From: dsturge@nlh.nl.ca
To: Tom Clift
Subject: Corp. Gov. Documents
Date: Saturday, May 27, 2006 2:23:46 PM
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Hydro Board Charter Review.doc
Hydro Corp Gov Charter Review.doc

Tom/ Wayne, attached are two documents for our next Corporate Governance meeting:

- Board of Directors Charter
- Corporate Governance Committee Charter

Derrick

Hydro Board Charter Review.doc Hydro Corp Gov Charter Review.doc

Derrick Sturge
Vice-President, Finance & CFO
Newfoundland and Labrador Hydro
Hydro Place
500 Columbus Drive
St. John's, NL
Telephone: 709-737-1292
Mobile: 709-690-2545
Email: dsturge@nlh.nl.ca

Newfoundland and Labrador Hydro
Corporate Governance Committee
May 27, 2006
Item: Review of Board of Directors Charter

The Corporation currently does not have a Board of Directors Charter. In developing a Board charter the Committee may wish to consider the practices included in the following:

- Guidelines and required governance disclosures contained in securities regulation for publicly-traded companies;
- Recommendations included in the 2005 Treasury Board Review of Corporate Governance for Federal Crown Corporations; and
- Other practices found in other public organizations with a single Shareholder.

It can serve as an inventory of items that the Committee may wish to consider as it moves forward.

<u>Comparison to *National Policy 58-201, Corporate Governance Guidelines* and *National Instrument 58-101. Disclosure of Corporate Governance Practices*</u>

NP 58-201 provides guidance on corporate governance practices for publicly traded companies. While generally there is no "requirement" for public companies to comply with these guidelines, they are required to provide public disclosure on whether or not they comply. As a result of these disclosure requirements, the guidelines established in NP 58-201 have become accepted practices in most public companies. While some of the practices in NP 58-201 are very specific to publicly traded companies, many of the required practices are relevant to other entities, and in fact are being adopted as best practices outside the public company environment. This is evident by the guidelines established by the Federal Treasury Board for federal Crown Corporations.

The following is a summary of the recommended practices of NP 58-201. The Committee may wish to consider the appropriateness of adopting some or all of these items for Hydro.

National Policy 58-201 Guidelines	CGC Recommendation
The board should have a majority of independent directors.	
The chair of the board should be an independent director. Where this is not appropriate, an independent director should be appointed to act as "lead director".	
The independent directors should hold regularly scheduled meetings at which non-independent directors and members of management are not in	

attendance.	
The board mandate should adopt a written mandate in which it explicitly acknowledges responsibility for the stewardship of the company, including responsibility for:	
❑ To the extent feasible, satisfying itself as to the integrity of the chief executive officer and other executive officers and that the CEO and other executive officers create a culture of integrity throughout the organization;	
❑ Adopting a strategic planning process and approving, on at least an annual basis, a strategic plan which takes into account, among other things, the opportunities and risks of the business;	
❑ The identification of the principal risks of the issuer's business, and ensuring the implementation of appropriate systems to manage these risks;	
❑ Succession planning (including appointing, training and monitoring senior management);	
❑ Adopting a communication policy for the company;	
❑ The company's internal control and management information systems; and	
❑ Developing the company's approach to corporate governance, including developing a set of corporate governance principles and guidelines that are specifically applicable to the company.	
The written board mandate should also set out:	
❑ Measures for receiving feedback from stakeholders; and	
❑ Expectations and responsibilities of directors, including basic duties and responsibilities with	

respect to attendance at board meetings and advance review of meeting materials.	
The board should develop clear position descriptions for the chair of the board and the chair of each board committee. In addition, the board together with the CEO, should develop a clear position description for the CEO, which includes delineating management's responsibilities. The board should also develop or approve the corporate goals and objectives that the CEO is responsible for meeting.	
The board should ensure that all new directors receive a comprehensive orientation. All new directors should fully understand the role of the board and its committees, as well as the contribution individual directors are expected to make. All new directors should also understand the nature and operations of the company's business.	
The board should provide continuing education opportunities for all directors, so that individuals may maintain or enhance their skills and abilities as directors, as well as to ensure their knowledge and understanding of the company's business remains current.	
The board should adopt a written code of business conduct and ethics (a code). The code should be applicable to directors, officers and employees of the issuer. The code should constitute written standards that are reasonably designed to promote integrity and to deter wrongdoing. In particular, it should address the following issues:	
❑ Conflict of interest, including transactions and agreements in respect of which a director or executive officer has a material interest;	
❑ Protection and proper use of corporate assets and	

