Background paper for the conference

Governance and Regulation in the Electricity Sector: A Comparison of Alberta, British Columbia and Ontario

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Background and Policy Context

As governments around the world have sought to improve the operational performance of electric utility sectors, and also to encourage private investment in utility infrastructure, a policy debate has emerged on the best practices for regulating both privately-owned and state-owned electric utilities. A central element of this debate concerns optimal governance practices, including (a) governance arrangements for regulatory agencies and (b) governance structures for state-owned utilities or crown corporations. *Regulatory governance* consists of the role and powers of regulatory agencies, and their relationships with ministries, parliaments and courts who oversee them – i.e. *how* regulatory policies are made and by *whom*. *Utility governance* consists of the structure of relationships between state-owned utilities and government shareholders, and the respective roles of utility boards of directors, executive officers and government ministers**.** Alternative structures differ in their relative balance between political control of utilities and operational independence.

While policy attention often focuses on specific regulatory policies – such as incentive pricing schemes, technology choices, allowed rates of return and so forth, research suggests that governance issues have as much of an influence on utility operations and performance as do regulatory policies. A comprehensive public policy approach to utility sector reform thus requires an integrated assessment of regulatory policies and regulatory governance regimes.

In this paper we provide a preliminary assessment of the state of regulatory and utility governance structures in three Canadian provinces, Ontario, Alberta and British Columbia. Although these policy issues have received considerable attention internationally, there has been relatively little research conducted within Canada, so this represents the first step towards a more comprehensive assessment and policy debate. The purpose is not to recommend specific policy reforms but rather to establish a factual basis and some analytical perspectives for informed discussions.

Part I: Governance of Regulatory Agencies

1. Regulatory Governance

In the utility sector governments typically delegate a degree of policy-making authority to administrative agencies, operating under objectives specified in legislation, since designing and implementing regulatory policies is a complex task requiring dedicated expert resources. Such agencies determine policy in the context of oversight by elected political institutions, and potentially under the influence of the judiciary if decisions may be appealed in the courts. Delegation to independent agencies promotes a professional approach to policy-making and can help governments to credibly commit to stable policy, thereby encouraging investment in long-lived infrastructure assets. A drawback, however, is that it limits government's flexibility to intervene in policy details if political, economic or technological conditions change. More generally, delegation creates a control problem for the government: how to ensure that expert agencies implement the government's preferred policy when the government cannot easily know or specify that policy ex ante. Agencies may deviate from political preferences for a variety of reasons – professional judgment, 'capture' by special interests, even corruption. Reflecting the tension between competing demands for regulatory commitment and flexibility, jurisdictions have varied in the extent to which governments have established independent agencies or other mechanisms that restrain executive discretion.

The independence of regulatory agencies can be assessed on several criteria:

i. *Government's policy-making powers over agency*
   a. Veto power or approval requirements for regulator's decisions: regulatory decisions are less susceptible to political influence in the absence of government veto or approval authority.
   b. Power to give directions to regulator: constraining the government's ability to give on-going detailed directions directly to the regulator increases independence.
   c. Sharing regulatory powers: a regulator that does not share regulatory powers with the government has greater independence.[i]
   d. Independence formally stated in legislation: a formal legislative statement commits the government to a policy of allowing the regulator to act independently.
   e. Formal obligations of regulator to legislature or government executive: a regulator that formally reports to the legislature is better monitored and more likely to remain independent even in parliamentary systems.[ii] Since legislative committees contain both government and opposition members, opposition members can probe the regulator's activities, acting as a check on political influence over the regulator.[iii]

ii. *Financial and organizational autonomy of agency*
   a. Magnitude of agency budget: adequate budgets promote independence because a certain amount of resources are necessary to collect and assess information provided by the industry and other stakeholders.[iv]

b. Source of budget: a regulator that is funded through consumer rate levies or industry fees is more independent compared to an agency that is funded through government appropriations.[v]
c. Control over internal organization and personnel: when the regulator controls its internal organization and personnel policy the government cannot control the agency through political appointees.

iii. Agency appointments

a. Professional experience requirements: professional ethics promote independence, and professional qualification criteria limit the government from appointing individuals purely on the basis of political connections.
b. Term of office, renewal options: fixed appointment terms enable regulators to exercise their regulatory powers without fearing the risk of politically-motivated immediate dismissal.[vi] Non-renewable terms promote independence because they eliminate the likelihood of decision-making designed to maximize re-appointment chances.[vii] Terms of office that do not coincide with the election cycle also enhance independence.
c. Appointment and dismissal processes: involving the legislature in regulator appointments provides a check on their selection, helps legitimize the regulator's authority and increases the regulator's awareness of its broader responsibilities to the electoral constituency.[viii]

iv. Agency characteristics

a. Single or multi-member body: additional members, appointed in a staggered fashion, provide checks on the exercise of power, which promotes independence from political intervention.[ix]
b. Single or multi-sector jurisdiction: multi-sector agencies may be more independent because a broader stakeholder constituency increases the consequences of political interference.

v. Appeals processes

a. Role of the courts in adjudication of disputes: the ability of courts to overturn regulatory decisions creates a check on political influence due to the risk of decisions being appealed to the courts. Broader rather than narrower grounds for appeal further strengthen judicial checks and balances.
b. Which parties have ability to appeal agency decisions: as more stakeholders have the ability to appeal decisions in court, greater restrictions are imposed on the scope for political influence on agency decision-making.

2. The Impact of Regulatory Governance on Utility Operations and Performance

Academic research has found that the structure of regulatory governance - notably as it affects agency independence - has a significant effect on the ability of governments to attract and sustain private investment in the utilities sector. As the time frame for investor returns lengthens – 20 years is common and 40 years is not uncommon in electricity infrastructure projects – the impact of regulatory governance in the assessment of the overall regulatory regime becomes more central. In a recent survey of private firms in the renewable power generation sector in Ontario, Holburn and colleagues found that firms rated regulatory governance factors to be more

important in their location decisions than operational and market factors when comparing alternative jurisdictions for their investments.

