**Omaha Public Power District**
**OPPD Governance Review**
**Findings and Recommendations**
**August 21, 2020**

## I. Introduction

The purpose of this report is to lay the foundation for a virtual retreat for OPPD's Board of Directors in August that will accomplish the following goals:

1. Refresh Board members' understanding and appreciation of OPPD's policy governance system;
2. Build agreement around the Board's approach to the refining of its policies;
3. Identify the policies that the Board and executive team will focus on for the next year.

To prepare for the retreat, we conducted interviews with the eight OPPD Directors and the CEO.

Each individual was told that the interviews would be confidential. We explained that we would translate the results of the interviews into specific findings and recommendations. We also said we would use quotes from our interviews, without attribution, to illustrate our findings.

## II. Findings

Below are each of the questions we asked in our interviews and a brief summary of what we heard, followed by sample quotes to illustrate the range of input we received.

1. **What are your thoughts about the Board's policy governance system? First, please tell us what you appreciate about it, what you like about it?**

   OPPD Directors are generally in agreement that the governance of OPPD is working well. The Board's policy governance framework is viewed as an effective basis for the Board and management to clarify roles and communicate the overall direction of the utility.

   - When asked about their support for the underlying principles of policy governance, all Board members say they support them.
     - The Board sets the District's overall direction through written policies;
     - The Board delegates to the CEO the interpretation and execution of those policies;
     - The Board continuously monitors the performance of the organization vis a vis the policies;
     - Individual Board members do not and cannot direct the organization.
   - Board members agree that policy governance provides a strong foundation for the Board and senior management have discussions and come to a common understanding of important issues.

2. **Tell us what you have questions about or would like to see improved?**

While the framework of policy governance has strong support among Board members, some members would like to clarify how they work with management under this framework.

- Some Board members feel that too much time is spent revisiting the language of specific policies;
- Some Board members feel too much time is spent trying to direct the CEO through individual Board member suggestions;
- Some Board members want to clarify what it means that the Board decides "what" and the CEO decides "how;"
- Some members raised concerns about whether enough attention is being placed on the GPs and BLs.

3. **To what extent do you think Board members feel ownership for the Board's policy governance structure and system?**

All eight OPPD Board members feel a high degree of ownership of the policy governance framework.

- Regardless of tenure, all Board members express strong ownership for the Board's policy governance system;
- Some Board members express concern that the Board is not able to stay disciplined with regard to its role vs. management's role;
- A few Board members think that the CEO should check with the Board prior to acting when there are there are multiple potential interpretations of a given policy;
- A few Board members want to exercise more control over the CEO by enacting "riders" to Board policies with specific instructions to the CEO and management;
- Two Board members express concerns that the Board lacks a public advocacy voice.

4. **Let's drill down to some specific areas: How effective is the process of reviewing and monitoring OPPD's performance against the goals set in the Board's policies? How would you improve that process?**

Board members are generally pleased with the process or reviewing and monitoring OPPD's performance, but there are specific areas of concern.

- The monitoring process itself is viewed as important;
- Management's presentations are viewed as effective;
- Some Board members question whether the right metrics are tied to each SD;
- Some Board members think that the monitoring process is overly repetitive;
- One Board member thinks the discussion prior to the vote on compliance is not very robust[
- Suggestions for improvement offered by Board members include:

- Share the management reports in advance with a requirement that Board members raise their questions prior to the committee discussion;
- Spend less time on Board member comment;
- Focus only on the monitoring discussion; raise the question of whether to revise the policy at a different time.

5. **How effective is the process of identifying areas where Board members feel the policies need to be changed or improved? How would you improve that process?**

Board members expressed varying opinions about whether the process of identifying areas of potential revision to their policies is working effectively.

- Board members want more discussion and clarity about how the process is supposed to work;
- Board members recognize that it requires an investment of both Board and management time to revisit and potentially revise an SD policy;
- Some Board members say the Board needs a way to distinguish between the situation where 1-2 Board members want to revise a policy – and the situation where a majority of Board members wish to do so;
- A few Board members want the Board to be better trained to be able to develop and write policy.

