented, over time, via the LTEP process.
  - b. The Minister should commit to equitable and evidence-informed decision-making. This requires disclosing the information on which decisions are made. It also involves preventing undue influence by vested interests. All stakeholders should have access to the information the government proposes to base its decisions on, and an opportunity to make submissions with respect to the accuracy, completeness, and relevance of that information.
  - c. The Minister should strengthen the capacities and skills of public employees to ensure the creation of a values-driven, trusted, capable, responsive, and adaptive public service, so that the Minister need not solely rely on the IESO for technical advice and recommendations with respect to the LTEP. The corporate governance structure of the IESO should be closely evaluated to ensure that its corporate governance processes align with sound public governance principles.

- d. The Minister should strengthen government digital strategies to enable a more strategic use of government data, including the costs consequences of policy and the drivers of higher energy costs. A variety of “sunshine act” disclosures should also be considered to ensure that the public is aware in a timely way who is lobbying the Minister, political staff, or the public service, what is said or presented as part of that lobbying, and what action is sought.
    - e. The Minister should put in place measures for policy performance monitoring to ensure proper implementation of public energy policy and adapt that policy in the face of evidence of unanticipated consequences or changed circumstances.
  3. The government should acknowledge that it will remain responsible for the LTEP process, including how well the LTEP is ultimately implemented, monitored and adapted over time, as conditions change.
  4. The advice the Minister receives, from any source, with respect to what the LTEP is, how it relates to energy policy, and what the LTEP process should look like must be fully disclosed. The informal LTEP process and the influence thereof should be minimized and subject to full disclosure in a timely and comprehensive manner.
  5. The LTEP process should reflect the energy policies of the government of Ontario and the decision criteria that inform the alignment of competing objectives on a principled basis. The determination of relevant LTEP criteria should be subject to an open and transparent, equitable and evidence-informed engagement process, and be supported by reasons explaining why those criteria have been selected.
  6. The criteria should include a list for the selection of possible sources and quantum of electricity supply, and be accompanied by an explanation of reasons.
  7. The role of government, the IESO, and the OEB should be delineated and enlivened by the OECD’s guidelines for the independence of regulators.
  8. The IESO’s “technical” report should be based on the criteria, and should include the costs and benefits, and the impact on consumer prices, of all supply options.
  9. Any directive to the IESO should not limit the nature and extent of its technical analysis.
  10. All supply contracts should be based on competitive bids and any advice the Minister receives, from any source, with respect to these contracts should be disclosed before the contracts are entered into.



11. The *Electricity Act* should be amended to provide that all contracts for the supply of electricity must be entered into in compliance with the LTEP.
12. A description of the roles of the IESO and of the Ministry in developing the technical elements of the LTEP.
13. A description of what the technical components of the LTEP are to consist of.
14. A description of the role of the Minister and the government in developing and approving the LTEP.
15. A description of the process of obtaining stakeholder input into the LTEP.
16. A description of the rules for contracting to acquire electricity pursuant to the LTEP.
17. A description of how and under what circumstances and subject to what conditions the LTEP may be changed.
18. Disclosure of the advice which the Minister receives from the IESO, the ministry, the government generally, and any stakeholder about any component of the Plan, including the terms of contracts, and how the Minister proposes to treat that advice.
19. The OEB should not have a role delineating the cost consequences of the LTEP or the extent to which the LTEP reflects the established criteria.
20. The LTEP should be approved by the provincial Legislature.

## References

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