Strong regulatory governance regimes consist of expert agencies that operate largely independently of direct political control, but under legislative mandates and procedural requirements that safeguard the rights of stakeholders. Such regimes can provide credible assurances to industry and stakeholders that policies will not change in an arbitrary or unpredictable fashion, for instance in response to new political or economic pressures, after investments have been made.

Utilities are especially vulnerable to adverse policy shifts, motivated by political forces, which have the effect of reducing their financial performance, for several reasons. First, electricity is broadly consumed and "essential" for modern day living, making pricing a matter of potential political interest. Second, utility investments involve large, sunk and specific assets, which limits the business options for utilities after investments have been made. Third, utility technologies, such as transmission and distribution networks, exhibit significant economies of scale and scope, implying that as long as revenues cover operating costs, they will still continue to operate, even if prices are set below long-run average costs. Utilities are thus liable to the effects of administrative expropriation - setting prices below long-run average costs, imposing specific investment requirements, equipment purchases or labour contract conditions, for example. Strong regulatory governance restrains the possibility of such expropriation by limiting the ability of governments to opportunistically alter policies.

Weak regulatory governance, on the other hand, is characterized by a more politicized policy-making process where the government rather than agencies, have greater control over regulatory policies. In this type of environment it is more difficult to achieve credible commitment to future investor and stakeholder protection, heightening perceptions of regulatory risk. In the absence of adequate regulatory governance, a jurisdiction may encounter multiple types of inefficiencies in its utilities sector:

- It may experience underinvestment, which occurs when utilities invest solely in areas with shorter payback periods.
- Utilities may minimize maintenance expenditures, reducing quality.
- Utilities may invest in more generalized, less tailored (and less efficient) technologies.
- The government may have to provide high but politically unsustainable incentives to attract investment, for instance through high rates, upfront subsidies and tax concessions.
- The jurisdiction may experience fluctuating levels of investment.

Ultimately, the negative effects of non-credible regulatory governance can lead to government ownership becoming the default mode of operation, as has been the case in many developing countries. The regulatory challenge for policy-makers therefore lies not just in designing regulatory incentive structures that encourage economically efficient utility operation but also in designing regulatory governance frameworks that constrain the political and administrative actors who have jurisdiction over the industry. However, designing regulatory arrangements that are *flexible* enough to make balanced policy decisions in response to unanticipated events but

that are also *rigid* enough to insulate policy from political pressures is a difficult task. Appendix 1 provides a brief overview of how the United States has approached the regulatory design problem.

3. Regulatory Governance in Ontario, British Columbia and Alberta

This section compares the regulatory governance structures of the Ontario Energy Board (OEB), the British Columbia Utilities Commission (BCUC) and the Alberta Utilities Commission (AUC) with the criteria summarized in the first section. Overall, we find that regulatory governance in Canada is quite exposed to political influence, subjecting regulatory agencies and hence the utility industry to a greater degree of direct political control than is the case in some other jurisdictions (e.g. the United States where multiple checks and balances confer a degree of autonomy on Public Utility Commissions). In each province, individual ministers have substantial authority to issue directives to agencies, to make specific regulatory policies, to establish budgets and/or to make appointments. The role of provincial legislatures in monitoring, reviewing or approving agency or ministerial actions is limited, further concentrating power in the executive. Although there are some differences between the provinces, these are mainly a matter of degree.

a. *Government Policy-Making Powers Over Agency*

The presence of executive powers, mainly in ministerial functions, limits the ability of agencies to make and implement policies that conflict with political priorities. The *OEB Act*, the *Alberta Utilities Commission Act* (*AUCA*) and the British Columbia *Utilities Commission Act* (*UCA*) each establish the scope of agency powers and authority, though none explicitly state that the agency is independent. Although the government executive (i.e. the relevant ministry and Cabinet) cannot directly overturn agency decisions outside the court system, each Act confers significant authority to the executive to issue binding directives. Moreover, all three regulators share regulatory functions with the government executive.

For instance, in Ontario the Minister of Energy and Infrastructure can issue Lieutenant-Governor in Council-approved (LGC) directives requiring the OEB to amend specific license conditions[x] without a hearing (the LGC is the official name for the Cabinet).[xi] Since the 2009 *Green Energy Act*, the Minister can direct the OEB to amend license conditions to include specified conservation targets[xii] and mandate transmission or distribution system expansion to connect renewable generators.[xiii] A directive may also specify if the OEB can hold a hearing regarding conservation and demand management targets, the circumstances under which a hearing can be held and the type of hearing held.[xiv] The Minister also exclusively approves the specifications and performance standards for smart meters and associated technologies.[xv]

Recent amendments to the 1998 *Ontario Energy Board Act* explicitly limit the OEB's ability to make decisions independently of existing government policies on certain issues. Its modified mandate, under s. 1.1, now requires the OEB to promote electricity conservation, demand management and the use and generation of electricity from renewable energy sources in a manner "consistent with the policies of the government of Ontario".[xvi]

Government control over the Ontario Power Authority (OPA), the agency charged with long term system planning, is more pronounced. Under sections 25.2(5) and 25.32(4) of the *Electricity Act* the Minister has the authority, as approved by Cabinet, to control by directive the OPA's process for procuring renewable energy – determining specifically both the magnitude and timing of procurements. [xvii] In addition, under section 25.30(2), the Minister can specify, through directives, the long-term renewable capacity targets included in the OPA's long-term planning forecast, the Integrated Power System Plan (IPSP). Even though the OPA must review the IPSP periodically, section 25.30(1) further allows the Minister to order a review at any point in time. The Minister thus sets renewable power targets and retains the flexibility to revise them. Under the *Green Energy Act* which received Royal Assent in May 2009, the Minister's legal powers were significantly and explicitly expanded. The Minister can dictate whether a competitive or non-competitive process will be used for renewable energy procurement (s. 25.32(4.2)), and can also select the pricing and economic factors used by the OPA (s. 25.32(4.3)).

