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# TOP QUARTILE REGULATOR REPORT

PHASE 1 - MARCH 2021



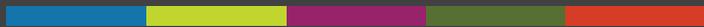
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# INTRODUCTION & SUMMARY



## Towards excellence

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In recent years, many of the world's energy regulators have been placing a sharper focus on ensuring that they are performing at an optimal level. This search for the best possible performance is driven by challenges that many regulators face arising from climate change, advancements in new technology, increasing customer expectations and diminished trust in government institutions.

In Ontario, the Minister of Energy, Northern Development and Mines responded to these challenges by establishing the OEB Modernization Review Panel. The Panel was asked to provide advice on how to strengthen the OEB's governance and operational framework to improve performance and enhance regulatory excellence. The Panel's final report, completed following research and extensive stakeholder engagement, was published in March 2019. Subsequent to the release of the report, the Government passed legislation to implement the governance recommendations made by the OEB Modernization Review Panel. On October 1, 2020, that new governance structure took effect, comprised of a Board of Directors led by a Chair as well as a separate Chief Executive Officer.

## The Top Quartile Regulator Project

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This report concludes phase one of the Top Quartile Regulator project, which is an initiative designed to move the OEB towards regulatory excellence by taking action on the recommendations of the OEB Modernization Review Panel. The report summarizes research that was conducted on best practices and ideas from other jurisdictions, examines areas where the OEB should improve its performance and provides a series of proposed initiatives designed to enhance the OEB's performance in those areas to the level required of a top quartile regulator.

The initiatives selected for implementation will need to be reflected in an action plan that provides greater detail on implementation activities and milestones that reflect appropriate pacing and prioritization. Phase two of the project will be that planning exercise.

Phase three of the project will see implementation of the chosen initiatives in a thoughtful, coordinated and time-bound manner.

## Relationship of this report to other work to further excellence

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The OEB had undertaken a number of steps towards achievement of the attributes of excellence identified by the OEB Modernization Review Panel after publication of the report in 2019 and further significant work since establishment of the new governance structure. Some of the recommendations in the body of the report build on and further this work. These existing initiatives are identified in *Appendix A* of this report.

The proposals for improved performance outlined in this report take into account the Minister's

mandate letter to the Chair of the OEB, dated October 1, 2020, which contains expectations with respect to the OEB’s service and performance priorities for the coming year, including moving forward on the recommendations in the OEB Modernization Review Panel Report.

One of the first initiatives undertaken after the new governance structure took effect was the creation and approval of the Chief Commissioner plan. Many of the identified gaps and suggested initiatives found in the “Efficiency” and “Certainty” sections of this report were originally identified in that plan and are noted where applicable in this report.

The OEB financial review report undertaken by Mr. Saad Raffi also influenced the analysis of areas where improvements could be made, and consequently there are initiatives identified in this report which also appear in the Management Response to the financial review report.

Finally, as this report was being researched and prepared, work on the new OEB Strategic Plan and Business Plan was proceeding in parallel and many of the themes of improvement and performance excellence can be found in all three documents.

Since all of these activities stem from the OEB Modernization Review Panel report, in order to optimize coordination of effort, the research and analysis in this report concentrates on the five characteristics of regulatory excellence identified by the OEB Modernization Review Panel, supplemented by an attribute related to the facilitation of innovation.

## The process

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One of the foundational pieces of work undertaken for this project was a broadly based jurisdictional review, which consisted of a literature review of best practices related to the attributes of regulatory excellence covered in this report, including key texts, online resources and thought leader interviews from both national and international sources. A further targeted jurisdictional review was conducted for best practices from amongst recognized leading regulators from Canada and around the world. The results of the research, including summaries of the thought leader interviews, key ideas and best practice resources and a detailed bibliography can be found in *Appendix B* of this report.

A stakeholder survey was undertaken in late 2020 to provide a baseline level of performance which could be used to inform a gap analysis and serve as a starting point for measuring improvement going forward. The survey questions were designed to elicit stakeholder views on the OEB’s performance in the areas of excellence identified in the OEB Modernization Review Panel Report.

A symposium on regulatory excellence was held on February 11, 2021. The selection of speakers gave the OEB the opportunity to seek advice and to look beyond its own borders to learn from leading jurisdictions.

## Highlights from our research and analysis

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A number of consistent themes emerged from our research. These themes, highlighted below, informed our analysis of the performance areas where the OEB should concentrate its efforts, and were instrumental in developing proposed improvement initiatives based on best practice.

### **Best Practice**

Our research revealed that many regulators are grappling with what regulatory excellence means going forward, and most face similar pressures. This means that the effort taken to identify best or better practices and initiatives from other jurisdictions has been very valuable. Thought leaders indicated that best practice is a matter of context and perspective and that while there are regulators worth emulating, the context is always different, so a best practice must be *adapted*, not just adopted.

### **Statement of Purpose**

Many thought leaders commented on the importance of a succinct and powerful statement of purpose to provide clarity and transparency around the regulator's mandate and to guide its work, processes, behaviours, communications and culture. These statements synthesize the mission, vision, values, and culture of the regulator, and can be traced through from the Strategic Plan, to Business Plans, policy project plans, processes, and communications.

### **Continuous Improvement**

A deliberate culture of continuous improvement is a key success factor for top quartile regulators. The most successful regulators undertake rigorous self-assessment. Many have undertaken a process very similar to the ongoing process being undertaken in Ontario. These regulators have put in place continuous improvement plans which systematically and consistently re-examine performance year over year to identify and improve areas which need attention. They ensure that they are transparent and disciplined about external reporting of results and improvement plans.

### **Ongoing Staff and Commissioner Development and Engagement with a Community of Practice**

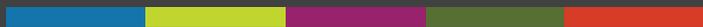
Engaged and empowered staff and engaged and skilled Commissioners drive innovation and agility and are key to regulatory excellence. The best regulators engage with regulatory colleagues in other jurisdictions, academic and think-tank research, educational events, and conferences. Emphasis is placed on professional development, fostering cultural change and leading to continuous improvement.

### **Genuine Engagement of Stakeholders in the Business of Regulation**

Our research points to the primacy of deep and effective two-way communication with regulated entities, other stakeholders and the public. Top tier regulators ensure that stakeholders are very involved in the establishment of policy priorities, that the regulator's thinking on both policy and adjudicative issues is clearly explained, that performance goals are clearly articulated, and that results are transparent.



# REGULATORY ATTRIBUTES



# INDEPENDENCE

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## Targeted Regulatory Behaviour:

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The OEB's adjudicative and policy decisions are made and seen to be made impartially and without undue influence from government or others.

## Description of the Attribute

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Independence is perhaps the most foundational and important attribute of excellence for a regulator. A regulator that is not perceived as independent is severely limited in its ability to build and maintain public trust and confidence in the legitimacy of its decisions, especially in a sector where decisions and issues are often difficult or polarizing.

The importance of public trust was underscored by the OEB Modernization Review Panel:

*“To perform at this level, the OEB will need to rely on a significant amount of public trust—an essential ingredient for institutions that have delegated authority from government. Public trust in the context of a regulator requires that all interested parties—the regulatory community, the public and public representatives—have confidence that the regulator will develop policies and issue decisions that are fair, well-reasoned, and responsive to their concerns.”* (OEB Modernization Review Panel report page 9)

Since the trust engendered by independence is in turn a key driver of a regulator's effectiveness and can be built and maintained in different ways, many of the observations in later sections will contribute to that goal. For the purposes of this section, what will ultimately be important is for the OEB to conduct its operations in a manner that highlights and supports the independence of its decision-making.

While discussions of independence are often associated with adjudicative activities, it is also an important dimension of a regulator's policy-making activities. The OEB Modernization Review Panel report describes independence as including the ability of the OEB to focus on its core economic regulation mandate.

## Discussion of Current State

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Participants in the 2020 Ipsos survey identified independence as one of the two most important attributes which the OEB should pursue, and one of the two primary areas (along with effectiveness) where the OEB should focus its efforts. The “what we heard” section of the OEB Modernization Review Panel report also refers to concerns related to independence.

Concerns have also been expressed about the perception that the OEB’s regulatory policy agenda is unduly driven by government, and that projects undertaken further to Ministerial requests or directives are diverting OEB resources away from a focus on its core work.

The Minister’s mandate letter identifies several priorities for the OEB in terms of independence and accountability which have as their focus strengthening trust through the implementation of governance reform.

## Gap areas, best practices and suggested initiatives

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Based on the material in the recommendations and “what we heard” sections of the OEB Modernization Review Panel Report, the Minister’s mandate letter and the Ipsos survey, the following gaps or opportunities have been identified:

### Gap Area 1: Process and Criteria for Commissioner Appointments

- Until September 30, 2022 (the end of the “transition period”), Commissioners are appointed by the Lieutenant Governor in Council. Thereafter, they will be appointed by the OEB’s Board of Directors. Although there is therefore currently no “gap” to be filled by the OEB in respect of the Commissioner appointment process, new By-laws will need to be in place for October 1, 2022 to address the process for the appointment of Commissioners by the Board of Directors. This presents an opportunity to ensure that the framework for Commissioner appointments is well-documented, transparent, fair and accountable, and reflects best practices as far as possible within applicable legislative constraints.
- One legislative constraint that has been identified as potentially limiting the OEB’s flexibility in achieving optimal outcomes is the term limits for Commissioners. Security and length of tenure are recognized as important attributes of independence and contribute to regulatory excellence.

### Best practices

- Best practices in this area include ensuring security of tenure; robust and transparent merit-based appointment processes; rigorous evaluation of candidates and ongoing Commissioner training and professional development.

- Nova Scotia appears to be a leader in this regard:
  - The Minister of Justice has published formal guidelines and a process to follow to ensure appointments are based on merit, including the involvement of an appointment committee made up of judicial experts and out of province experts among others.
  - An independent appointment process is used; the Government is ultimately given a list of three candidates and must choose from this list.
  - Appointments are at good behaviour until the member reaches the age of seventy years. This longer term is intended to allow for the attraction of quality candidates.
- The Canada Energy Regulator's appointment process includes rigorous testing of candidates, including having the candidate participate in psychometric testing and requiring them to complete a sample case analysis.

**The OEB should consider the following initiatives for appointments that will be made by the Board of Directors after the transition period ends on September 30, 2022:**

- **Ensuring that new By-laws required for October 2022 lay out a transparent and robust framework for Commissioner appointments** that reflects best practices as far as possible within applicable legislative constraints.
- Using **an independent and reputable recruitment firm**, and perhaps an expert interview or evaluation panel, to assist and advise the Board of Directors (or a Committee of the Board of Directors) in the selection process.
- **Establishing a Commissioner appointment plan which addresses staggered terms and length of tenure.** The plan should be prepared and updated as needed to map out a strategy for optimizing Commissioner terms and would serve to identify gaps in needed skills on an ongoing basis.
- **Exploring a legislative solution** with the Ministry which would allow greater flexibility for the OEB to extend and stagger Commissioner terms to better ensure adjudicative continuity, address workload issues and enable the OEB to attract excellent candidates by reason of security and length of tenure.
- Assessing candidates against **merit-based publicly available evaluation criteria, including a skills matrix** for Commissioners and a separate skills matrix for the Chief Commissioner that recognizes the leadership responsibilities of that role.

## Gap Area 2: Traceability of policy development

- Ministerial Directives to the OEB are allowed by the legislation and are a transparent vehicle for the Government to convey its requests for the OEB to pursue specific policy work. Given ongoing concerns expressed about the use of Directives, it would be helpful if the OEB did more to ensure that the nature and legitimacy of Ministerial Directives is made clear and that the genesis and progress of policy processes is traceable.

## Best Practices

- The Nova Scotia Utilities and Rates Board reports to the legislature through the Minister of Finance, one step removed from the Energy Minister.

### The OEB could consider:

- **Refreshing the “Directives to the OEB” page on the website** to improve transparency and build greater understanding and awareness of the nature of Ministerial Directives.
- **Where applicable, posting project or consultation plans associated with each new Directive, so that work on Directives is clearly traceable.** Such plans should include key dates, touch points with stakeholders, and summaries of external input as it is received. This will enhance transparency in terms of the OEB’s thinking, such that both the genesis of a policy initiative stemming from a Directive and the related work of the OEB are readily accessible.
- Establishing an **annual policy day** where stakeholders could share their views on policy priorities for the coming year. Seeing their priorities reflected in the annual Business Plan can help mitigate the perception that the OEB’s policy priorities are either overly influenced by Government or straying beyond its core mandate. (This initiative also ties into the Accountability and Effectiveness Attributes).