6. **How effective is the process of deciding on the Board's work plan for the year and the topics to be discussed by the Board each year? How would you improve on that process?**

Although there was general consensus that there is a work plan, Board members expressed a desire for more interaction in the development and review of the work plan.

- Some Board members think the process is working well;
- Other Board members express confusion about it;
- Some Board members say that the work plan process can only be effective if the Board is informed about management's plans well in advance – and is aware of which Board's policies are driving management's planning and decisions.

7. **Aside from what we've already covered, please tell us how you think OPPD's governance system facilitates good communication? Among the Board members? Between the Board and the executive team? Among the executive team? What's working well? What could be improved?**

Board members generally agreed that the current system fosters good communication at all levels. Some suggested improvements included:

- Better understand how to start from outcomes to develop the written policies that direct OPPD to achieve those outcomes;
- Provide a binder with all of these policies for each Board member at every meeting, so that members can refer to them easily;

- Further clarity the role of individual directors in public engagement – and when Board members are entitled to use utility resources and when directors are acting on their own;
- In addition to the CEO's current 1:1s with Board members, also use "2x2s" to broaden Board members' understanding of different perspectives and to keep Board members apprised of management's thinking and forthcoming decisions;
- Use ad hoc committees on occasion for the development of Board policy;
- Revisit the appropriate GP and BL policies and solidify understanding of specific policies e.g. GP-2,GP-3, BL-5, BL-7.

**8. What policies would you like the Board and executive team to work on in the coming year?**

Board members are interested in working on at least nine of the SDs in the coming year. In some cases, the issue is whether the SD is still relevant and in others it is the interpretation of the words of the SD that are in question. The policies below are not ranked in order of priority.

- SD-2 (rates): Some members want to better define "affordability," to incentivize people to use less energy, to look at net metering rates, and to revisit the fixed charge;
- SD-5 (customer satisfaction): Some members expressed a desire to better understand customers' priorities through surveys and other means;
- SD-7 (environmental stewardship): Some members want to understand the interplay between SD-7 and SD-9;
- SD-9 (resource planning): Some members expressed a desire to understand the Board's role in determining the resource plan – and what level of policy making is appropriate;
- SD-11 (economic development): Some Board members expressed a desire to refocus the SD toward small business;
- SD-13 (stakeholder outreach and engagement): Some Board members expressed a need to understand management's interpretation of this policy;
- One Board member expressed a desire to clarify how management is defining resiliency in SD-4 (reliability) and to discuss the investments that OPPD is making in resiliency.

### III. Observations

1. There is strong ownership on the part of the Board – and the CEO – for OPPD's policy governance framework and processes.
   - All Board members expressed confidence that the governance framework is working well and contributes toward the utility's success and effectiveness.

2. There needs to be a shared understanding of how the Board's SD policies dovetail with its delegations (BLs) to the CEO.
   - See recommendation #1 below.

3. There needs to be a shared understanding of the circumstances under which the CEO is expected to communicate to the Board about forthcoming management actions.
   - See recommendation #2 below.

4. There is a need to clarify the manner in which individual Board members can communicate requests for information and/or suggestions to the CEO.
   - See recommendation #3 below.

5. There is a need to clarify when the Board will discuss: 1) whether to consider revising a given GP, BL or SD policy; and 2) the process of revising the policy.
   - See recommendations #4, #5 and #6 below.

6. There is a need to clarify how the Board can be an effective conduit for public voices and public representation.
   - See recommendation #7 below.