In British Columbia, the executive has even greater discretion to control agency decisions compared to the other provinces. The *UCA* permits the LGC to direct the BCUC regarding the exercise of its powers and the performance of its duties including, without limitation, a direction requiring the Commission to exercise a power or perform a duty or to refrain from either.[xviii] The Commission must comply with the direction despite any other provision of the Act, regulations or any previous Commission decision.[xix] The Minister also has further specific powers to make general or specific regulations[xx] regarding, for example, rules for determining whether a demand-side measure is adequate or cost effective[xxi] and the exemption of "eligible persons" from any of the Commission's energy supply contract stipulations.[xxii] The Clean Energy Act, proposed in Bill 17 in 2010, appears to confer on the Minister extensive broad and specific powers to shape policy implementation for renewable energy. Bill 17 contains more than 30 aspects relating to green energy policy over which the Minister, through the LGC, has explicit authority to determine regulations, including: powers to determine a feed-in tariff program for renewable generators, the definition of a clean or renewable resource and "the types of smart meters to be installed, including the features or functions each meter must have or be able to perform".

The AUC also shares many of its regulatory functions with the government executive. The *AUCA* allows the LGC to order the Commission to carry out any function or duty.[xxiii] Multiple sections of the *Electric Utilities Act* ("*EUA*") outline the Minister's power to make regulations.[xxiv] For example, the Minister can make regulations regarding: the eligibility of a person to hold a power purchase agreement[xxv], terms and conditions that must be included in agreements between electric distribution system owners and retailers[xxvi] and regulated rate tariffs.[xxvii] The Minister can also continue an existing regulation made under the *EUA*, regardless of whether there is legislative authority for that regulation under the Act.[xxviii]

b. *Financial and Organizational Autonomy of the Regulator*

Sufficient agency budgets and staff resources enable agencies to perform their duties in a professional manner. Strong government control over agency finances, however, can undermine agency autonomy. Out of the three provinces we examine here, it appears that the BCUC has a particularly weak financial base.

In Ontario, the OEB's costs are recovered primarily through assessments levied on market participants (electricity distributors, transmitters and gas utilities). [xxix] However, the LGC may make regulations prescribing who is liable to pay an assessment and the amount of the assessment or the method of calculation.[xxx] The BCUC is also self-financed by recovered costs from regulated utilities and pipeline companies.[xxxi] As in Ontario, the LGC may make regulations setting or authorizing the Commission to set and collect fees, exempting or authorizing the commission to exempt a utility or other person from paying a fee.[xxxii]

The ACUC also derives its revenues through administration fees levied on utilities though it has greater control to establish them independently of the government executive.[xxxiii] Unlike the *OEB Act* or the *UCA*, the *AUCA* explicitly allows the Commission to "impose an administration fee sufficient to pay for the Commission's estimated net expenditures associated with carrying out its powers, duties and functions for a fiscal year"[xxxiv], so long as it considers any funds paid to it by the legislature.[xxxv] The AUC is empowered to make rules regarding, for example, how the fees are calculated, fee appeals and who must pay the fees.[xxxvi]

Although it is hard to identify 'optimal' budget levels, comparisons across the three provinces reveal considerable differences in budgets (see Table 1): the BCUC had the smallest budget overall and on a per capita basis in fiscal year 2008/09 while the AUC had the largest both in absolute terms and on a per capita basis out of the three agencies. This implies that financial constraints may be relatively binding for the BCUC, creating greater organizational dependency on the Minister and government.

Table 1: Agency Budgets and Staff

Agency	Population (million)	Budget ($ million)	Budget per capita	Staff	Staff per million capita
BCUC	4.4	$5.9	$1.35	25	5.7
OEB	13.0	$31.4	$2.42	173	13.3
AUC	3.5	$35.2	$10.13	150	43.2

c. *Agency Appointments*

Methods of selecting and appointing agency leadership personnel also influence the extent to which agencies are able to operate independently of political pressures. Appointment procedures that involve multiple institutions, e.g. the government executive and legislature, that establish professional criteria for candidate selection, and that rely on longer, fixed terms with limited opportunities for renewal will tend to better insulate agency boards and executive staff from political forces. Appointment methods in the three provinces only partially reflect such a model. Notably, the absence of fixed appointment terms and the lack of legislative involvement in agency appointments reduce the independence of the three agencies. None of the governing acts state that independence is a necessary condition for appointment to the agencies.

In Ontario, the LGC appoints all OEB members although the Ontario Public Appointments Secretariat oversees the process and mandates competent appointees.[xxxvii] An OEB appointee's first term cannot exceed two years in duration.[xxxviii] He or she may be reappointed for one or more subsequent terms of five years or less each.[xxxix] Since their first term is limited to only two

years, the Minister (through the LGC) can replace dissenting Board members within a relatively short time horizon – creating an incentive for OEB board members to account for the preferences of the Minister in their decisions.[xl] Appointment procedures for the BCUC and AUC are quite similar to those in Ontario, though the expected Alberta *Public Agencies Governance Act* will require a merit-based selection process, fixed terms and twelve-year limit in office.

In contrast, appointment procedures in the U.S. and U.K. afford regulatory agencies in the utility sector greater independence from political bodies: Public Utility Commissioners in U.S. states are typically appointed for fixed, overlapping 5 year terms, longer than the terms of office for state governors and House representatives (usually 4 years and 2 years, respectively). In the U.K., members of the Gas and Electricity Markets Authority (the equivalent of the OPA or OEB) are appointed for up to 5-year terms by the Secretary of State.

d. *Agency Characteristics*

While the BCUC, OEB and AUC all have multiple members[xli], creating additional checks on the exercise of power, only the BCUC is responsible for more than one industry. In addition to reviewing energy rates and services, the BCUC monitors the Insurance Corporation of BC, reviews basic automobile insurance matters[xlii] and regulates intra-provincial pipelines.[xliii] Thus, the BCUC reports to the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Transportation. BCUC's multi-sectoral mandate vis-à-vis the sector ministries increases its independence. The AUC and OEB solely report to the Minister of Energy[xliv] and Minister of Energy and Infrastructure, respectively.

e. *Appeals Processes*

Since courts can overturn regulatory decisions, and all parties to a proceeding may appeal decisions in court, the judicial system provides a potential check on political influence in all three provinces.