## Gap Area 3: Relationship with Government could be more clearly articulated

- There has been insufficient transparency concerning the OEB’s relationship with Government, including a clear articulation of roles and responsibilities and communication protocols as between the two. The new Memorandum of Understanding between the OEB’s Chair and the Minister of Energy, Northern Development and Mines provides transparency on these issues, while at the same time specifically reinforcing the need for and value of independence.
- The OEB needs to refresh its mission statement such that it clearly speaks to independence and the traits that it will exhibit as it conducts its work.

### Best practices

- Clear mission statements are prominent on the home page of many websites: see for example Australian Energy Regulator; Australian Competition and Consumer Commission; Canada Energy Regulator; New Zealand Commerce Commission.

### The OEB could consider:

- **Refreshing its “mission and mandate date” webpage or its home page to include a clear mission statement that** speaks to independence and other key values such as integrity, transparency and accountability, as part of a broader initiative to ensure the OEB’s website reflects the priorities of the organization and is a more effective tool for communicating the OEB’s work and values.

- Creating and **posting a document which contextualizes** how independence applies to an agency of the Government that is an administrative tribunal.

## Gap Area 4: Adequacy of remuneration and raising the profile of Commissioners

- The level of remuneration set out in the *Agencies and Appointments Directive [for full-time appointments]* poses a considerable challenge for the OEB's ability to attract well-qualified Commissioners having regard to the expertise, skills and level of effort expected of them.
- Given their heavy workload, Commissioners have not had the ability to avail themselves of external opportunities to showcase their expertise or to demonstrate their proficiency to external audiences. As the OEB returns to a full complement of Commissioners, Commissioners should be better able to raise their profile and showcase their expertise.

### Best practices

- Regulators at agencies in the United States have a greater public profile and attend conferences, make speeches and are visible participants at agency policy processes.
- The National Association of Regulatory Utility Commissioners (NARUC) in the United States features numerous regulators as speakers at its conferences and Commissioners are active members of NARUCs committees.

### The OEB could consider:

- Exploring a legislative solution with the Ministry to **address forthcoming issues associated with sub-optimal compensation for Commissioners.**
- **Building greater awareness of the expertise and independence of Commissioners** by restoring and increasing external exposure and opportunities for relationship building in a manner that respects their independence. This could include attending and speaking at conferences to show expertise, engagement and knowledge of sectoral issues.
- Establishing **a formalized mandatory adjudicative** training program complimented by increased participation in organizations such as NARUC and the Canadian Association of Members of Public Utilities Tribunals (CAMPUT).

# ACCOUNTABILITY

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## Targeted Regulatory Behaviour:

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The OEB is accountable for its actions and advances the public interest in a transparent and accessible manner.

## Description of the Attribute

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*"Financial accountability is an essential characteristic of all public facing organizations. The Ontario Energy Board (OEB) is funded by those it regulates and as such, it must be both accountable and transparent as it drives a mandate of organizational modernization. To that end the OEB commissioned a financial review with broad parameters and full exposure to all aspects of financial and operational management within the OEB."*  
(OEB Financial Review Management Response page 2)

The OEB is a government agency charged with making decisions in the public interest and is ultimately funded in large part by the ratepayers that it serves through cost assessments levied on regulatory entities. It is accountable to the Government of Ontario and must be a prudent steward of the funds it receives and responsible to the public it serves. As stated in the OEB Modernization Review Panel Report:

*"While being independent in its decision-making, the regulator's governance should reflect that it is accountable for the advancement of the public interest."*  
(OEB Modernization Review Panel Report I page 10)

The Minister's mandate letter also speaks to accountability issues, requiring the OEB to "promote openness and transparency, flexibility in approach, and responsiveness to input from stakeholders as key characteristics of the OEB's organizational structure. It requires the OEB to:

*“conduct strategic and business planning in a manner that supports the OEB’s ability to address the challenges facing the energy sector, ensuring that initiatives described in future business plans are sufficiently detailed to make clear why the initiatives are being pursued what their objective is, and how success will be determined.”*

## Discussion of Current State

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The following discussion concentrates on the processes used by the OEB as it undertakes its policy work and business planning.

The results of the Ipsos survey indicate that while stakeholders strongly believe the OEB is delivering on its public interest responsibility, there are concerns with how the OEB conducts policy work and how it communicates with the sector regarding policy work.

Stakeholders’ major concern is with the establishment of policy priorities, i.e. whether the OEB is tackling the most pressing issues and in the right order. There is also concern with the degree to which all interests are heard and with the manner in which the OEB balances the different interests in the sector.

Further, there is a sense that policy work is undertaken without first identifying measurable outcomes, so that the value of a policy initiative can later be assessed. Stakeholders are also concerned that the progress of policy consultations is not always transparent, creating uncertainty in the sector and concerns that decisions are being made without stakeholder involvement.

Similar observations about a lack of transparency and inclusiveness could be made about the development of the OEB’s Business Plan, as in the recent past, the OEB has not consulted on the Plan. Along the same lines, as pointed out in the Financial Review Report, the OEB does not currently stakeholder its annual budget before it is finalized and sent to the Ministry. The manner in which the OEB’s costs are allocated among the payor classes who fund the OEB has not been examined in some time.

## Gap areas, best practices and suggested initiatives

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Based on the material in the recommendations and “What we heard” sections of the OEB Modernization Review Panel Report, the Minister’s mandate letter and the Ipsos survey, the following gaps have been identified:

### **Gap Area 1: Policy development and Business planning**

- The process by which the OEB prioritizes policy issues is not sufficiently understood and does not adequately include the point of view of sector participants.

- Engagement and consultations on policy priorities are not sufficiently structured and are not seen to occur at a sufficiently early point in the evolution of a policy project.
- The OEB is not seen to be adequately coordinating its engagement activities with other actors in the energy sector and to be providing an optimal level of stakeholder engagement which, while providing for meaningful engagement, takes into account stakeholder capacity to address multiple policy priorities at the same time.
- Internal decision-making protocols and the progress of thinking on policy issues have not been sufficiently explained, such that policy making at the OEB may be seen to be a “black box”.
- The business planning and budget processes do not sufficiently engage the sector in an annual priority setting exercise.
- Initiatives described in Business Plans are not sufficiently detailed to make clear why the initiatives are being pursued, what their objectives are, and how success will be determined.
- The OEB does not have a structured monitoring of linkages between emerging issues, and the various policy and adjudicative work it undertakes.

## Best Practices

- Ofgem publishes a forward work program which sets out in draft form a proposed workplan and invites views on which priorities it should focus on to further develop its work programme for the next year.
- The Australian Energy Regulator publishes a “Statement of Intent” which outlines forward looking programs, indicates how it will meet expectations and contains performance indicators to measure performance.
- Ofgem and the Australian Energy Regulator also hold planned annual consultations to gather input from stakeholders on work priorities. These regulators then report back to the stakeholders through mechanisms such as Forward Work Programs and Business Plans that set out the direction of the regulator with appropriate analysis and transparency in terms of decisions on prioritization.
- A number of regulators, such as Ofgem and the Australian Energy Regulator have developed and published consultation frameworks that set out the principles, processes of consultation on policy issues and the decision-making process. These frameworks have been developed through engagement with stakeholders to ensure they are informed by participants in different forms of consultations.
- The Alberta Utilities Commission has recently adopted a process for getting input on its business plan to set priorities for its ongoing work.
- The Ontario Securities Commission holds an annual “*Dialogue*” day with stakeholders and Commission members for the purpose of gathering input on priorities.

- The National Association of Regulatory Utility Commissioners, NARUC, recently reported on best practices entitled *Public Utility Commission Stakeholder Engagement: A Decision-Making Framework*. This report identified as an emerging best practice that commissions engage stakeholders early and often in any policy development or engagement process.
- NARUC also recommends the adoption of a multi-tier approach to engagement, which allows some discussions to be held in open, plenary format while other deliberations occur in smaller working groups, and places a focus on building consensus throughout the process rather than postponing decisions on all matters to the end.
- In Oregon working groups are required to produce a short (two-page) consensus memo to document points of agreement, and commission staff interview stakeholders early in the process to understand where their interests lie and how they propose to become involved.
- The federal government requires that any federal proponent of a new regulatory instrument carry out an impact analysis to demonstrate that the benefits of a proposal outweigh the costs and that the new regulatory instrument or requirement has been structured so that the excess of benefits over costs is maximized.

### The OEB could consider:

- **Developing an Engagement Guide for consultations**, including guiding principles and identification of process options which build on appropriate best practices identified at other regulators and incorporates the views and ideas in the NARUC report referred to above including:
  - **Interviewing stakeholders** early in the process to understand where their interests lie and how they propose to become involved
  - **Adopting a multi-tier approach to engagement**, which allows some discussions to be held in open, plenary format while other deliberations occur in smaller working groups in order to enhance efficiency
  - **Establishing an advisory board** that can provide guidance on the objectives, scope, schedule, and deliverables of major policy initiatives in which they have been engaged. The advisory board should be representative of the participants
  - **Focusing on building consensus** through the process rather than postponing a decision on all matters to the end, including maintaining detailed minutes of meetings
  - **Requiring working groups to produce a short (two-page) consensus memo** to document points of agreement.
- **Establishing new stakeholder advisory approaches which** allow both industry and consumer-oriented stakeholders to meet with the OEB regularly to discuss initiatives, process issues and emerging trends. These approaches should also take into account stakeholder capacity and coordination with other energy sector activities.
- Sharing a **forward work program** in the context of consulting on the Business Plan that shares the OEB's priorities and provides proposed processes and expected outcomes. This would provide increased transparency on the issues that will be addressed by the OEB.
- Developing and posting a framework for **Cost-Benefit Analyses**, which provides a clearer demonstration of the linkage between a given requirement and the OEB's overall objectives, in

order to better communicate how regulatory policies and processes deliver on the organization's mandate and responsibilities.

## Gap Area 2: The OEB does not have clear policies regarding when generic hearings should be used over a consultation process

- Generic hearings have been used sparingly in recent years in favour of broad policy consultations. In addition, stakeholders have indicated that they are not completely satisfied that it is sufficiently clear why the OEB's chooses one regulatory process over another when it is considering a policy issue.
- Adjudicative regulators in the United States and the AUC tend to use more formal hearings such as those for review of the cost of capital and the recent initiative to examine the need for a deferral account to capture the impacts arising from the COVID-19 pandemic.

### The OEB could consider:

- Developing and maintaining a list of emerging generic issues to assist the OEB **in establishing and posting a guideline** that allows it to consider the appropriate stakeholder engagement path for an emerging issue (consultation or generic hearing). This would help to facilitate predictability and consistency.

## Gap Area 3: Examining, tracking, improving and reporting on performance

- The OEB needs to drive a more intentional and externally visible culture of rigorous self-assessment and relentless improvement.
- Performance trends are not examined annually for trend improvement or decline, and problem areas are not systematically identified and prioritized to be fixed first.
- Section 128.1 of the *Ontario Energy Board Act, 1998*, which requires the Minister to commission a report on the OEB's effectiveness every five years, has not been implemented by the Ministry.
- The OEB's Annual Report does not include sufficiently detailed information concerning performance on financial, operational and performance measures.

### Best Practices

- The Nova Scotia Utility and Review Board tables an annual Accountability Report in the legislature, which clearly measures outcomes against goals set out in its Business Plan.
- Transparency between Government and the Regulator is enhanced in Australia through the Australian Energy Regulator's receipt of a Statement of Expectations from government to which it responds with a Statement of Intent. This statement of intent then informs the AER Business Plan and results are ultimately tracked through and appear in the Annual Report.

- The Australian Government has published a performance framework for its regulators which contains a common set of performance measures to allow for comprehensive assessment of regulator performance and engagement with stakeholders.
- The British Columbia Utilities Commission and the Alberta Utilities Commission share a report on full cycle times for adjudicative processes.