## IV. Recommendations

1. Refresh the Board's understanding of how the Board's SD policies dovetail with its delegations (BLs) to the CEO.
   - Under policy governance, the Board defines the outcomes it wants OPPD to achieve via its SD policies;
   - The Board's SD policies are intended to provide a stable, predicable set of expectations upon which the CEO and management can base their planning and budgeting assumptions;
   - The Board' policies are in effect until the Board changes them;
   - Particularly with regard to some of the SDs, the planning horizons are long and investments take years to fully materialize;
   - The Board delegates to the CEO the authority to interpret the SDs and use best judgment in putting in place strategies, programs, and other policies to achieve the Board's desired results;
   - If individual Board members disagree with the CEO's interpretation, then they can try to get the policy changed. Otherwise, however, the Board and individual Board members need to be self-disciplined in their roles and grant the latitude delegated to the CEO to interpret its policies;
   - This will have long-term positive impact in attracting high-quality management to OPPD;
   - The specific language in BL-7 is: "The Board will instruct the President and Chief Executive Officer (CEO) through written policies that define the results that the organization is to achieve. The CEO is authorized to establish all further policies, make all decisions, take all actions, establish all practices, and develop all activities related to the operations or business affairs of OPPD. The CEO shall use prudent judgment in the exercise of the delegations and in a manner that is operationally and economically sound, serves the best interests of OPPD's customer-owners and the community, employs prudent business practices, balances the risks and benefits of the actions, and does not expose OPPD to unreasonable risk."

- We recommended that the Board engage with management in incorporating the values and the over-arching strategies the Board holds important in its policies. This may help the Board avoid "what" vs "how" distinctions and focus on defining outcomes the Board is seeking to achieve.

2. Refresh the Board's understanding of the expectations for communication from the CEO.
   - Some Board members feel that the CEO needs to do a better job keeping the Board informed so that the Board – before management acts – can assess whether its current policies accurately reflect the Board's views.
   - There is a requirement in BL-7 that the CEO keep the Board informed about actions that he/she plans to take. The language reads: "If the CEO reasonably determines that an activity related to the delegations presents an operational risk to the District in any way, the CEO shall inform the Board and may request that the Board take appropriate actions."
   - At SMUD, BL-7 includes the following additional language regarding this requirement to keep the Board informed (italicized): "If the Chief Executive Officer and General Manager reasonably determines that an activity related to the delegations presents, regardless of the size of the financial commitment: *(i) a unique and significant operational risk to SMUD; (ii) a significant impact to customers; (iii) a significant impact to community relations; (iv) a significant impact to SMUD's reputation; or (v) materially compromises the policies and goals established by the Board,* the Chief Executive Officer and General Manager shall timely inform the Board and may request the Board to take appropriate actions."
   - We recommend that OPPD's Board consider including some or all of the elements in SMUD's BL-7.

3. Clarify and check for complete understanding of the Board's unity of control policy (BL-5).
   - The unity of control policy (BL-5) is a central tenet of policy governance. It says that only the Board, acting as an entity, can give direction to the CEO;
   - Policy governance is intentionally designed to avoid the confusion, inefficiencies and risk that inevitably occurs when different individuals try to steer the organization;
   - By design, it takes time, collaboration, and consideration to change one of the Board's policies and to thus redirect the organization;
   - Board members and the CEO cited instances in which Board members try to give individual direction and make suggestions to OPPD's CEO and management;
   - Board members also cited instances in which Board members are critical of OPPD staff;
   - The level of civility between Board members and between Board members and senior leadership can have a profound impact on the utility;
   - There is a subtle difference between OPPD's BL-5 and SMUD's corresponding policy;

- OPPD: "Board Members shall refrain from conducting performance evaluations for any OPPD employee or staff member, other than the CEO."
- SMUD: "Board Members will refrain from evaluating, either formally or informally, any staff. The Board as a body will refrain from evaluating, either formally or informally, any staff other than the General Manager, the General Counsel, the Internal Auditor, and the Special Assistant.
- We recommend that OPPD's Board consider including some or all of the elements in SMUD's BL-5.