In Ontario, parties to an OEB proceeding may appeal to the Divisional Court on a question of law or jurisdiction.[xlv] Previously, an interested party could file a petition with the Clerk of the Executive Council when the Board made an order, made a rule under s. 44 or issued a code under s. 70.1.[xlvi] The LGC would confirm the Board's order, rule or code or require the Board to review all or part of its order, rule or code.[xlvii] If the Board followed the LGC's mandated review, no further petition was available.[xlviii] However, the 2009 *Good Government Act* expressly repealed this provision.

BCUC decisions can be appealed by leave from the Court of Appeal.[xlix] The LGC may not specifically and expressly declare a BCUC order or decision to be of no force or effect or require it to rescind an order or decision.[l] Similarly, AUC decisions can be appealed on a question of law or jurisdiction by leave from the Court of Appeal.[li]

4. Regulatory Governance Reform Options

Stronger regulatory governance regimes – which enhance agency independence from political intervention in day-to-day decision-making – have the benefit of encouraging greater levels of private investment and at lower cost, which benefits consumers, since perceived regulatory risks

are reduced. Such reform programs are thus likely to have the support of both industry and consumer stakeholder groups.

In Ontario, British Columbia and Alberta there is considerable scope to improve the quality of regulatory governance. In each province, the presence of key policy-making power in the energy ministry, coupled with the ability to issue directives without extensive stakeholder or public consultation, establishes a relatively weak regulatory governance regime. The ability of a single minister to exert political control, subject to Cabinet approval, over central aspects of energy policy outside the legislative process has fundamental consequences for the development pattern of regulatory policy over time. In particular, political control puts at risk the long-term stability and credibility of policy since key dimensions may be modified at the discretion of an individual minister by initiating directives to agencies or even simply by proposing to do so. Changes over time in ministerial policy preferences, which may occur in response to the appointment of new ministers, shifting party political priorities or lobbying by organized stakeholder groups, can thus lead to rapidly shifting agency decisions. In Ontario, the tenure of individual ministers in the Ministry of Energy and Infrastructure has also been exceptionally brief: since 2003, the average ministerial tenure period has been approximately 12 months. Proclamations about long-term policy goals and intentions, either by agency heads or ministers, thus lack credibility since they may be modified in the future with relative ease. The repeated revisions of long-term renewable energy capacity targets and of feed-in tariff policy instruments in Ontario illustrate how sensitive regulatory policy can be to political forces in such a 'flexible' institutional environment. Academic research has found that private sector energy firms rate energy policy stability especially poorly in Ontario, though stability is of significant importance in their investment allocation decisions across different jurisdictions.

Regulatory governance reforms that 'hard wire' policy commitments can reduce the degree of political discretion in policy-making. One option is to enshrine specific policies, for instance renewable energy capacity or generation emissions targets, in legislation. Even though the majority party in the provincial legislature controls the legislative agenda, the legislative process provides opportunities for public debate and consultation that are not required for ministerial directives. Extensive consultation has the benefit of reducing the risk of policy errors since multiple parties have an opportunity to provide information on policy consequences and alternatives that may not have been anticipated by the sponsoring Ministry. Enacting legislation also demands time and resources from the initiating parties, implying that once enacted, legislation is not easily reversed or modified.

A second approach to stabilizing policy over time is to strengthen agency independence from government control, as has been the practice in other jurisdictions such as the U.S. and U.K. that have also encouraged private sector investment in the utility sector. Further policy decision-making authority could be conferred on the regulatory agencies, subject to administrative procedural requirements, but without the need for explicit ministerial initiation or approval. Independence from political pressures may be further enhanced by reforming appointment processes: lengthening terms of appointment to fixed five year periods, and staggering the appointments of board members will insulate regulatory agencies from immediate political exigencies.

Part II: Governance of State-owned Utilities

1. Overview

Corporate governance can be defined as the process and structure for overseeing the corporation's strategic direction and management to ensure that it effectively meets its mandate and objectives.[lii] State-owned utilities and enterprises (SOEs) have unique governance challenges. Unlike private sector firms, SOEs typically have both profit-seeking and state-mandated social objectives. On the one hand, SOEs are often expected to operate in a commercial manner.[liii] Yet they also operate in a political context and are subject to strategic direction and control by government shareholders. Because of the inherent tension between commercial and political objectives, SOEs perform less efficiently in many jurisdictions compared to private sector counterparts. Careful corporate governance reforms, however, have the potential to improve performance and unlock significant value, even in situations where privatization is not politically feasible.

The OECD has developed policy guidelines to help governments improve how they exercise ownership of SOEs. The following discussion compares the OECD guidelines to the governance structures of government-owned electric utilities in three provinces, Hydro One (Ontario), BC Hydro and EPCOR. Our focus is on the formal structural relationships between (1) the government and the utility and (2) the board and management, which we assess using publicly available information such as annual reports and SEDAR filings. These formal relationships may or may not reflect how governance relationships operate in practice. An analysis of the *de facto* relationships would provide a more accurate assessment of the SOE's governance. However, such an analysis is beyond the scope of this paper.

On many dimensions, the three utilities' governance structures seem to comply with OECD guidelines. The state's ownership policy vis-à-vis the utility tends to be formalized in an agreement, such as a "letter of expectations" or "memorandum of agreement". The state ordinarily appoints directors from the private sector to the utilities' boards. As in the private sector, boards are responsible for reviewing and approving the utilities' strategic plans, appointing and evaluating the CEO, appointing special committees and supervising the utilities' internal and external audits. The utilities' annual reports adequately disclose material information and comply with national corporate accounting and auditing standards. Employees, including directors, are expected to comply with internal ethics codes.