### The OEB could consider:

- Implementing **the public reporting of compliance and enforcement activity and of industry guidance through** a bi-annual report on its website.
- **Enhancing the Annual Report** to more fully report on the measurement of outcomes against goals set out in its Business Plan.
- **Refreshing and revising the existing framework for policy evaluation.** This would involve investigating whether the framework is an effective tool for assessing whether the original objectives of OEB policies have been met. The framework could also be revised as necessary to ensure that the OEB approach to policy development involves setting outcomes for policy initiatives at the outset and a renewed emphasis on cost/benefit analysis.

### Gap Area 4: Transparent communication

- The OEB website does not allow easy tracking of both policy and adjudicative processes. In the case of policy initiatives, there is a concern that there can be long periods of silence where there is no indication of whether the OEB is proceeding with an initiative or has put it on hold, leading to stakeholder frustration and business risks.
- The OEB does not adequately communicate how regulatory policies and processes deliver on the organization’s mandate and objectives, which may lead to the perception that independence is compromised by Government policy direction.

### Best Practices

A number of regulators (Ofgem, AUC) and the IESO have adopted processes of regular communications about the status of all policy initiatives and engagements to keep stakeholders informed. These processes involve the ability to sign up for notifications for updates on any initiative or weekly/monthly reports on engagements.

### The OEB could consider:

- **Optimizing the OEB website** in order to facilitate easy access and tracking of policy initiatives in particular.
- Developing a system for **regular reporting** on all ongoing policy initiatives through a newsletter or web posting that will ensure stakeholders are aware of the progress on individual initiatives and

understand how to engage in any initiative.

- Consider **developing an email notification system**, similar to the current “What’s New”, where stakeholders would be able to sign up for updates about specific and major initiatives’.

## Gap Area 5: Fiscal transparency

- The OEB does not stakeholder the Budget on an annual basis.
- The OEB has not recently examined the methodology it uses to allocate its costs to regulated entities, to ensure that it is appropriate and well understood by the sector.
- The OEB does not currently publish an annual “Forward Work Program” which includes financial reporting and the ongoing work on modernization efforts it plans to implement in that year.
- The OEB has not benchmarked what it costs to deliver all key administrative functions and costs against other regulators with a view to improvement.

### The OEB could consider:

- **Stakeholdering the annual budget** as part of seeking stakeholder input on the Business Plan.
- **Examining and explaining the methodology it uses to allocate its costs** to regulated entities, to ensure that it is appropriate and well understood by the sector.

# CERTAINTY

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## Targeted Regulatory Behaviour:

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OEB processes follow a predictable path. Regulated entities understand very clearly what is expected of them.

## Description of the Attribute

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The OEB Modernization Review Panel report identified certainty as a key attribute of excellence, describing it as follows:

*Regulatory processes should be as predictable as possible. Regulated entities should understand what is expected of them and regulatory proceedings should follow a dependable schedule.*

Regulatory certainty can also be thought of as regulatory predictability. This description recognizes the importance of consistency and predictability of process for both policy and adjudicative matters, while also recognizing that substantive regulatory outcomes will depend on the specific facts and circumstances which emerge in adjudication or through policy processes. This is more acutely the case in the realm of adjudication, where a particular substantive result cannot and should not be guaranteed. What is important though in both policy and adjudicative processes is that it is clear what process will be followed, and that the process is well understood, timely and easy to track.

*"Excellent regulators are able to process case work on a dependable timeline and can clearly communicate with the regulatory community about requirements, status, and milestones. Participants need more certainty as to what they can expect from regulatory processes. Providing this certainty is a significant component of building public trust."*

(OEB Modernization Review Panel report Page 16)

In addition, predictability is critical when it comes to establishing the "rules of the road". Regulated entities need to be able to clearly understand their obligations; binding codes and rules need to be unambiguous and the processes which are followed when these are breached also need to be very clearly spelled out.

## Discussion of Current State

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The Ipsos survey revealed that there is still much room to improve the certainty and predictability of processes. Participants expressed concern about the transparency of processes and ability to track progress in both adjudicative and policy matters.

In addition, the “what we heard” section of the OEB Modernization Review Panel Report is also instructive as to the need for more certainty or predictability concerning the trajectory of various processes.

*“Most stakeholders stressed the importance of clear, open and transparent stakeholder processes in regulatory applications and policy consultation. Most stakeholders found that the OEB processes were challenging due to lengthy and uncertain timelines associated with some OEB decisions.”*  
(OEB Modernization Review Panel report Appendix D “What we heard”)

## Gap areas, best practices and suggested initiatives

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Based on information obtained from the OEB Modernization Review Panel Report, the Ipsos survey and dialogue with participants in our processes, the following areas have been identified for improvement:

### Gap Area 1: Predictable schedules and timelines in adjudicative matters

- Participants in OEB adjudicative and policy processes cannot accurately predict next steps in processes or timelines for completion.
- Current performance measurements do not sufficiently reflect all areas which matter most to participants in adjudicative processes, such as greater predictability in the timing of issuance of the decision once the application has been heard.
- The OEB has new rates performance standards, but performance standards for other application types are stale as they were established in 2009 or earlier.
- The OEB’s overall corporate performance target of 80% as reported in its Annual Report has not been updated since 2014.

### Best Practices

- Other energy regulators monitor their performance based on elapsed time from close of record to decision and not exclusively on total cycle time.
- Regulators vary on the publication and quantification of performance measurement results. For

example, some regulators do not publish the proportion of decisions issued within established performance standards for processing applications.

### The OEB could consider:

- **Updating performance standards** and key performance indicators for all application types and establishing corporate targets for key performance measures, including stretch targets so that timelines are more predictable.

### Gap Area 2: Need for greater predictability around steps in an adjudicative proceeding

- More active adjudication is needed to manage proceedings through the discovery, cross examination and argument phases to provide more certainty to stakeholders with respect to process steps and timelines.
- The OEB's current issues list for rate applications is formalized in each proceeding after the filing of interrogatory responses.
- Need to provide more guidance and assistance to stakeholders who are not familiar with OEB processes.

### Best Practices

- The AUC recently completed a report containing recommendations from an independent panel of experts (*Report of the AUC Procedures and Processes Review Committee*) which recommends:
  - More assertive case management by panels
  - Better control of the scope of the proceeding
  - Focusing on rules concerning participation
  - Identifying key issues that need to be better explained.

### The OEB could consider:

- **A more precise definition of who is impacted by an application** to provide better understanding and certainty to interested parties about whether there is a link between their interest and the scope of an application. To do this, the OEB could provide a better definition on what constitutes a "substantial interest" for intervention in OEB proceedings. (included in Chief Commissioner Plan).
- **Revising the timing for issues lists in rate applications** to better scope the proceeding at an earlier stage. The identification of unique issues earlier for a rate application may assist in scoping interrogatories.
- **Establishing issues lists for leave to construct applications** in order to provide stakeholders unfamiliar with the OEB's processes and mandate with a clear understanding of the matters that fall under the OEB's authority. This may assist in explaining the OEB's mandate to stakeholders who are unfamiliar it.

- Developing **process guides** and providing more assistance to stakeholders who are not familiar with OEB processes.
- **Providing applicants with the implications of requests for deadline extensions or the filing of updated evidence** so there is clarity on the impact on case schedules. This could include continuing the practice of posting updated case schedules after each major procedural update.

### Gap Area 3: The OEB does not provide sufficient informal guidance on applications

- Communication with stakeholders is not frequent and detailed enough due to concerns that such engagement could be seen as preempting the adjudicative process.
- There is a need for more focused discussion of what to expect during the course of a proceeding, as well as what elements in applications could require more information or be a potential cause of delays.

### Best Practices

- Non-adjudicative regulators such as OFGEM and the AER provide informal guidance when required.

### The OEB could consider:

- **Undertaking more pre-application outreach to applicants** to allow for a focused discussion about what to expect during the course of a proceeding as well as about what elements of their applications could require more information or be a potential cause of delays.
- Making it a practice to **debrief** with utilities following the conclusion of major applications.
- **Establishing a new forum for dialogue with utilities that may include Commissioner representation and reinstating the attendance of Commissioners at the annual Orientation Session** to allow for generic feedback to be provided by decision makers.

### Gap Area 4: There should be more public reporting of OEB's Adjudicative Performance

- The OEB currently reports on total cycle time for all applications in its Annual Report, internally monitors progress against its key performance indicators, and documents reasons for delays for internal reference. The OEB also maintains a two-year forecast of cases, including Commissioner workload. However there is currently no public reporting on the key performance measures established for rate applications in March 2019 (other than total cycle time), or on current or forecast caseload.
- Stakeholders are often unaware of the drivers for late cases and are also at times surprised by the volume of work that the OEB undertakes.

## Best Practices

- The BCUC provides a summary of the outcome of key cases, including reasons for delays, in its Annual Report.
- The AUC posts a forecast of cases on its website.

## The OEB could consider:

- **Increasing the frequency of reporting** on adjudication and communication to stakeholders. For example, the OEB could issue a What's New website posting when major decisions are issued.
- **Begin reporting on decision writing time in its Annual Report.**
- Consider providing a **summary of the key themes of major decisions in its Annual Report.**
- Establishing an **Applications Dashboard** that identifies the current and forecast caseloads which is posted on the OEB's website, updated on a quarterly basis and include a forecast of oral hearings to provide stakeholders with a snapshot of the number of current cases before the OEB, grouped into major categories, as well as a 12-month forecast of applications.
- **Completing the pilots for the Status of Applications initiative** and proposing an approach going forward. (The OEB is currently conducting a pilot whereby the status of five proceedings is provided and updated regularly on the OEB's website).

## Gap Area 5: Improve Standardization in Analytical Approaches

- Although the OEB provides templates, excel spread sheets and models for rate applications, certain policy areas that underpin these rate applications have not been refreshed in some time.

## Best Practices

- OFGEM provides updates when required to its Price Control Financial Model (PCFM) for its RIIO price control process.
- The OEB provides templates in the form of excel spreadsheets and models in an effort to allow rate regulated utilities to present similar information in a consistent manner in major rates proceedings.

## The OEB could consider:

- **Refining its models including the use of pre-populated reporting** data where possible.
- **Identifying policy areas that require updating** during the annual review of filing requirements and establish a plan for an update, where appropriate.

# EFFECTIVENESS

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## Targeted Regulatory Behaviour:

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The OEB consistently and effectively delivers on its key mandate through a program of relentless and transparent continuous improvement.

## Description of the Attribute

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Effectiveness is an attribute that is key to attaining top quartile regulator performance and is an area where the OEB should focus careful attention. It is described in the OEB Modernization Review Panel report as follows:

*"The OEB should be clear about the outcomes it is aiming to achieve. This includes having a clear rationale for how regulatory policies and processes deliver on statutory objectives. It should be transparent with how success is measured by tracking outcomes over time."*

Thought leader interviews indicate that the most successful regulators consistently ask themselves whether they are improving or declining. They are transparent about their performance both good and bad, and report on their results on a regular basis.

The literature and best practices review we conducted indicates that the salient trait of these regulators is the fact that they have adopted a culture of very deliberate continuous improvement. These regulators assess baseline performance, set improvement goals, implement remedial measures and measure progress in order to ensure optimum effectiveness over time.

The Ipsos survey results indicate that increasing effectiveness should be an important area of focus.

## Discussion of Current State

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The recent Ipsos survey was conducted in part to identify areas where improvement is needed and to establish a baseline against which change can be measured. This is an important step which is planned to continue, but a survey of stakeholders had not taken place for many years before November of 2020.

The OEB has had established Key Performance Indicators (KPI's) for many areas of its operations. These KPI's provide targeted metrics for many transactional areas of the operations, for instance application cycle times and telephone responses. While the OEB refreshed certain adjudicative procedural KPIs following the publication of the OEB Modernization Review Panel Report, many KPI's still need to be re-examined, revised and better focused. Output based KPI's have not been adjusted for some time to ensure they are driving steady improvement.

Over the last few years, the OEB has developed a performance measurement framework to monitor key indicators within the electricity and gas sectors and to assess effectiveness on an annual basis.

This performance measurement framework seeks to measure not just outputs, but regulatory outcomes, such as the change in the cost of electric delivery service over time, trends in reliability performance of distributors, and the level of public trust in the OEB's consumer protection role. Considerable progress has been made in measuring the outcomes to which the OEB's work contributes, but further work and refinement needs to be done.