opportunities;	
❑ Confidentiality of corporate information;	
❑ Fair dealing with the company's security holders, customers, suppliers, competitors and employees;	
❑ Compliance with laws, rules and regulations; and	
❑ Reporting of any illegal or unethical behaviour.	
The board should be responsible for monitoring compliance with the code.	
The board should appoint a nominating committee composed entirely of independent directors.	
Prior to nominating or appointing individuals as directors, the board should adopt a process involving the following steps:	
❑ Consider what competencies and skills the board, as a whole, should possess.	
❑ Assess what competencies and skills each existing director possesses.	
The board should appoint a compensation committee composed entirely of independent directors.	
The compensation committee should be given the authority to engage and compensate any outside advisor that it determines to be necessary to permit it to carry out its duties.	
The compensation committee should be responsible for:	
❑ Reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those corporate goals and objectives, and determining (or making recommendations to the board with respect to) the CEO's	

compensation level based on this evaluation; and	
❑ Making recommendations to the board with respect to non-CEO officer and director compensation, incentive-compensation plans and equity-based plans.	
The board, its committees and each individual director should be regularly assessed regarding his, her or its effectiveness and contribution.	

<u>Other Best Practices</u>
In addition to the requirements established in NP 58-201, there are a number of other best practices being used by board of other crown corporations. Two examples are cited below:

- EPCOR Utilities Inc. ("EPCOR"). EPCOR is owned by the City of Edmonton and provides rate-regulated and non-regulated electric utility services, natural gas services, water utility services, and complementary services. It had revenues of $2.7 billion in 2005, with operations in Alberta, Ontario, B.C. and in the states of Washington, Idaho, Colorado and New York.

- New Brunswick Power ("NB Power"). NB Power is a crown corporation owned by the Province of New Brunswick. It provides generation, transmission and distribution services in New Brunswick and also exports power into Maine and Quebec. In 2005 it had annual revenues of $1.4 billion.

<u>EPCOR</u>

In 2004 EPCOR was named the overall winner of the 2004 National Award in Governance from the Conference Board of Canada. The award honours Canada's most innovative Boards, recognizing measurable and transferable improvements in governance.

The EPCOR Board Chair made the following comment at the awards ceremony*: "It is an honour to have our governance model upheld as an example for both private and public sectors. This is especially meaningful at a time when governance comes under increasing scrutiny."*

In an article in the April 2005 newsletter of the Institute of Corporate Directors, the Board Chair offered the following insights into the success of EPCOR's governance practices:

- ✓ EPCOR board operates independently of the Shareholder with the full authority to make strategic business decisions.

- ✓ Directors are respected business leaders from across Canada, who have no affiliation to the Shareholder or financial interest in the company.

- ✓ There are no employees or elected representatives of the City on the Board.

- ✓ The Shareholder retains an independent consultant, who seeks out potential directors in consultation with the Nominating Committee, who then proposes candidates to the Shareholder.

- ✓ The process employs a skills matrix that gives consideration to gender and geographical balance, and proactively identifies the skills needed to close both knowledge and experience gaps.

- ✓ The Board's evaluation process has been independently ranked in the top quartile of Canadian companies.

- ✓ Each year, directors complete a questionnaire that probes a range of areas from board performance to committee activities.

- ✓ Responses are provided to an independent consultant, who evaluates them and provides feedback to individual directors and the Chair.

- ✓ The Board voluntarily embraced best governance practices as a means to distinguish EPCOR and put it on equal footing with publicly-traded companies.

- ✓ The roles of the Board and management are clearly delineated. Directors focus on three areas of responsibility:
  - o The hire, assess, evaluate, compensate and if necessary part company with the CEO and by extension his management team;
  - o They ensure and assist management with the development of an appropriate business strategy and hold management accountable for its execution; and
  - o They ensure the appropriate conduct of the organization by oversight of financial controls, human resources and governance, and management and mitigation of business risks.

- ✓ A special Board committee was struck to oversee management's assessment and mitigation of risks associated with the construction of the 450 megawatt Genesee Phase 3.

- ✓ EPCOR's governance is about finding the right balance.

- ✓ It allows for the entrepreneurial enterprise and long-term planning necessary to run a sustainable business.

- ✓ In EPCOR's case, success can be attributed to:
  - o A courageous Shareholder, who recognized that business decisions are best left to those who know the business;
  - o An astute Board that works well together, and possess the right mix of depth and experience needed to move the company forward; and

- A top notch management tea, who capably navigates through complex industry issues and focuses on running the business rather than dealing with the political or personality issues sometimes found in single shareholder corporations.