However, there are some critical areas where the utilities' governance structures do not comply with OECD guidelines. One metric is whether the state's ability to direct the SOE is limited to strategic concerns. Allowing the state to intervene in the utility's day-to-day management can compromise the utility's ability to operate as a commercial entity. On this dimension, Hydro One and BC Hydro appear to fall short since individual ministers have extensive powers to control utility decision-making. EPCOR, however, is arguably more operationally independent relative to Hydro One and BC Hydro even though it is owned by a single shareholder, the City of Edmonton. Unlike the other utilities, EPCOR reports to the entire City council, rather than a minister with a narrow portfolio, and is not obligated to communicate on an ongoing or daily basis with its shareholder. A majority of the council are thus required to approve new directions to EPCOR, while in Ontario and British Columbia this power resides in a single minister.

Other major areas where the utilities and/or the state do not comply with OECD guidelines include the following:

- There is no centralized state ownership function or coordinating entity for all SOEs in any of the provinces.
- Legislative approval is not required for major changes to ownership policy or organizational strategy, or for financial transactions, in Ontario or British Columbia.

BC Hydro does not meet additional OECD guidelines because of its somewhat distinct governance structure - it is generally exempt from general corporate law obligations and liabilities, it is explicitly recognized as the government's agent, the government holds and guarantees its debt. These factors suggest that BC Hydro has a less robust governance structure and may be less operationally independent relative to the other two utilities.

2. The State Acting as Owner

a) Ownership Policy

The OECD recommends that the state's ability to direct the SOE should be limited to *strategic* concerns. Similarly, the Ontario Agency Review Panel on Electricity Agencies recommended that SOEs should "be free of day-to-day, operational interference by Government". The state should issue a consistent and explicit ownership policy outlining its overall objectives, its role in corporate governance, its ownership policy implementation plans and its priorities.[liv] The ownership policy should be accessible to the general public and endorsed by the relevant civil servants.[lv] The SOE General shareholders meeting, the board and senior management should endorse the corporate objectives statements.[lvi]

Governance structures of the three utilities in our study do not fully comply with this OECD recommendation. The state's ability to direct the three utilities is not explicitly limited to strategic concerns. In Ontario, the Minister can direct Hydro One to "undertake special initiatives" via a unanimous shareholder agreement (USA) enacted under s. 108(3) of the *Business Corporations Act*.[lvii] With an USA, the Minister can intervene in Hydro One's operations beyond mere strategic guidance. For example, in September 2008, the Minister responded to political pressure against Hydro One's decision to outsource some IT and administrative functions to CapGemini/Inergi who had further offshore the jobs to India: the Minister issued an USA transferring the board's power to make off shoring decisions entirely to the Minister. Hydro One's annual report acknowledges that "[t]he Province made a declaration removing certain powers from our company's directors pertaining to the off-shoring of jobs…[t]he Province may make similar declarations in the future, some of which may have an adverse effect on our business".[lviii]

Hydro One must also obtain political approvals before making a broad range of decisions. The criteria for these issues are set out in a Memorandum of Agreement which outlines Hydro One's objectives and the governance relationship between Hydro One and the government. The Memorandum requires Hydro One to obtain the approval of the Minister of EI and the Minister of Finance prior to any proposed acquisition or divestment of assets or any other major transaction, proposal or action that could materially impact on the cash flow to the Ontario Electricity Financial Corporation, the province's financial interests or Hydro One's payments made in lieu of taxes.[lix] The Memorandum also requires Hydro One's senior management and

senior Ministry officials to "meet and communicate on a regular and as needed basis to discuss ongoing issues and clarify expectations or to identify and address emergent issues, including, but not limited to issues that may have a material impact on the financial performance of [Hydro One] or the Shareholder".[lx] While satisfying such political requirements, Hydro One's mandate also states that it "will operate as a commercial enterprise with an independent Board of Directors".[lxi]

Likewise, BC Hydro's legislation permits the Minister of Energy, Mines and Petroleum Resources's to direct both its strategy and operational decisions.[lxii] All of BC Hydro's enumerated powers and its ability to issue securities are subject to the approval of the Lieutenant Governor in Council (LGC).[lxiii] The Minister of Finance serves as its fiscal agent and may arrange all of BC Hydro's loans.[lxiv] The LGC may also direct BC Hydro to pay the government a specified amount or pay BC Hydro's past or present customers a specified amount.[lxv]

The Minister and BC Hydro annually agree on a publicly available "letter of expectations", endorsed by the Minister and BC Hydro's Chair. The letter outlines BC Hydro's objectives and the state's role in BC Hydro's governance. Specifically, the government states that it will provide "broad policy direction" and will continuously monitor the achievement of goals, objectives, performance and financial targets and risk assessments.[lxvi] BC Hydro is officially recognized as the government's agent. The letter anticipates that there will be "effective and efficient day-to-day communications" between the Minister and BC Hydro. It must inform the government immediately if it cannot meet its performance and financial targets.

EPCOR and the City have adopted a "Charter of Expectations" setting out the board's responsibilities. As with Hydro One, the City of Edmonton can direct EPCOR through USAs, amending the articles or amending the by-laws.[lxvii] The directors have the residual power to manage EPCOR's business and affairs.[lxviii] EPCOR's reporting obligations to the city include adequately reporting its financial performance on a timely and regular basis and reporting developments that have a significant and material impact on its value.[lxix]