In terms of a focus on continuous improvement, it has largely been the case that performance improvements, while valuable, have been made in a rather ad hoc fashion. In other words, there has not been an intentional continuous improvement cycle which drives better performance by identifying deficits, establishing performance goals and KPI's, and determining how to measure progress against those KPI's. There has also been a lack of regular external validation and reporting.

## Gap areas, best practices and suggested initiatives to increase effectiveness

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### **Gap Area 1: Information gathering and systemic analysis of data to inform an assessment process**

- Lack of a systemic process to review policy initiatives, recent adjudicative processes and other touch points with stakeholders in order to ascertain where to concentrate efforts to improve.
- Insufficient mining of the substantial data which is already filed by regulated entities to inform assessment of the need for changes in regulatory instruments.
- Until recently the OEB has not surveyed its stakeholders to thoroughly understand what aspects of its performance are seen to be most problematic.

- Lack of targeted one on one conversations with key stakeholders to assess performance.

## Best Practices

- The Australian Government's *Regulator Performance Framework* comments on the presence of a feedback system between inspectors, performance assessment departments and policy-making units within a regulatory organization, to improve the performance of regulatory instruments.
- The Australian framework also recommends stakeholder detailed surveys as part of a regular feedback cycle.

## The OEB could consider:

- Ramping up the systemic mining and analysis of available reporting data to identify key areas of focus and inform the need for updates to or changes to regulatory instruments.

## Gap Area 2: self-assessment and external reporting of results

- Lack of a formalized self-assessment process leading to an improvement plan.
- Lack of formal external validation of performance.
- Performance gaps and concerns which have been internally identified are not typically shared with regulated entities or stakeholders.

## Best Practices

- The Public Utility Commission of Texas does a yearly performance measures report.
- Australia does an annual externally validated self-assessment and has its performance externally reviewed every three years by Government, Industry and comparable Industry regulators.
- Australian performance results are comprehensive, timely, externally validated and available to the public.
- The United Kingdom's National Audit Office, which conducts reviews of public spending and public services, assesses its performance by measuring the value of its work relative to its costs. It has established a target of delivering benefits of at least ten times greater than the cost of its operations.

## OEB could consider:

- Conducting a **yearly survey** of stakeholders (already planned) **one on one interviews and focus groups** to feed into an annual gap analysis and as a means of gauging external input and validation on performance.
- Undertaking an **annual self-assessment exercise** using inputs from the survey and information gleaned from internal analysis using available reporting data to formulate a plan to remedy problem areas.
- Having annual **self-assessments externally validated**.
- Publishing an **annual report which assesses performance**, either stand-alone or as part of an enhanced annual report.
- A long term project could be to attempt to **quantify the degree of concordance between a regulator's allocation of effort and those of stakeholders** by developing a means of measuring the amount of staff and commissioner time allocated to a particular issue or application compared to an assessment of stakeholder' investment of time and resources to particular topics. This will help to indicate whether the OEB and stakeholders are placing priority on the same kinds of topics and issues.
- As a longer term initiative to formalize its self-assessment process, the OEB could consider seeking to arrive at a measure of the total value delivered to consumers via the OEB's discharge of its duties. The OEB could investigate whether it could develop an estimate of the overall effectiveness of its activities in a given year relative to its spending.

## Gap Area 3: Planning, establishing and measuring meaningful Key Performance Indicators

- There has been an absence of a culture of continuous improvement and of a continuous improvement plan.
- It follows that the business planning process has not included a deliberate component of continuous improvement.
- Established output-based KPIs have not been revisited for some time for relevance and efficacy and are not adjusted year over year to require consistent improvement in performance.
- OEB has not systematically sought out better practices in performance areas from other jurisdictions.
- Recently established outcomes based KPIs such as, trends in reliability performance of distributors need to be further developed.
- While output based KPIs have been in place for some time, there is no formal means to measure the efficacy of these measures.

- There has not yet been a determination of what will constitute evidence of better performance.

## Best Practices

- The Australian government's *Regulator Performance Framework* sets out continuous improvement as a key performance indicator and ensures that the results of performance analysis are used to guide business planning. It also identifies the use of a feedback cycle as a best practice.
- The Nova Scotia Utility and Review Board Strategic plan specifically calls out maintaining a culture of continuous improvement.
- The Washington State Commission includes a goal review section in their Business plan.
- FERC's strategic plan is divided into goals and objectives.

## The OEB could consider:

- Focusing on **driving a culture of relentless continuous improvement** throughout the organization by commencing with a clear mission statement that drives improvement.
- Ensuring the **strategic plan** includes continuous improvement as a regulatory behaviour.
- Deliberately planning for continuous improvement by conducting an **annual performance analysis** using trends and measures obtained in a prior period to inform priority-setting for the upcoming business planning period.
- **Developing an annual improvement plan** by identifying the areas of worst performance every year and focusing on them for the upcoming year.
- **Sharing performance information** with stakeholders to solicit their input on any new initiatives or reviews of existing policy to be undertaken as part of a business plan.

## Gap Area 4: Benchmarking against other regulators, peer review and participation in the international community of practice

- The OEB has been very active at the national level in (CAMPUT) Canada's Energy and Utility Regulators national association and has greatly benefitted from that association but has not made sufficient use of an international community of practice.
- The OEB has not undertaken a comprehensive effort to benchmark itself against other national and international regulators.

## Best Practices

- The Alberta Utility Commission recently commissioned a report which benchmarked the timeliness of its Proceedings against other North American regulators. (*Report of the AUC Procedures and Processes Review Committee*, August 14, 2020).
- The Canadian Nuclear Safety Commission requested the International Atomic Energy Agency (IAEA) to assess Canada's framework for nuclear safety in order to benchmark its regulatory framework against international standards and best practices.
- There are several international think tanks such as the OECD Network of Economic Regulators, Positive Energy (University of Ottawa), the American NRRRI (National Regulatory Research Institute), NARUC and others listed in the attached bibliography.

## The OEB could consider:

- **Learning about best practices** through more ongoing staff and commissioner engagement with regulatory colleagues, academic and think-tank research, educational events, and conferences.
- Investigating a **benchmarking exercise** against other regulators or **international peer review of performance**.

# EFFICIENCY

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## Targeted Regulatory Behaviour:

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The OEB systematically looks for process improvements in all its functions to increase productivity and value for money.

## Description of the Attribute

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This section focuses on efficiency in adjudicative processes, as efficiency in non-adjudicative work is explored in the section of the report on Accountability.

The OEB Modernization Review Panel Report identified efficiency as a key attribute of excellence, highlighting the following:

*'Excellent regulators also continuously seek to find efficiencies in their use of resources; the goal of any regulator should be to deliver its work at the lowest cost possible to the ratepayer.'*

(OEB Modernization Review Panel Report pages 19 and 20)

## Discussion of Current State

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The Ipsos survey revealed that stakeholders want the OEB to make improvements in issuing decisions in a timely manner and in processing applications more efficiently. Total cycle time was highlighted as a chief concern, but other stakeholder feedback has expressed concern about the time taken for decision writing. In addition, stakeholders want a review of both the intervenor and interrogatory process, as well as consideration of the amount of documentation required to be filed in applications.

The mandate letter speaks to reducing the regulatory burden on licensees, and it encourages the OEB to adopt a digital-first approach in its work, building on efforts to move toward online-only filing of OEB applications. The OEB Act now requires the OEB to include details on steps taken by the Board of Directors to simplify or streamline practices and procedures in relation to the OEB's regulatory functions in its annual report.

The Chief Commissioner Plan sets out a variety of initiatives which are specifically focused on process improvements that will lead to greater efficiencies in the adjudicative process. Many of these initiatives are highlighted in that Report and so will not be reiterated here. The goal of these programs is to take a critical eye to current processes and to look for efficiencies. The process of review should be continuous and on-going as the OEB seeks to create a mindset of continuous improvement.

## Gap areas, best practices and suggested initiatives

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Based on information contained in the OEB Modernization Review Panel Report, the Ipsos survey and feedback with participants in the OEB's processes, the following areas have been identified as areas where there are gaps which would benefit from a plan for improvement.

### **Gap Area 1: Process improvements could improve the OEB's efficiency as it relates to adjudication.**

- Stakeholder feedback indicates that there is a concern with the length of time it takes for the OEB to process applications.
- Feedback indicates that there is a feeling that a review of process steps could work to reduce duplication and increase efficiency.

### **Best Practices**

- The AUC and BCUC are recognized as regulators with transparent reporting systems which clearly set out key performance metrics related to adjudication. These application KPIs are addressed in the Certainty section.
- The Nova Scotia Utility and Review Board has been recognized as a leader in its ability to transition from in-person hearings to a virtual format. They made the change quickly, in response to the pandemic and have conducted a large volume of varied applications through a virtual format. This switch to a virtual hearing format has allowed applications to proceed in an efficient manner without delaying application cycle time.

### **In addition to the initiatives included in the Chief Commissioner Plan, the OEB could consider:**

- Reviewing the Notice process to explore more efficient and timely ways to constitute a proceeding, by considering whether notice could be provided in advance of the filing of an application, among other areas.
- **Limiting oral submission time limits and considering written material limits.** In order to focus on the most material aspects of an application, it may be worth considering whether written

submission page limits and oral submission time limits could be an effective tool for Commissioners to use to increase efficiency, while still respecting the rules of natural justice.

- The OEB has made significant strides in its evolution of mechanistic (IRM) applications by providing a spreadsheet model with pre-populated fields where information is already provided to the OEB, for example, under the OEB's reporting and record-keeping requirements. The OEB could further improve on its process for mechanistic applications by considering a conversion to an online format rather than relying on utilities populating spreadsheet models.
- **Continuing with Virtual Hearings** in certain circumstances post-pandemic as a way to increase efficiency.

## Gap Area 2: The OEB should consider strategies for reducing overlap and duplication in regulatory proceedings

- Participants in OEB proceedings can sometimes have similar interests, which can lead to some duplication and overlap.
- Stakeholder feedback points to an increase in the amount of interrogatories that are being asked in applications.

## Best Practices

- Regulators are required to strike a balance between ensuring that the discovery process provides the information necessary to properly consider the issues in an application while at the same time ensuring that proceedings are conducted in an efficient manner. Best practice suggests that achieving both these outcomes requires careful balancing and trade-offs.

## The OEB could consider:

- **Undertaking a review of who has a substantial interest** in an application. This initiative is referenced in the Certainty section and is a key component of the Chief Commissioner Plan. Determining the specific interest of each participant could lead to a reduction of overlap and duplication, which would in turn lead to increased efficiency.
- Doing a more detailed jurisdictional review of intervenor processes in other jurisdictions to look for areas for improvement as it relates to overlap and duplication.

### Gap Area 3: Focus on priority information to be filed. The OEB should only be requesting information that is necessary to do its work

- Regulated entities are required to file a large amount of information with the regulator. Doing so requires an expenditure of time and resources. Regulated entities want to know that the information they file serves a purpose.
- Applicants are asked to file information in an application that they have previously filed with the OEB for a different purpose. There should be a better way to consolidate information.

### Best Practices

- The OEB has recently moved to a digitized filing system, no longer requiring paper copies of documents. In doing so, the OEB has also started to consider what other technical enhancements might be possible as it relates to filed material. Other regulators are also looking at best practices as it relates to information management.

### The OEB could consider:

- Harmonize to the extent possible information required in major applications with reporting and record-keeping requirements so that information is filed only once and used where needed.
- Maintaining a **Central Repository of Documents** or portal to leverage more of the material regulated entities file in the normal course through reporting and record-keeping requirements, for use in their applications. This initiative has the potential to reduce duplication.
- Continue to re-examine existing filing requirements to ensure all information requested is absolutely necessary.

# INNOVATION

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## Targeted Regulatory Behaviour:

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The OEB understands the transformations taking place in the energy sector and facilitates these by providing clarity concerning the regulatory treatment of innovation.

## Description of the Attribute

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The *Ontario Energy Board Act*, 1998 was recently amended to add a new objective related to innovation which requires the OEB to “facilitate innovation in the electricity sector.” Consequently, addressing the need for a regulatory response to the many changes transforming the energy sector will require concentrated focus. The OEB will need to ensure that its policies and practices are well positioned.