4. Clarify the Board's process for deciding whether to consider revising a given policy.
   - At the previous workshop, it was agreed that the monitoring process was to be kept separate from the process of deciding whether to revise a given policy;
   - The question after the monitoring report and discussion is: "Do Board members think that the organization is in compliance with this policy?"
   - At a separate time and place, Board members should be asked whether they want to revise any of the GP, BL  or SD policies;
   - This could occur on monthly, quarterly, or annual basis;
   - A survey can help establish objectively whether a consensus or majority of Board members want to invest the time and resources in revisiting and revising specific policies;
   - At the public discussion, the question on the table is whether a sufficient number of Board members feel that a policy merits revisiting and possibly refreshing – and thus should be added to the Board's work plan;
   - It is appropriate for Board members to briefly explain why they'd like to revisit the policy, although this is not the time for a lengthy discussion of the pros and cons of specific policy changes;
   - The actions for the Board to take at this point include: 1) decide not to revisit it: 2) decide that it merits revisiting and referring it to a committee or ad hoc for discussion and development; 3) decide to revisit it but defer referral to a specific committee or ad hoc;
   - This decision is typically done informally, with the understanding that it requires a majority of Board members to decide to put a given policy on the Board's work plan;
   - The chair or CEO may request a vote to clarify the will of the Board;

5. Clarify how the Board's work plan is used and kept up to date.
   - Based on the Board interviews, it appears that there is a need to clarify the purpose of the Board's work plan and what information it should contain;
   - We recommend that it contain three separate sets of information:
     a) The overall work plan; this is the list of policies and other topics that the Board has agreed to invest time and energy in at its Board and committee meetings in the coming year.
        - This could include policies the Board wants to re-visit; expert education it wants to receive; or stakeholder input it wishes to obtain;
        - The CEO and senior management can recommend topics for the Board work plan as well;

- The work plan should include time-dependent topics that need Board approval to operate the utility (e.g. state-mandated reports, budget);
- This set of topics needs to be voted on/approved by the Board;
- We recommend the Board chair regularly remind his/her colleagues in public session about the topics on the work plan.

b) The schedule of upcoming Board meetings and committee meetings, showing the topics expected to be on the agendas.
- This provides Board members a valuable "look ahead" so that they can prepare for discussions and request any advance material they need;
- This information is typically updated by staff in consultation with the Board chair and committee chairs.

c) A "parking lot" of Ideas from individual Board members about future topics for the Board to explore.
- This is a place to capture individual Board members' ideas; it is not a commitment to devote Board time or energy to those ideas;
- From time to time (e.g. quarterly), the Board chair should ask his/her colleagues whether they have any ideas to add to the parking lot;
- On a quarterly basis, we recommend the Board chair ask his/her colleagues whether they wish to move any topics from the "parking lot" to the work plan;
- The discussion should take into account the existing work plan commitments and the impact on time and resources of adding more items to the plan;
- Changes to the work plan should be by consensus or vote.

6. Clarify how the Board and CEO monitor compliance with the Board's GP and BL policies.
- Board members cited that the GP and BL monitoring process could be more robust so that some of the cornerstone concepts of policy governance might be more regularly reviewed and discussed;
- It is recommended that the Board and senior leadership team be surveyed at least annually with regard to perceived compliance with the Board's GP and BL policies.

7. Clarify the role of the Board in being a conduit for public voices and public representation.
- GP-2 (Governance Focus) addresses the public role of the Board, at least in part. The preamble states: "The Board shall govern with an emphasis on: (i) strategic, forward-looking vision and leadership versus administrative detail; (ii) clear distinctions between the Board and President and Chief Executive Officer roles; and (iii) collaborative decision-making that encourages diverse viewpoints.
- GP-3 (Board Job Description) states: "The Board shall serve as representatives of OPPD's customer-owners and build relationships throughout OPPD's service territory and the region."

- GP-3 also states that "the Board shall monitor stakeholder processes, when necessary, to ensure the Board hears the strategic viewpoints and values of customer-owners and other interested stakeholders."
- GP-7 (Guidelines for Board Member Behavior) is also important to consider in the context of how individual Board members interact with the public and gather input.
- We recommend that the Board discuss how it currently operationalizes GP-2 and GP-3 (and GP-7) – and what refinements are needed to carry out these policies.