As aforementioned, EPCOR appears to enjoy a greater degree of operational independence relative to Hydro One and BC Hydro. First, because EPCOR reports to the entire City council, a majority of the council is required to direct EPCOR to change its policies or practices, which limits the ability of a single elected official to pursue their own agenda. By contrast, a single minister with a single issue (energy) portfolio has much greater power to influence day-to-day utility management. Second, EPCOR is not subject to a general, legislatively enshrined ministerial power to direct its affairs, beyond the ordinary corporate law USA. Third, EPCOR's Charter does not contemplate ongoing or daily communications between the City and EPCOR. Fourth, unlike Hydro One, EPCOR is not required to obtain the City's approval prior to any major transaction or actions. Lastly, the City of Edmonton classifies EPCOR as a "decision making agency", with decision-making authority over specific functions.[lxx]

b) *Appointments*

The OECD recommends that the state does not involve itself in the SOE's daily management.[lxxi] It should respect the SOE board's independence by not appointing excessive board members from the state administration[lxxii] and not imposing its political objectives through board participation.[lxxiii]

The three utilities generally follow this OECD principle. In Ontario the Minister appoints Hydro One's directors via a sole shareholder resolution.[lxxiv] The Public Appointments Secretariat manages the recruitment and review process to ensure qualified, diverse appointments.[lxxv] In British Columbia, the Minister appoints BC Hydro's board members.[lxxvi] The BC Board Resourcing and Development Office (BRDO) set provincial agency appointment guidelines designed to ensure merit-based, transparent appointments.[lxxvii] The City of Edmonton also appoints EPCOR's Board members. The Board's Corporate Governance and Nominating Committee oversees appointment procedures and makes appointment recommendations to the Board, which are passed on to the City Council.[lxxviii] An external consultant assists the Council in recruiting and filling positions.[lxxix]

c) Ownership Function

The OECD recommends that the state clearly identify its ownership function within its administration.[lxxx] Preferably, the ownership function should be centralized in a single entity to clarify ownership policy and consolidate relevant competencies in areas such as board nomination.[lxxxi] If the ownership function is decentralized, there should be a strong coordinating entity that can harmonize actions and an overall ownership policy between multiple ministries.[lxxxii]

There is no centralized ownership function or coordinating entity either in BC, Ontario or Edmonton. The BC government has established some SOE policies regarding appointment procedures, director remuneration[lxxxiii] and capital asset management.[lxxxiv]. The BC Crown Agencies Resource Office provides a "Shareholder's Expectations Manual", which explains the Crown Agency Accountability System and summarizes the responsibilities and expectations of the government, ministers, agency boards and ministry and agency staff.[lxxxv] The City of Edmonton also provides guidelines for board appointments, agency reporting and ethics in its civic agencies, which are supported by a Civic Agencies Coordinator.[lxxxvi]

d) Legislative Accountability

The OECD recommends that representative bodies should hold the ownership or coordinating entity accountable.[lxxxvii] The ownership entity should provide quantitative and reliable information to the public regarding the SOE's performance.[lxxxviii] However, the ownership entity should only be required to seek the legislature's prior approval when making significant changes to the overall ownership policy, size of the state sector and significant transactions.[lxxxix]

The three utilities somewhat follow this OECD recommendation, though the checks and balances on ministerial decision-making are limited. The Ministers do not seek legislative approval prior to significant changes or transactions or provide additional information regarding the utilities' performance. The Minister submits Hydro One's annual report to the LGC and tables the report in the legislature.[xc] Similarly, the Minister tables B.C. Hydro's service plans and annual service plan reports in the Legislative Assembly.[xci] The Minister must respond to B.C. Hydro issues raised during Question Period and the Budget-Estimates Debate process.[xcii] The Select Standing Committee on Crown Corporations reviews these plans and tables its findings and recommendations in the Legislative Assembly.[xciii] Unlike Hydro One and BC Hydro, the EPCOR board reports to the City Council on a quarterly and annual basis.

3. Legal and Regulatory Framework

The OECD recommends that the state's ownership function and other functions, such as market regulation and industrial policy, should be clearly separated to avoid a conflict of interest.[xciv] In particular, SOEs and state-owned financial institutions should have a purely commercial relationship.[xcv] The SOE's liabilities should not be automatically guaranteed by the state and credit should be granted on market terms and conditions.[xcvi] The state ownership function should also be separated from state entities that are also clients or suppliers to SOEs.[xcvii]

General rules and regulations should apply to all SOEs. The SOE's operational practices and legal form should be simplified and based on corporate law to the greatest possible extent.[xcviii] Laws and regulations should clearly mandate any SOE public service obligations that go beyond the generally accepted norm. These obligations should be incorporated in corporate by-laws and costs should be identified, disclosed and compensated by the state.[xcix] However, the legal and regulatory framework must be flexible enough for SOEs to adjust their capital structure.[c] Adjustment mechanisms should be properly documented and carefully monitored to avoid cross-subsidization through capital transfers.[ci]

Governance of Hydro One and EPCOR somewhat comply with these OECD recommendations, while that of BC Hydro falls significantly short.

Hydro One is incorporated under Ontario's *Business Corporation Act*. The government, OEFC, IESO, OPA and OPG are related parties.[cii] Hydro One's financing appears to have been obtained on a commercial basis [ciii] and the province does not automatically guarantee Hydro One's debt obligations.[civ] However, the Minister may "acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Hydro One Inc. or any of its subsidiaries".[cv] Hydro One's annual report acknowledges that "[c]onflicts of interest may arise as a result of the Province's obligation to act in the best interests of the residents of Ontario in a broad range of matters…[w]e may not be able to resolve any potential conflict with the Province on terms satisfactory to us".[cvi]

BC Hydro is exempt from all statutes or statutory provisions that are not specifically enumerated under s. 32(7) of the *Hydro and Power Authority Act*. BCUC and the BC government are its related parties. All transactions between BC Hydro and related parties are considered to have "commercial substance" and recorded at the amount of consideration agreed to by the related parties.[cvii] But all of BC Hydro's debt is held or guaranteed by the government.[cviii] The government may also enter into interest rate and foreign currency contracts on behalf of BC Hydro. Losses stemming from these contracts are indemnified by BC Hydro.