As the OEB Modernization Review Panel put it in its Discussion themes:

*“The panel seeks to explore how the OEB can position itself to respond to the significant changes underway in Ontario’s energy sector. Non-traditional technologies such as energy storage are becoming cost-effective; customer demands, expectations and participation trends are evolving; and new business models are emerging.”*

This will be a challenging task, as innovation in energy poses many challenges to regulators, adopters and customers alike. It can be difficult to choose the best course of action in an area of accelerating evolution and uncertainty, and difficult to facilitate change in a sector where the market forces that typically drive innovation are diminished. It is also very important for an economic regulator to balance interest in innovative products with prudent use of ratepayer funds.

The need to address innovation was clearly identified by the many stakeholders from whom input was sought by the OEB Modernization Review Panel and by a substantial percentage of participants in the IPSOS survey.

## Discussion of Current State

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There is pent up demand in the sector for guidance on the regulatory treatment of innovation, as is clearly illustrated by the results of the Ipsos survey, where there was a very low satisfaction score on facilitating innovation.

Part of this dissatisfaction seems to stem from the LDC view that there is a lack of clarity as to what approach the OEB will take in individual rates cases.

One relatively recently introduced initiative intended to assist innovators interested in trying out new approaches in Ontario's energy sector is the Innovation Sandbox. Although it is a unique initiative among Canadian regulators, as noted in the Financial Review Report prepared by Mr. Raffi, there is a need to increase its profile within the organization and across the sector, as its purpose in the context of the OEB's broader work to facilitate innovation is not well understood.

## Gap areas, best practices and suggested initiatives to facilitate innovation

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### Gap Area 1: Regulatory understanding of Issues and Guidance to the Sector

- Regulated entities have said they lack clarity as to how the OEB will view investments in innovative technology and the evaluation and approval criteria that will be applied to innovative proposals.
- There is a perception that the OEB is not up to date, does not understand what is needed, and is inflexible in its approach to innovation.
- There are deficits both internally and externally on understanding what innovation is and is not, whether a focus on modest improvements is appropriate, or whether a more ambitious, yet riskier, outlook toward innovation support is called for.
- The OEB is aware that some public institutions have adopted a "Grand Challenge" type of approach which takes a problem (or set of problems) and provides financial incentives to encourage proponents to develop innovative solutions.

### Best Practices

- In 2018, the Nova Scotia Utility and Review Board (NSUARB) developed criteria to support electric utility proposals for capital investments. This new criteria which supplemented existing capital investment criteria to support emerging innovation opportunities which could not be otherwise justified on the basis of typical business-case criteria.
- The OECD's Observatory of Public Service Innovation (OPSI) has developed a framework for

identifying different kinds of innovation – noting that while some new endeavours seek to improve on existing methods or processes, other kinds of innovation serve to support, deliver or anticipate broader-scale transformation and therefore require different regulatory treatment.

- United States Department of Energy (DOE) Energy Storage Grand Challenge provides funding to accelerate energy storage technologies.
- UK Department for Business, Energy, and Industrial Strategy provides funding for smart energy technologies.
- Italian energy regulator (ARERA) conducts thematic trials to resolve specific challenges.
- UK regulator (Ofgem) has instituted an annual competition for utilities and private sector partners to propose innovative projects which are financed through a defined fund overseen by Ofgem, and which relies on expert panels for vetting of projects. Ofgem has indicated that it may enhance its innovation process through use of thematic trials.

### The OEB could consider:

- **Modifying the OEB Innovation Sandbox:** Consideration could be given to the opportunity to define the areas of focus, as well as to contemplate other changes, including the prospect of partnerships.
- Investigating the use of a **“Grand Challenge”** approach to encourage innovative solutions to identified system issues.
- To help to provide additional clarity on the OEB’s policies and approaches, developing a **compendium of existing OEB policies** and related material. This will help to raise awareness of existing mechanisms and mitigate the risk that innovative approaches have not been brought forward because of lack of clarity on policies.
- Developing **innovation justification criteria**. The OEB could consider developing similar criteria to assist utilities in developing investment cases for novel or innovative approaches to be included in rate applications. These criteria could also assist Commissioners in assessing utility proposals.
- Using the **OPSI model to assist the OEB in developing and understanding new policies and regulatory responses to change as well** as improvements to its own approaches.
- Revising the OEB’s **planning guidance** to regulated utilities to provide clear expectations for consideration of innovation in system planning, including consideration of the use of distributed energy resources (DERs) and other emerging technologies.
- **Researching a set of practices and attributes that are exemplified by economic regulators who most effectively support innovation** among the entities in the sectors they regulate and formulating a plan for the OEB to develop and adopt these traits and policies.
- **Researching** opportunities to support the deployment of DERs and their participation in markets through use of **Blockchain**.

## Gap Area 2: Rate making, remuneration and funding

- New choices and options in electricity services are emerging but current rate-making practices could be perceived as a barrier because policies may not incentivize utilities to consider optimal options that do not involve the use of utility assets.
- The OEB's legislative objective is to facilitate innovation, but it must also ensure ratepayer funds are prudently spent, and therefore needs to develop criteria for assessing innovation in that context.
- Lack of policy clarity concerning what types of activities licensed utilities can engage in.

## Best Practices

- Under its Reforming the Energy Vision initiative, New York State's Public Service Department incentivizes utilities to consider DER solutions as an alternative to traditional grid investments and creates a more local, distribution network-oriented market structure facilitated by the utility as distribution system platform provider.
- California's DER Action Plan aims to motivate utilities to deploy DERs regardless of their impact on their distribution capacity investment opportunities, with a focus on rates, distribution planning, procurements and market integration.
- Ofgem has implemented a Network Innovation Allowance that provides up to 1% of allowed revenue to fund small-scale demonstration projects focusing on vulnerable consumers and the transition to lower carbon energy systems.
- Alberta's energy regulator has conducted a Distribution System Inquiry into technological change in the distribution sector and implications for distributors.

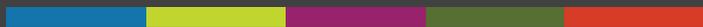
## The OEB could consider:

- **Continuing to review its regulatory framework** such that utilities pursue and enter into alternative arrangements – such as non-wires alternatives – where it makes sense to do so.
- Facilitating utilities' pursuit of innovative options through **better defining ways to assess the costs and benefits of alternatives to meeting distribution needs.**
- Researching the opportunity **for Blockchain** to deliver value in expanding energy market opportunities for consumers. This would be an opportunity for collaboration with the IESO as they look at new market opportunities for DERs.
- **Further considering ramifications of DERs on network use and distribution planning** so that utility infrastructure is optimally utilized as DER adoption grows.
- Evaluating the potential to incentivize investments in innovative technology that enhance the efficiency of the distribution system and reduce consumer costs.

- Over the longer term, **working across the sector on broader opportunities for small-scale distributed resources** to provide value in wholesale markets.
- **Investigating the feasibility of partnerships or other arrangements that can provide financial support for innovations** that involve novel regulatory arrangements.
- **Reviewing OEB guidelines for distributors' pursuit of demand management** opportunities that can reduce infrastructure investments.



# APPENDICES



## APPENDIX A

### Recent Steps taken to foster **Independence**:

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- Legislative changes to the OEB's governance structure that establish a new governance framework which includes a Board of Directors with a non-executive Chair, a separate CEO and a Chief Commissioner.
- Strengthening of adjudicative independence through the establishment of an Adjudication Committee of the Board.
- Approval of corporate by-laws which give effect to the new structure through well-defined roles, responsibilities and accountabilities.
- Establishment of new internal committee structures which clearly delineate roles and responsibilities.
- Approval of the Chief Commissioner Plan by the Board of Directors.
- Execution of a renewed Memorandum of Understanding between the Chair of the OEB and the Minister of Energy, Northern Development and Mines which clarifies roles and responsibilities and recognizes the importance of the independence of the OEB.

### Recent Steps taken to strengthen **Accountability**:

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- As is the case with independence, important deficits in the area of accountability have been addressed through the introduction of the new governance structure. In particular, the division of the Chair and CEO roles into a non-executive Chair and a CEO and the addition of a Board of Directors addresses sectoral concerns that the former governance structure was an impediment to independent decision-making and accountability.
- The OEB commissioned Mr. Saad Raffi to conduct a full financial review with broad parameters and full exposure to all aspects of financial and operational management within the OEB. The review was conducted in late 2020, and the review and the Management response to the review have been posted on the OEB website.

### Recent Steps taken to enhance **Certainty**:

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#### **The Chief Commissioner Plan contains initiatives designed to enhance certainty.**

- New performance standards for the review of rate applications following on from the recommendations in the OEB Modernization Review Panel report.
- Work is progressing on modernizing performance standards and key performance indicators for leave to construct and other application types and establishing corporate targets for key performance measures, including stretch targets.
- Conducting a pilot whereby the status of five proceedings is provided and updated regularly on the OEB's website.
- Establishing a forecast of caseload and Commissioner resources.
- Conducting an annual Orientation Session for electricity distributors to provide an overview of the

cost of service process.

- Establishing a Protocols for Adjudicators document that provides guidance to Commissioners on various adjudicative matters such as roles and responsibilities, hearing management, peer review protocol and decision drafting. The protocol is a living document that will be refreshed and updated as the OEB implements new approaches (See Chief Commissioner Plan).
- Conducting peer review and establishing a decision template and style guide, where guidance is provided to assist Commissioners in writing technical findings in plain language, including a requirement for a plain language summary at the front end of each decision. This has been in place for some time and was found to be a best practice.

## Recent Steps taken by the OEB to improve **Effectiveness**:

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- Ipsos stakeholder survey was conducted to assist in establishing a performance baseline.
- A financial review was conducted by Mr. Sadd Raafi.
- The new draft OEB Business plan reflects this review.
- The proposed Strategic plan includes performance outcomes.
- Jurisdictional research on best practices in the area of continuous improvement was been conducted.

## Recent steps to enhance **Efficiency**:

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- The OEB commissioned a third-party financial review which resulted in the Ontario Financial Review Report which was released in November 2020. The Report made various recommendations and focused on three areas: Financial Efficiency, Efficiency Measures benefitting the sector and Investments. The OEB prepared a Management Response which outlines a path to address the recommendations.
- In addition to conducting a financial review, the OEB has recently undertaken several process improvements in order to enhance efficiency. These initiatives include:
  - Changes to reporting requirements removing quarterly reports and streamlining some reliability reporting requirements
  - New reporting system implemented that simplifies the utilities' process for reporting
  - Validation of reporting has been automated through the use of new technology
  - Streamlined publicly traded securities filings by licensees to reduce the need for multiple filings
  - Commenced a 3-year strategic RRR review with stakeholders to ensure effective data collection, and to manage change process and institute ongoing assessment of RRRs for relevance
- Automation of incentive rate-setting mechanism (IRM) process for electricity distributors
- Mapping of natural gas franchises and certificates
- Moving to an electronic filing system for regulatory documents
- Moving to automation of the licensing application process
- Planned review of the OEB's Rules of Practice and Procedure (Chief Commissioner Plan)
- Planned review of the Motions to Review procedure and process (Chief Commissioner Plan)

## Recent steps taken to facilitate **Innovation**:

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- The OEB initiated a consultation to develop a more comprehensive regulatory framework that facilitates investment and operation of Distributed Energy Resources.
- The same consultation is also seeking to identify how to remunerate utilities in ways that make them indifferent to traditional or innovative solutions, better supports their pursuit of least cost solutions, strengthens their focus on long-term value and requires them to reflect the impact of sector evolution in their system planning and operations.
- Conducting a comprehensive review of connection requirements recognizing they were not necessarily fit for purpose for the emergence of DERs. The review has been undertaken by a working group of both distributors and DER providers.
- The OEB has established an Innovation sandbox, which is intended to be a streamlined, accessible way for the OEB to support innovators who wish to test new ideas, products, services, and business models in the electricity and natural gas sectors.
- Supported and analyzed the results of four commodity pricing pilot projects that tested 10 different price plans involving approximately 15,000 consumers.
- Recognizing that changes in technology are creating new ways to solve problems, we issued a staff bulletin on the ownership and operation of behind-the-meter energy storage assets for remediating reliability of service.