In 2005 EPCOR commenced providing public governance disclosures in its annual report. While EPCOR is not a publicly-traded company, they chose to voluntarily provide the type of disclosures required for publicly-traded companies. The table below identifies some of the practices discussed in these disclosures:

Best Practice	**CGC Recommendation**
The Board holds an annual strategic planning session, and reviews and approves the corporation's Long Term Plan.	
The Board sets aside one meeting with EPCOR's Shareholder each year to report on the strategic plan and respond to questions.	
The Audit Committee monitors financial risks and the Board has oversight responsibility for all business risks faced by the company. Risk management is a standing agenda item at all regular Board meetings.	
A formal communications program is in place and requires the timely disclosure of material information relating to the business activities and corporate performance to the public and to the Shareholder.	
The Board determines, on an annual basis, whether a member of EPCOR's Board is independent if they:	
✓ Did not work for EPCOR;	
✓ Did not have any immediate family member engaged in the employment of EPCOR;	
✓ Did not benefit from a business relationship with EPCOR that could reasonably be perceived to materially interfere with their independent judgment;	
✓ Did not receive remuneration from EPCOR other than Director's fees and disbursements.	

NB Power

NB Power is a crown corporation that is not required to comply with corporate governance guidelines developed for publicly-traded companies. However, similar to EPCOR, NB Power voluntarily provides corporate governance disclosures in its annual report.

Federal Crown Corporations

In 2005, the Treasury Board of Canada published *Review of the Governance Framework for Canada's Crown Corporations.* The following is a summary of the major recommendations related to the board of directors contained in the report and how Hydro compares:

Federal Treasury Board Recommendation	**CGC Recommendation**
The government will enact the legislative changes required to ensure a split in the positions of CEO and chair of the Board for Crown Corporations.	
The government will require that the CEO be the sole representative of management to a Board of Directors.	
The government will require that the Board of Directors of Crown Corporations hold annual public meetings at which stakeholders could express their views and seek information about the activities of the corporation.	
Consistent with good governance practices, the government will ask Boards of Directors to establish regular assessments of their effectiveness and the contribution of individual directors as a self-development tool.	
All directors on the audit committee must be independent of management and have financial literacy. An individual with financial expertise must chair the activities of the committee.	

Newfoundland and Labrador Hydro
Corporate Governance Committee ("CGC")
May 27, 2006
Item: Corporate Governance Committee Charter

HYDRO THE POWER OF COMMITMENT

The purpose of this document is to identify potential roles and responsibilities for inclusion in the Charter of the newly created Corporate Governance Committee. Many organizations combine the roles for Corporate Governance and Nominating into one committee. In addition, some companies include responsibility for Director compensation in the Governance Committee, while others include it in the Compensation Committee. The following is a summary of typical responsibilities of Corporate Governance Committee's, benchmarked against the Corporate Governance Committee charter of three companies.

Corporate Governance Committee Mandate	Aliant	CHC	Ontario Power Gen.	CGC Recommendations
Annually develop, and update a long-term plan for the composition of the Board of Directors that takes into consideration the current strengths, skills and experience of the Board, retirement dates and the strategic direction of the Company.	●	●	●	
Review, monitor, and make recommendations regarding new Director orientation and the ongoing development of existing directors.	●		●	
Recommend, for Board approval, a Code of Business Conduct and Ethics, applicable to directors, officers, and employees of the corporation, constituting written standards that are reasonably designed to deter wrongdoing, and monitor compliance with the Code.	●	●		
Recommend to the Board an appropriate evaluation process for the Board as a whole, its Committees and Directors individually.	●	●	●	

Recommend to the Board the remuneration and benefits to be provided or paid to Directors.	●		●	
Function as a forum for concerns of individual Directors about matters that are not readily or easily discussed at full Board meetings.	●			
Review and approve any public disclosures included in the annual report or other public documents regarding the corporate governance of the Corporation.	●	●	●	
Recommend to the Board the members and/or Chairs to serve on the various committees.	●		●	
Review the terms of reference for the Board of Directors, the committees of the Board and the Chairman and CEO.	●		●	
Annually, be responsible for overseeing the implementation of the assessment process approved by the Board, and report to the Board with the results of its assessment of Board and Committee performance.	●		●	
Review the Directors and officer's liability insurance coverage.	●			
Monitor current developments in corporate governance and make recommendations to the Board as necessary.		●	●	
The committee shall make recommendations to the Board with respect to the independence criteria for Board members.		●		