EPCOR is incorporated under Alberta's *Business Corporation Act*. The City of Edmonton is a related party. EPCOR acknowledges that conflicts of interests could arise as a result of its relationship with the City, who is also the regulator for water utility rates in Edmonton.[cix] Transactions between EPCOR and the City are recorded at normal commercial rates or as agreed to by the parties.[cx] Although it owes debt obligations to the City of Edmonton, the debt appears to have been issued at a commercial rate (ranging from 7.01-10.27%).[cxi] The City does not automatically guarantee EPCOR's debt obligations.

4. Responsibilities of the Boards of State-Owned Enterprises

a) Providing Strategic Guidance

The OECD recommends that SOE boards have the authority, competency and objectivity to strategically guide and monitor management.[cxii] SOE boards should formulate and review corporate strategy in light of the SOE's overall objectives, establish performance indicators, identify key risks, monitor disclosure and communication, ensure the reliability of financial statements, assess managerial performance and develop succession plans for key executives.[cxiii] Board members should be aware of their legal obligation to act in the best interests of the company and should be subject to corporate law responsibilities and liabilities.[cxiv] The annual statements should include a Directors' Report, containing commentary on the organization, its financial performance, key risk factors, significant events, stakeholder relations and the impact of directions from the ownership or coordinating entity.[cxv]

The three utilities appear to largely comply with this OECD recommendation. All three boards review and approve the utilities' overall strategic plan. The boards monitor the utilities' progress towards their strategic, operational and capital objectives. The boards also identify the utilities' principal risks, monitor disclosure and communication and ensure management succession and development. While corporate law governance requirements generally apply to Hydro One[cxvi] and EPCOR, BC Hydro is exempt from the province's *Business Corporations Act*.[cxvii] Hydro One and EPCOR's annual reports include a separate "Letter from the Chair"[cxviii] or "Chairman's Message"[cxix] but BC Hydro's annual report does not contain any message from the directors.

b) Appointment and Evaluation of the CEO

The OECD suggests that SOE boards should have the power to appoint and dismiss the CEO.[cxx] The CEO and Chair should be separate positions.[cxxi] At a minimum, CEOs should be appointed in consultation with the board, appointment procedures should be transparent and CEO remuneration should be disclosed and linked with performance.[cxxii] To determine appropriate compensation levels, the Ontario Agency Review Panel recommends that committees and boards first identify the appropriate "comparator market", which is comprised of other employers competing for the same talent sought by the SOE.[cxxiii] They should then determine their position within that comparator marketplace, which determines (1) the scope of the SOE's compensation program and (2) the aggressiveness of their hiring and retention strategy.[cxxiv] The Panel also recommends that board chairs and compensation committee chairs report to the Minister and appropriate legislative committees on the compensation of executives and senior management.[cxxv]

The three utilities' appointment and evaluation policies are largely aligned with the OECD's recommendations. All three boards appoint and can terminate the President and CEO.[cxxvi] [cxxvii] The boards' human resource committees evaluate CEO performance. Hydro One's Human Resources and Public Policy Committee approves executive compensation but the full Board approves the CEO's compensation.[cxxviii] Management can receive additional performance-based compensation in addition to their base salaries.[cxxix] There are no long-term incentive plans.[cxxx] The positions of Chair and the CEO are separate. However, the Chair is also considered to be member of Hydro One's Executive.[cxxxi] Additionally, the CEO serves as a board member.[cxxxii]

BC Hydro's CEO's remuneration includes a "variable incentive pay" component (up to 60% of annual salary) based on performance. The Chair is separate from the CEO except in 'exceptional

circumstances', such as a major shift in strategic direction or significant change. When it is appropriate for the roles of Chair and CEO to be combined, certain Chair and CEO responsibilities may be delegated to another director or senior executive.[cxxxiii] No executives serve as board members, but the CEO is entitled to receive the same information as all other board members (except for information regarding the CEO's performance).[cxxxiv]

EPCOR's CEO and top executives are eligible for short and long-term incentive compensation. Short-term incentives are based on achieving corporate and individual targets, while long-term incentives, such as stock options, are conditional on performance and designed to align executive and shareholder interests.[cxxxv] EPCOR's Charter does not explicitly state that the CEO and Chair are separate. However, two separate individuals serve as CEO and Chair. The CEO provides "day-to-day leadership and management of the corporation" and presents strategies and plans to the board for approval.[cxxxvi] Unlike Hydro One and BC Hydro, no EPCOR executives serve as board members and it does not appear that the CEO is entitled to receive the same information as all other board members.

c) Appointment and Evaluation of Board Members

The OECD recommends that board members be transparently nominated and insulated from political interference.[cxxxvii] Preferably, board members should be recruited from the private sector and mostly independent from the executive.[cxxxviii] The number of re-appointment terms should be limited.[cxxxix] If employee board members are legally mandated, there should be mechanisms to ensure their independence and mitigate potential conflicts of interest.[cxl] The board chair should be responsible for annually evaluating the board's overall performance and the performance of individual board members.[cxli]

The three utilities largely comply with this OECD recommendation, but they do not have limits on director re-appointments. Hydro One's Corporate Governance Committee reviews the criteria for selecting director candidates[cxlii] and recommends director candidates to the Minister.[cxliii] The legislative Standing Committee on Government Agency reviews proposed appointments and reports on whether it concurs with the intended appointments.[cxliv] All current directors are independent except for the CEO and Chair, who are both executives. The board is evaluated by questionnaires completed by board members and the management. The Corporate Governance Committee reports on the results to the board.[cxlv] The Chair meets annually with each director regarding individual performance and the overall effectiveness of the Board and Committees.[cxlvi]

In British Columbia, the BRDO monitors BC Hydro's appointment process and carries out due diligence on nominees.[cxlvii] The board's Corporate Governance Committee provides the government with director selection criteria.[cxlviii] The BRDO's appointment guidelines state that elected officials and public servants are not appointed to the board, barring exceptional circumstances.[cxlix] The current board has one former and one current public servant.[cl] The Chair and Corporate Governance Committee annually review the overall performance of the board and Committees.[cli]

The City of Edmonton, EPCOR's board and an external consultant develop or annually update a profile of the EPCOR board, including qualifications and criteria for appointment and re-appointment as a board member or Chair.[clii] The City Council approves the final profile. The consultant identifies suitable applicants from respondents to advertisements, Board recommendations and Council recommendations. Appointments are made by Council resolution.