## APPENDIX B

### Thought Leader Interviews

Final Version: 24 February 2021

Based on research undertaken by Cynthia Chaplin

### Key ideas & best practices

*The material below is based on interviews held between November 2020 and January 2021 with the following people:*

- *David Morton (Chair & CEO, BCUC)*
- *Peter Gurnham (Chair, NSUARB)*
- *Damien Côté (Lead Commissioner, CER)*
- *Liane Randolph (Commissioner, CPUC)*
- *Diane Burman (Commissioner, NYPSC)*
- *Ann Rendahl (Commissioner, Washington UTC)*
- *Ellen Nowak (Commissioner, Wisconsin PSC)*
- *Paula Conboy (former Chair, Australian Energy Regulator)*
- *Kevin Baillie (Director, Ofgem)*
- *Beth Moon (Director, Ofgem)*
- *Scott Hempling (Regulatory lawyer, writer and teacher)*
- *Guy Holburn (Professor, Ivey Business School)*
- *AJ Goulding (consultant)*
- *Nicole Martin (former credit analyst, S&P)*

***This document will evolve if further interviews are held.***

The results of the interviews are presented according to the five key attributes of regulatory excellence identified by the OEB Modernization Review Panel: Independence, Accountability, Certainty, Effectiveness, and Efficiency.<sup>1</sup> For each attribute there is a synthesis of the key points raised and a list of identified best practices.

### OVERALL THEMES

- Best practice is a matter of context and perspective.
- A culture of continuous improvement is important to fostering excellence.
- There are regulators worth following, but the context is always different, so a best practice must be ***adapted***, not just ***adopted***:
  - Ofgem
  - Australian Energy Regulator

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<sup>1</sup> Based on interviews with thought leaders, it may be helpful to re-cast “certainty” as “predictability”. Consistency and predictability in terms of process and outcome are important, but regulatory outcomes also depend on the specific facts and circumstances and therefore can not be known with certainty in advance.

- o Federal Energy Regulatory Commission (FERC)
- o Canada Energy Regulator

- Many regulators are struggling with what regulatory excellence means going forward. Major factors include climate change, technology change, and changed customer expectations – coupled with climate change policy uncertainty and diminished trust in government institutions.
- No regulator does everything well.
- A good way to stay current on best practices is through ongoing staff and commissioner engagement with regulatory colleagues, academic and think-tank research, educational events, and conferences.
- Engaged/empowered staff and engaged/skilled commissioners are key to regulatory excellence.

## INDEPENDENCE

### Key Ideas:

- Select Commissioners based on qualifications; provide rigorous orientation; ensure ongoing education and development.
- The regulator needs clearly articulated vision and defined mission. (linkage to *Predictability*)
- Independence is question of fact and perception. Independence shapes reputation and *credibility*.
- *Independence* is closely linked to *Predictability*. Political involvement through policies and directives brings instability and uncertainty. Directives are transparent, but diminish independence.
- Independence is easier when utilities are investor owned due to greater external pressure for independent regulator.
- It is up to the regulator to set the boundaries with policy makers (who will often seek to interfere).

### Best Practices:

- Commissioner selection process:
  - o NSUARB uses independent process; Government must choose from list of three; life term allows them to attract quality candidates.
  - o CER assessment process includes a variety of tests, including psychometric and a sample case analysis.
- Government Interface: NSUARB reports to the legislature through Minister of Finance, so one step removed from Energy Minister
- Clear mission statement prominent on website: see for example Australian Energy Regulator; Australian Competition and Consumer Commission; Canada Energy Regulator; New Zealand Commerce Commission

## ACCOUNTABILITY

### Key Ideas:

- Clarity of purpose frames accountability. Purpose should be articulated clearly and linked to policy.
- Regulatory work must be prioritized. An annual business plan establishes transparency, sets objectives, and can then guide decision-making when trade-offs must be made.
- A culture of rigorous self-assessment and continuous improvement is important: identifying problems and areas for improvement and implementing changes which are then assessed. Fix the

things you are doing badly first. Is the performance trend towards improvement or decline?

- Decision quality is a key component of accountability. Decisions must explain what was heard and how the decision was reached.
- Developing effective performance measures is challenging.
- Public trust comes from genuine engagement.

### **Best Practices:**

- Reporting: NSUARB tables an Accountability Report in the legislature
- Strategic Planning: NSUARB
- Clarity of purpose: Ofgem
- Linkage between government and regulator: Australian Energy Regulator receives a Statement of Expectations from government; it responds with a Statement of Intent, which informs the AER Business Plan. Results are then shown in the Annual Report
- Performance measurement: Australian *Regulator Performance Framework*
- Open Commission Deliberations: Many U.S. Commissions have commissioner deliberations through open meetings, which are fully accessible online. This is not applicable to the OEB, but is worth knowing about because of the requirement for commissioners to be focused in their review, articulate in their thinking, and agile enough to deliberate effectively in public.

## **PREDICTABILITY (CERTAINTY)**

### **Key Ideas:**

- Best way to provide predictability is for regulator to articulate vision and mission.
- Investors (debt and equity) value predictability and stability. There is greater predictability with an independent regulator. Political involvement through policies and directives brings instability and uncertainty. (Linkage to *Independence*)
- High quality decisions provide effective communication and facilitate predictability.
- Set a framework based on principles so you can be flexible on the specifics. (OEB policy consultation processes achieve a “default” approach.)

### **Best Practices:**

- Government should set policy through legislation and regulations, not through directives to the regulator.
- OEB ROE formula is a recognized best practice
- Cost/Benefit Analysis: Rhode Island has established a generic framework
- Decision Quality:
  - Summary of decision points in OEB decisions: excellent for transparency
  - Commissioner Training: NSUARB and BCUC do ongoing writing training and emphasize importance of writing quality.
  - Australian Energy Regulator: Panel of international regulatory experts reviewed draft determination for WACC – to assess logic and sufficiency of reasons.

### **Specific Suggestions:**

- OEB should consider providing more informal guidance. (Also goes to Efficiency)
- OEB should consider greater standardization in analytical approaches (e.g. load forecast, weather normalization, etc.). (Also goes to Efficiency)

## EFFECTIVENESS

### Key Ideas:

- The regulator’s vision should be clearly articulated in proactive, not reactive, terms and should be prominent on the website and embraced throughout the organization.
- Senior staff should exhibit visionary leadership. Thought leadership should be fostered across senior staff who can combine expertise and continuity (compared to commissioners with shorter terms generally). Regulators need leaders, not just managers.
- Innovation and agility come from empowered staff. Regulators must keep updating staff skills to reflect where technology and sector are going, which is challenging in a civil service environment.
- Regulators need access to external expertise and a spectrum of perspectives. Intervenors have value, because decision-making will be better informed. The value may be diminished because of the incentives to create issues or duplicate effort, but effective case management can mitigate this risk.
- How cases are framed influences effectiveness. Is the framing being controlled by the applicant or the regulator? Is the question “Is the increase reasonable” or is it “what is the appropriate cost level and performance framework”? (Don’t let the utility run the show.)
- It is difficult to manage complex processes/issues well. The NYPSC and CPUC are known for doing well when they “get excited” about something or are breaking ground on something foundational, but:
  - o New York REV was ground breaking, had a clearly expressed vision, but has become mired in multiple and conflicting processes. “Can’t see where it is going.” “If you try to do everything, you end up doing nothing.”
  - o CPUC implementation of EV legislation was done effectively. But the CPUC has failed repeatedly at holding regulated entities accountable.
  - o Ofgem was a leader with “light handed” regulation, but over time the framework has become more complex and less light handed.

### Best Practices:

- Regulatory innovation initiatives (multi-party, broad-based collaborative processes): SEPA “Renovate” project, and e21 Initiative in Minnesota.
- OEB: utility scorecards and data yearbooks are great resources
- FERC: very well organized large organization. Well written orders.
- FERC: when given a new mandate or when identifying a new issue, FERC staffs up well and quickly.
- NSUARB: good public hearing process for System Planning
- CPUC: effective plan to implement EV legislation
- CNSC: effective response to innovation (Small Modular Reactors) through early transparent engagement. Balancing innovation and risk.
- New Zealand Commerce Commission: effective customer empowerment around retail choice (including customer-friendly brochures).
- Australian Energy Regulator forms of engagement: Consumer Challenge Panel, Customer Consultative Group, Consumer Reference Group
- NYPSC Interconnection Ombudsman: mediator/facilitator works with parties to address issues with interconnection guidelines.
- Washington UTC: using Lean Principles to flatten hierarchy and strengthen leadership skills across staff.
- BCUC: matrix structure with work organized on project basis. Shifted to less hierarchical approach allowing staff to take more initiative.

- Indiana Utility Regulatory Commission: uses an external independent forecasting group based in the university.
- Singapore: pays commissioners at private sector levels.
- Staff expertise, thought leadership and training: can't necessarily pay at private sector level, but can offer breadth of experience, empowerment, robust training, engagement opportunities with other jurisdictions, including international.

### **Specific People:**

- Megan Decker (Chair, Oregon Public Utility Commission): took leadership position in politically tumultuous time and had to reinvigorate the commission.
- Willie Phillips (Chair, District of Columbia Public Service Commission): finding innovative ways to address issues.

## **EFFICIENCY**

### **Key Ideas:**

- Hearings generally go on too long: often they are being run by the participants as case and response, rather than by the commission seeking best information to fulfill mandate.
- Timeliness is important and can be done through effective case management: setting the schedule and sticking to it.
- Setting performance standards for process management and meeting the targets demonstrates efficiency.
- Other forms of performance measurement are challenging to develop.
- Need internal subject matter expertise and effective project management to have successful case management. (Quality of analysis is particularly important if you are going to constrain inputs, time, etc.)

### **Best Practices:**

- Timeliness: Nova Scotia performance metrics and overall case management approach (developed under the first three strategic plans)
- AUC: recent work on application timelines, with focus on settlement processes as alternative.

## APPENDIX C

### Best Practice Resources

Final Version: 24 February 2021

Provided by Cynthia Chaplin

## Regulators

### Alberta Utilities Commission

**Benchmarking of timeliness of Proceedings** (Summary Document, November 2020): <https://www.auc.ab.ca/Shared%20Documents/AUC%20Benchmarking%20Report%20-%20November%202020.pdf>

**Letter to Stakeholders:** <https://www.auc.ab.ca/News/2020/2020-12-04-Letter.pdf>

### Canadian Nuclear Safety Commission

**CNSC Departmental Results Report 2019-2020:** <http://www.nuclearsafety.gc.ca/eng/resources/publications/reports/departmental/drr-2019-2020/index.cfm>

### Nova Scotia Energy and Utilities Board

**Strategic Plan 2016:** [https://nsuarb.novascotia.ca/sites/default/files/NSUARB-%23244251-v1-Strategic\\_Plan\\_2016\\_%28Mission\\_Vision\\_%26\\_Values\\_and\\_Prior....pdf](https://nsuarb.novascotia.ca/sites/default/files/NSUARB-%23244251-v1-Strategic_Plan_2016_%28Mission_Vision_%26_Values_and_Prior....pdf)

**Business Plan (2021):** [https://nsuarb.novascotia.ca/sites/default/files/NSUARB%20Business\\_Plan\\_2020-2021.pdf](https://nsuarb.novascotia.ca/sites/default/files/NSUARB%20Business_Plan_2020-2021.pdf)

**Accountability Report (2020):** <https://nsuarb.novascotia.ca/sites/default/files/Accountability%20Report%20FY2019-2020%20FINAL.pdf>

**Appointments:** <https://nsuarb.novascotia.ca/about/appointment-info>

**Minister of Justice Guidelines to Ensure Appointments Based on Merit:** [https://nsuarb.novascotia.ca/sites/default/files/NSUARB-%23259231-v1-Guidelines\\_%28Revised\\_by\\_Finance\\_August\\_2017%29\\_to\\_Ensure\\_Appointments\\_Based\\_on\\_Merit.pdf](https://nsuarb.novascotia.ca/sites/default/files/NSUARB-%23259231-v1-Guidelines_%28Revised_by_Finance_August_2017%29_to_Ensure_Appointments_Based_on_Merit.pdf)

### Federal Energy Regulatory Commission

**Strategic Plan FY 2018-2022:** <https://www.ferc.gov/sites/default/files/2020-04/FY-2018-FY-2022-strat-plan.pdf>

**FY 2021 Congressional Justification (FY 2021 Performance Budget Request, FY 2020 Annual Performance Plan, FY 2019 Annual Performance Report):** [https://www.ferc.gov/sites/default/files/2020-04/FY21-Budget-Request\\_1.pdf](https://www.ferc.gov/sites/default/files/2020-04/FY21-Budget-Request_1.pdf)

The **FERC insight** gives you a monthly snapshot of FERC news. The insight gives you updates from Commission meetings and schedules for upcoming conferences/speeches/presentations, and links to Commission orders, notices, new reports and Coronavirus updates. [Volume 11 FERC insight](#)

## Ofgem

**Priorities and Objectives:** <https://www.ofgem.gov.uk/about-us/our-priorities-and-objectives>

**Corporate policy, planning and reporting:** <https://www.ofgem.gov.uk/about-us/corporate-policy-planning-and-reporting>

**Transparency:** <https://www.ofgem.gov.uk/about-us/transparency>

## Australian Energy Regulator

**Key messages about purpose are at top of home page:** <https://www.aer.gov.au/>

**Government Statement of Expectations:** [https://treasury.gov.au/sites/default/files/2019-03/AER\\_Statement\\_of\\_expectations.pdf](https://treasury.gov.au/sites/default/files/2019-03/AER_Statement_of_expectations.pdf) (I think this is from 2019 but the document is undated)

**AER Statement of Intent:** [https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field\\_accr\\_aer\\_report\\_type%3A1554](https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field_accr_aer_report_type%3A1554)

**AER Corporate Plan:** [https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field\\_accr\\_aer\\_report\\_type%3A1366](https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field_accr_aer_report_type%3A1366)

**AER Annual Report:** [https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field\\_accr\\_aer\\_report\\_type%3A1249](https://www.aer.gov.au/publications/corporate-documents?f%5B0%5D=field_accr_aer_report_type%3A1249)

**Consumer Challenge Panel:** Expert panel of 11 provides input and challenge on key consumer issues during network determinations. <https://www.aer.gov.au/about-us/stakeholder-engagement/consumer-challenge-panel>

**Consumer Consultative Group:** 12 organisations provide advice on cross-cutting issues as well as connecting into the wider consumer landscape. <https://www.aer.gov.au/about-us/stakeholder-engagement/customer-consultative-group>

**Consumer Reference Group:** helps AER implement the consumer consultation process during the 2020 inflation review and development of the 2022 rate of return instrument. <https://www.aer.gov.au/about-us/stakeholder-engagement/consumer-reference-group>

## Australian Government

**Regulator Performance Framework** (2014): <https://www.pmc.gov.au/resource-centre/regulation/regulator-performance-framework>

A framework developed as part of the government's commitment to reduce unnecessary or inefficient regulation. A series of six outcomes-based key performance indicators to be used for self-assessment. For each KPI there is a statement of best practice, measures of performance and examples of output:

- regulators do not unnecessarily impede the efficient operation of regulated entities
- communication with regulated entities is clear, targeted and effective
- actions undertaken by regulators are proportionate to the risk being managed
- compliance and monitoring approaches are streamlined and coordinated
- regulators are open and transparent in their dealings with regulated entities
- regulators actively contribute to the continuous improvement of regulatory

## Washington Utilities and Transportation Commission

**Strategic Business Plan 2021-2023:** <https://www.utc.wa.gov/aboutUs/Documents/UTC%20Strategic%20Business%20Plan%202021%20to%202023.pdf>

**Policy Statement/Guidance on EV Charging:** [https://www.utc.wa.gov/\\_layouts/15/CasesPublicWebsite/GetDocument.aspx?docID=147&year=2016&docketNumber=160799](https://www.utc.wa.gov/_layouts/15/CasesPublicWebsite/GetDocument.aspx?docID=147&year=2016&docketNumber=160799)

## Regulatory Initiatives

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### **SEPA (Smart Electric Power Alliance) – Renovate Initiative**

<https://sepapower.org/renovate/>

*The Renovate mission is to spur the evolution of state regulatory processes and practices to enable innovation, with a focus on scalable deployment of new technologies and operating models, to meet customer needs and increasing expectations while continuing to provide all with clean, affordable, safe, and reliable electric service.*

Site includes reports and case studies. Initiative is fairly broad-based – not just regulated entities. (You can view the Task Force membership list on the website.)

Example report on the Rhode Island Benefit-Cost Analysis Framework: <https://sepapower.org/resource/developing-a-comprehensive-benefit-cost-analysis-framework-the-rhode-island-experience/>

### **e21 Initiative – co-convened by the Great Plains Institute and Center for Energy and Environment**

<https://e21initiative.org/about-e21/>

**Phase I: Consensus for Change** - In its first phase (February to December 2014), a group of roughly 30 stakeholders developed consensus recommendations for Minnesota to evolve toward a more consumer-centric, performance-based regulatory approach and utility business model. See Phase I Report here: <https://e21initiative.org/e21-phase-1-report/>

**Phase II: Implementation Plans** - e21's second phase (January 2015 to December 2016) convened a similar group of roughly 35 stakeholders to add additional details to the Phase I recommendations by publishing a set of white papers on performance-based compensation, integrated systems planning, and grid modernization. See white papers here: <https://e21initiative.org/e21-phase-2-report/>

**Phase III: Ideas to Action** - e21's third and current phase (January 2017 to present) is focused on convening many different groups of stakeholders to shape and accelerate progress on a wide variety of specific proceedings, filings, and topics relevant to modernizing Minnesota's electric system, including Performance-based regulation, New utility rates, products, and services, and Integrated Systems Planning.

(See website for more detail and further documents.)

## Reports on the Canadian Investment Climate

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**Updates and Insights on Regulatory Jurisdictions Shaping Policies for North American Utilities**, S&P Global Ratings, November 2020. Gerrit W Jepsen and Daria Babitsch. <https://www.spglobal.com/ratings/en/research/articles/201109-updates-and-insights-on-regulatory-jurisdictions-shaping-policies-for-north-american-utilities-november-2020-11720691>

*Identifies Ontario in the “Most Credit Supportive” category (the highest category).*

**The Investment Climate for Canada’s Energy Sector**, Ivey Energy Policy and Management Centre, Western University, Guy Holburn, July 2020 [https://landing.ivey.ca/cmsmedia/3791546/iveyenergycentre\\_surveyreport\\_aug12.pdf?\\_ga=2.78489747.620673019.1606593937-770023204.1605456096](https://landing.ivey.ca/cmsmedia/3791546/iveyenergycentre_surveyreport_aug12.pdf?_ga=2.78489747.620673019.1606593937-770023204.1605456096)

*“Economic factors such as input costs and financing costs were viewed as contributing favourably to investment decisions, while provincial policies and regulations were rated as having the most negative impact on investment, especially in Ontario and British Columbia. Respondents most frequently identified reducing the regulatory burden and improving the stability and predictability of regulation as the two priorities that would most improve the investment climate.”*

**Wind Energy in Canada: A Survey of the Policy Environment**, Ivey Energy Policy and Management Centre, Western University, Guy Holburn, June 2013 <https://www.ivey.uwo.ca/cmsmedia/1413431/wind-energy-2013-clean-copy.pdf>

## APPENDIX D

### Bibliography

Final Version: 24 February 2021

Provided by Cynthia Chaplin

#### BOOKS/REPORTS/ARTICLES – Current and Historical Works

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**1. *Achieving Regulatory Excellence***, Cary Coglianese editor, Brookings Institution Press, 2017

A collection of essays on regulatory excellence from a variety of authors.

Summaries of the essays are available online in this series: <https://www.theregreview.org/2018/01/02/in-pursuit-of-regulatory-excellence/>

Coglianese webinar for ANZSOG: <https://www.anzsog.edu.au/resource-library/news-media/what-makes-an-excellent-regulator> **“Regulatory excellence is ultimately people excellence”**

Book: <https://www.brookings.edu/book/achieving-regulatory-excellence/>

**2. *Australia and New Zealand Tribunal Excellence Framework***, June 2017, COAT (Council of Australasian Tribunals) –

A framework for self assessment of tribunal excellence, using eight areas of measurement (independence, leadership and effective management, fair treatment, accessibility, professionalism and integrity, accountability, efficiency, and client needs and satisfaction). By using a rating system for 95 separate questions (specific attributes), the framework provides a tool for benchmarking and continuous improvement. Guidance is provided for each question.

[https://coat.asn.au/wp-content/uploads/2018/11/Tribunals\\_Excellence\\_Framework\\_Document\\_2017\\_V4.pdf](https://coat.asn.au/wp-content/uploads/2018/11/Tribunals_Excellence_Framework_Document_2017_V4.pdf)

**3. *Creating a Culture of Independence: Practical Guidance against Undue Influence***, OECD, 2017

*“...independence is never a foregone conclusion nor should it be taken for granted; nor is formal (de jure) independence sufficiency to guarantee the impartiality of a regulator’s daily behaviour and decisions.”* The document provides guidance to establish and maintain the capacity to act independently, using five dimensions: role clarity and responsibility; transparency and accountability; financial independence; independence of leadership; staff behaviour.

<https://www.oecd.org/gov/creating-a-culture-of-independence-9789264274198-en.htm>

4. **Customer Engagement in Regulation**, Discussion Paper 82, February 2016, Centre for Analysis of Risk and Regulation at the London School of Economics

<https://www.crmasia.org/assets/uploads/resourcepdf/5cc49a0d22921/Disspaper82.pdf>

A series of brief essays on customer engagement processes in a variety of different regulators, primarily in the UK.

5. **The Economics of Regulation: Principles and Institutions**, Alfred E. Kahn, The MIT Press, 1988.

A seminal work by the leading economist in the field. Volume 1 focuses on the economic principles and Volume 2 focuses on the institutional issues. Kahn oversaw deregulation of the airlines in the 1970s, but he cautions against decision-making based on ideology. The work addresses the specifics of a wide variety of sectors.

6. **Effective Regulation: Guidance for Public Interest Decision Makers**, National Regulatory Research Institute, 2009-2011

A useful primer, which includes some of the material in **Preside or Lead** on attributes of an effective regulator. Includes introductions to the electricity, natural gas, telecommunications and water sectors, setting out functions and structure, key issues and the forms of economic regulation.

7. **Fundamentals of Regulatory Design**, Malcolm Sparrow, Harvard, 2020

Professor Sparrow, a noted thinker on regulation generally, has used the COVID-19 period to set out the basics of his lectures and programs into a slim and thoughtful book. Perhaps his most quoted offering (from 2000):

*Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature:*

*Be less intrusive – but be more effective;*

*Be kinder and gentler – but don't let the bastards get away with anything;*

*Focus your efforts – but be consistent;*

*Process things quicker – and be more careful next time;*

*Deal with important issues – but do not stray outside your statutory authority;*

*Be more responsive to the regulated community – but do not get captured by industry”*

ANZSOG webinar: <https://www.youtube.com/watch?v=d8-CcQiZqzc>

Harvard webinar: <https://www.youtube.com/watch?v=w5zBouDke5k>

**8. *Listening, Learning, Leading: A Framework for Regulatory Excellence***, Cary Coglianese, Penn Program on Regulation and Alberta Energy Regulator,

The results of the Alberta Energy Regulator’s “Best-in-Class Project” conducted under the auspices of the Penn Program on Regulation at the University of Pennsylvania. A comprehensive exploration of what makes a “best-in-class” or excellent regulator. Concludes that the attributes of regulatory excellence are Utmost Integrity, Empathic Engagement and Stellar Competence. Identifies nine tenets of regulatory excellence under those three attributes and a series of recommendations for action. Notable quotes:

*“Regulatory excellence is ultimately ‘people excellence’.”*

*“...too often regulators today view regulation as primarily a technical enterprise and underappreciate the essentially social nature of regulation, which demands more than just stellar competence but also a high level of integrity and truly empathic forms of public engagement too.”*

<https://www.law.upenn.edu/live/files/4946-pprfinalconvenersreport.pdf>

**9. *A Literature Review on Regulatory Independence in Canada’s Energy Systems: Origins, Rationale and Key Features***, Ian T.D. Thomson, November 2020, Positive Energy (University of Ottawa)

[https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/a\\_literature\\_review\\_on\\_regulatory\\_independence\\_in\\_canadas\\_energy\\_systems\\_final.pdf?mc\\_cid=00b7023d50&mc\\_eid=088b2956a3](https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/a_literature_review_on_regulatory_independence_in_canadas_energy_systems_final.pdf?mc_cid=00b7023d50&mc_eid=088b2956a3)

Part of a series of work being done by Positive Energy at the University of Ottawa. This piece is a survey of the writing and analysis on regulatory independence in Canada. The focus on the history and evolution in Canada makes this a useful addition to the writing on independence. (see also 11 below)

**10. *OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators***, OECD, 2014.

A framework of principles for governing regulators, across seven dimensions: role clarity; preventing undue influences and maintaining trust; decision making and governing body structure for independent regulators; accountability and transparency; engagement; funding; performance evaluation.

[https://www.oecd-ilibrary.org/governance/the-governance-of-regulators\\_9789264209015-en](https://www.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en)

**11. *Policymakers, Regulators and Courts – Who Decides What, When and How? The Evolution of Regulatory Independence***, Michael Cleland and Ian T.D. Thomson with Monica Gattinger, Discussion Paper, December 2020, Positive Energy, University of Ottawa

*“The case studies examine how each of these decision-making systems and the relevant institutional relationships have evolved over time and what were and are the economic, environmental, social, political and technological circumstances (expanded upon in Section 2) that may have shaped change. Ultimately, the question turns on how those various circumstances*

*might evolve in the next ten to thirty years to mid-century, how that in turn might shape the decision systems and how reform of such systems can facilitate adaptation to emerging realities.”*

[https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/policymakers\\_regulators\\_and\\_courts\\_-\\_who\\_decides\\_what\\_when\\_and\\_how.pdf?mc\\_cid=00e8b60883&mc\\_eid=%5bUNIQID%5d](https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/policymakers_regulators_and_courts_-_who_decides_what_when_and_how.pdf?mc_cid=00e8b60883&mc_eid=%5bUNIQID%5d)

**12. *Preside or Lead? The Attributes and Actions of Effective Regulators*, Scott Hempling, 2013.**

A collection of essays from a leading thinker in the field. Part One sets out pithy guides to nine attributes of effective regulation, including purposeful, decisions, synthesizing, and creative. Part Two examines the actions of effective regulators. Other sections focus on political pressure, regulatory courage, jurisdiction, practice and procedure and regulatory organization. A great introduction for a new regulator, but also thoughtful discussion which will be of interest to the more experienced regulator.

<https://www.scotthemplinglaw.com/preside-or-lead>

**13. *Principles of Public Utility Rates*, James C. Bonbright, Columbia University Press, 1961.**

A handbook on every regulator’s desk. The first significant articulation of the principles of setting rates. While some of it is outdated, it is remarkable how enduring many of the principles are. A useful reference for the practitioner and still referred to often.

Available for download from the Regulatory Assistance Project (but you might want a display copy for your desk): <https://www.raponline.org/knowledge-center/principles-of-public-utility-rates/>

**14. *Prophets of Regulation*, Thomas K. McCraw, Harvard University Press, 1984.**

<https://www.amazon.com/Prophets-Regulation-Charles-Francis-Brandeis/dp/0674716086>

Pulitzer prize winning study of four leaders in U.S. regulation, focusing on their roles in both the theory and practice of regulation. An intriguing combination of biography, economic theory and historical analysis.

**15. *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction*, Scott Hempling, American Bar Association, 2013.**

A thorough and practical guide to the contemporary practice of regulation from a leading thinker and regulatory lawyer.

<https://www.scotthemplinglaw.com/regulating-public-utility-performance>

**16. *Regulation and Customer Engagement*, Stephen Littlechild, Economics of Energy & Environmental Policy, Vol. 1, No. 1, 2012**

One of the architects of the UK regulatory framework (competition, incentive regulation, bilateral process between utility and regulator) writes about what the UK could learn from North American

regulatory approaches. He observes that the UK process has become increasingly burdensome and protracted over time, and highlights the benefits of negotiated settlements with engaged customer representatives. [https://www.eprg.group.cam.ac.uk/wp-content/uploads/2014/02/Regulation-and-customer-engagement-eeep\\_06\\_Littlechild.1\\_15.pdf](https://www.eprg.group.cam.ac.uk/wp-content/uploads/2014/02/Regulation-and-customer-engagement-eeep_06_Littlechild.1_15.pdf)

**17. Regulator Performance Framework**, Australian Government, 2014

A framework developed as part of the government’s commitment to reduce unnecessary or inefficient regulation. A series of six outcomes-based key performance indicators to be used for self-assessment:

- regulators do not unnecessarily impede the efficient operation of regulated entities
- communication with regulated entities is clear, targeted and effective
- actions undertaken by regulators are proportionate to the risk being managed
- compliance and monitoring approaches are streamlined and coordinated
- regulators are open and transparent in their dealings with regulated entities
- regulators actively contribute to the continuous improvement of regulatory

For each KPI there is a statement of best practice, measures of performance and examples of output.

<https://www.pmc.gov.au/resource-centre/regulation/regulator-performance-framework>

**18. The Regulators: Watchdog Agencies and the Public Interest**, Louis M. Kohlmeier, Jr. Harper & Row, 1969.

An interesting analysis and critique of the regulatory system and its shortcomings in protecting consumers and the public interest. Particularly interesting to learn that the issues and quandaries of today are related and connected to those of 50 years ago. The author calls for the abolition of regulators and the distribution of their powers across the three branches of government, with greater reliance on competition and antitrust law.

<https://www.amazon.com/Regulators-Watchdog-Agencies-Public-Interest/dp/B00GDODF00>

**19. Report of the AUC Procedures and Processes Review Committee**, August 14, 2020

A series of recommendations on specific aspects of rate proceedings designed to enhance efficiency and effectiveness. The overarching theme is that the Alberta Utilities Commission has within its legal authority the ability to implement “assertive case management”. The recommendations will be familiar to regulatory practitioners. The risk analysis is focused on legal risk.

<https://www.auc.ab.ca/Shared%20Documents/2020-10-22-AUCReviewCommitteeReport.pdf>

**20. Tribunal Excellence Resource**, CCAT (Council of Canadian Administrative Tribunals), 2018

A questionnaire based on the COAT Tribunal Excellence Framework (see number 2 above), using the same eight areas of tribunal excellence and 82 specific measures.

<http://www.ccat-ctac.org/en/resources--opportunities/tribunal-excellence-resource>

**21. What Regulators Need to Know About Organizational Culture**, Jennifer Howard-Grenville, Stephanie Bertels and Brooke Boren, Penn Program on Regulation, June 2015

*“Perhaps the single most important, and disarmingly simple, lesson from this paper is that organizational culture, like any other aspect of organizing, needs explicit, mindful tending.”*

<https://www.law.upenn.edu/live/files/4708-howard-grenvillebertelsboren-ppr-researchpaper0620>

## ONLINE RESOURCES – For Learning and Development

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**Australia and New Zealand Government School of Government (ANZSOG):** <https://www.anzsog.edu.au/>

*The Australia and New Zealand School of Government (ANZSOG) is a global leader in education and government-focused research relevant to the public sector.*

*Within ANZSOG, the **National Regulators Community of Practice (NRCoP)** is an active network of public sector regulators from all three levels of government and from every regulatory sector, professional background, role and level of seniority, who are keen to learn from and with each other. Its objectives are to support participants and agencies to become more professional and capable regulators and to promote the public value and importance of regulation as a key task of government and thereby, to deliver better citizen outcomes. Website holds reports, webinars, and presentations*

<https://www.anzsog.edu.au/regulators/regulator-news-and-events>

Webinar “What Makes an Excellent Regulator” with Cary Coglianese: <https://www.anzsog.edu.au/resource-library/news-media/what-makes-an-excellent-regulator>

**European University Institute - Florence School of Regulation -** <https://fsr.eui.eu/>

*The Florence School of Regulation (FSR) is a centre of excellence for independent discussion and knowledge exchange with the purpose of improving the quality of European regulation and policy. We deliver academic research, training and policy events in the areas of Energy & Climate, Communications & Media, Transport and Water.*

**London School of Economics – Centre for Analysis of Risk and Regulation (carr)** <https://www.lse.ac.uk/accounting/carr>

*carr is an interdisciplinary research unit, whose core intellectual work focuses on the organisational and institutional settings for risk management and regulatory practices.*

Regulator's Forum <https://www.lse.ac.uk/accounting/carr/events/regulators-forum>

*The Regulators' Forum is a unique initiative to bring together academics and practitioners in the field of regulation to share insights and lessons regarding contemporary regulatory challenges. Contemporary regulation often takes place within distinct policy domains, with little opportunity to draw on cross-sectoral experiences. CARR's Regulators' Forum, supported by LSE's Knowledge Exchange initiative, seeks to provide for a setting for structured themes about key themes in regulation.*

Sample Report – Customer Engagement in Regulation <https://www.crmasia.org/assets/uploads/resourcepdf/5cc49a0d22921/Disspaper82.pdf>

**Michigan State University Institute of Public Utilities** - <https://ipu.msu.edu/>

*IPU specializes in building capacity for meeting the challenges of utility, network, and market governance, including modernization and transformation. IPU's neutral analytical and instructional practice is informed by a broad array of traditional and applied disciplines, including economics, political science, law, accounting, finance, and engineering. IPU's diverse program faculty includes nationally recognized university educators and expert practitioners known for their insight, experience, and teaching ability.*

**New Mexico State University Center for Public Utilities** - <https://business.nmsu.edu/research/centers/cpu/>

*A branch of the College of Business at New Mexico State University since 1978, the CPU provides training programs and current policy issues conferences to meet the needs of professionals employed at federal and state commissions, utility companies, and other stakeholders in the electricity, natural gas distribution, interstate pipeline, water utility and telecommunications industries.*

**New Zealand Government Regulatory Practice Initiative:** <https://g-reg.govt.nz/>

*The Government Regulatory Practice Initiative (G-REG) focuses on developing people capability, organisational capability, and building a professional community of regulators.*

Resources for regulators : <https://g-reg.govt.nz/resources-for-regulators/>

**NRRI (National Regulatory Research Institute)** – <https://www.naruc.org/nrri/>

*The National Regulatory Research Institute (NRRI) was founded in 1976 by the National Association of Regulatory Utility Commissioners (NARUC). NRRI serves as a research arm to NARUC and its members, the utility regulatory commissions of the fifty states and the District of Columbia in the United States. NRRI's primary mission is to produce and disseminate relevant and applicable research for NARUC members.*

**OECD Network of Economic Regulators** - <http://www.oecd.org/gov/regulatory-policy/ner.htm>

*The OECD Network of Economic Regulators (NER) promotes dialogue between over 70 regulators from across the world that operate in different sectors like communications, energy, transport and water. NER members share their experiences, challenges, and innovative solutions, and together define what makes a “world class regulator” that is equipped to face the future. The Secretariat supports the NER via the development of guidance, analytical work and thematic or institutional reviews, under the guidance of the [NER Bureau](#). Canadian members include the CER and CRTC.*

**RAP (Regulatory Assistance Project)** - <https://www.raonline.org/>

*The Regulatory Assistance Project is an independent, non-partisan, non-governmental organization dedicated to accelerating the transition to a clean, reliable, and efficient energy future.*

**Smart Electric Power Institute - Renovate Initiative: Regulatory Process Innovation**

<https://sepapower.org/renovate/>

*The world is innovating by leaps and bounds but regulatory processes, developed over the last 100 years, are challenged to keep up. That slows innovation and makes it harder for customers – and society at large – to leverage and benefit from the latest technological advances and operating practices. Our task force and partners are gearing up to tackle this issue and change regulatory processes, practice and structures to foster innovation to build a modern grid and promote a modern society.*

Resources, case studies, other tools.

**University of Florida – Body of Knowledge on Infrastructure Regulation** - <http://regulationbodyofknowledge.org/>

*Developed by the Public Utility Research Center (PURC) at the University of Florida, in collaboration with the University of Toulouse, the Pontificia Universidad Catolica, the World Bank and a panel of international experts, the Body of Knowledge on Infrastructure Regulation (BoKIR) summarizes some of the best thinking on infrastructure policy.*

*This site provides links to more than 500 references, an extensive glossary and self-testing features to facilitate learning. The references include publications and decisions by regulatory agencies and other governmental bodies; policy advisories by think tanks, consultants, donor agencies, and others; and research by academics, consultants, and other experts.*

**University of Pennsylvania – Penn Program on Regulation** - <https://www.pennreg.org/>

*The Penn Program on Regulation (PPR) brings rigorous, balanced analysis from multiple disciplines to bear on important regulatory policy problems and alternative strategies to solve them, as well as on the processes of making and implementing regulation.*

[WWW.OEB.CA](http://WWW.OEB.CA)