City councillors or employees are not appointed to EPCOR.[cliii] All of EPCOR's current directors are independent except one.[cliv] The Corporate Governance and Nomination Committee regularly surveys the directors on the effectiveness of the board, its committees and individual board members.[clv]

5. Transparency and Disclosure

a) Disclosure of Material Information and Compliance with GAAP

The OECD suggests that SOEs disclose material information, such as a clear statement of company objectives and their fulfillment, the SOE's ownership and voting structure, material risk factors and risk management strategies, financial assistance received from the state, commitments the state undertakes on behalf of the SOE and material transactions with related entities.[clvi] SOEs should comply with the same accounting and auditing standards as publicly traded companies.[clvii] Financial reports should be signed by board members and certified by the CEO and CFO.[clviii] The Agency Review panel also suggests that there should be clear and full disclosure of the quantitative and qualitative metrics used to measure senior executives, their performance and how their performance impacts their compensation.[clix]

Governance of the three utilities appears to comply with these OECD recommendations. All three annual reports disclose the utilities' progress towards their main objectives, their ownership, material risk factors and risk management strategies and general information on key related party transactions.[clx] All financial statements are prepared and audited according to GAAP and signed by the CEO and CFO, as well as the Chair of the Board and Chair of the Audit Committee on the Board's behalf.[clxi]

b) Internal and External Audits

According to the OECD, large SOEs should establish an internal audit function that is monitored by and reports directly to the board and audit committee.[clxii] Internal auditors should develop procedures to collect information, have unrestricted access to board members and the audit committee and communicate with external auditors.[clxiii] The internal control report should be included in the financial statements.[clxiv] Large SOEs should also be subject to an annual external audit.[clxv] External auditors must comply with the same independence requirements followed by external auditors for private companies.[clxvi] State audits are not sufficient substitutes because they monitor the use of public funds and budget resources and not the SOE's overall operations.[clxvii]

The three utilities mainly comply with this OECD recommendation but none of their financial statements include an internal control report. Each utility's audit committee is responsible for supervising and evaluating the internal audit. Hydro One's internal auditors report their findings on an ongoing basis to the Audit and Finance Committee, as well as to management.[clxviii] The Committee reviews internal audit procedures, separately meets with internal and external auditors, oversees the internal audit's scope and reviews management's annual internal control report.[clxix] The Board recommends the appointment of the external auditor to the province, who may or may not confirm it.[clxx] The Committee annually reviews and reports on the external auditor's independence and must inquire into the reasons behind a change in external auditors.[clxxi]

BC Hydro's Audit and Risk Management Committee annually reviews the Internal Audit Plan. Internal Audit reports are provided to the Committee and Code of Conduct Advisor on a quarterly basis.[clxxii] The Committee also annually reviews the external auditor's independence.[clxxiii] External auditors review both annual and quarterly statements.[clxxiv]

EPCOR's Audit Committee must meet with the internal auditors at least annually in the absence of management.[clxxv] The Committee annually approves the internal audit plan and reviews the independence and performance of the internal audit functions. The Committee annually recommends the external auditor's appointment to the board, which is approved by the City Council. In making a recommendation, the Committee considers the external auditors' independence and whether a change in external auditors may be appropriate.[clxxvi]

c) *Aggregate Annual Report on SOEs*

The OECD states that the ownership entity should publish an aggregate annual report on SOEs.[clxxvii] The report should focus on the SOEs' financial performance and value. But it should also include information on the state's ownership policy, ownership function organization, changes in SOEs' boards and individual information on key SOEs.[clxxviii] The annual report should complement, not duplicate, existing reporting requirements (e.g. annual reports to Parliament).[clxxix] Contrary to this OECD recommendation, the Ontario and B.C. governments and the Edmonton City Council do not publish an aggregate annual report on SOEs.

6. Relations with Stakeholders

The OECD states that the SOE should develop and disclose clear stakeholder policies.[clxxx] The state, ownership or co-ordinating entity and SOE should recognize and respect stakeholder rights granted by the law, regulations or mutual agreements, such as timely access to reliable and relevant information, and stakeholder access to legal redress.[clxxxi] Large and publicly listed SOEs, including those pursuing key public policy objectives, should provide stakeholder relations reports, which are independently scrutinized and include information on social and environmental policies.[clxxxii] SOEs should not be used to further public goals without compensation from the state.[clxxxiii] The general shareholders meeting and the board should retain their decision-making powers, despite specific legal rights granted to certain stakeholders.[clxxxiv]

In addition, the SOE's board should develop, implement and communicate an internal code of ethics based on country norms and broader international codes of behaviour. The code should be developed with the participation of all employees and stakeholders and have the full support of its board and senior management.[clxxxv] The code should include guidance on procurement processes, specific mechanisms to encourage reporting of illegal or unethical conduct by corporate officers and disciplinary measures for frivolous allegations of wrongdoing.[clxxxvi] Compliance programs should supplement the code of ethics.[clxxxvii]

The three utilities largely comply with this OECD recommendation. However, Hydro One does not issue formal stakeholder reports. BC Hydro issues Global Reporting Initiative (GRI) stakeholder reports, which measure the economic, environmental and social dimensions of its activities, products and services.[clxxxviii] EPCOR issues an annual, independently scrutinized Corporate Responsibility Report, which follows GRI guidelines.[clxxxix]

All three utilities have a code of conduct containing guidance on procurement processes and mechanisms to encourage reporting code violations. Hydro One's Code of Business Conduct and BC Hydro's Code of Conduct do not explicitly include disciplinary measures for frivolous allegations, but mentions that an employee who reports a violation in good faith will not face reprisals. BC Hydro has a compliance program to support its Standards of Conduct, which prohibit its employees from disclosing sensitive information about the BC Transmission Corporation's activities.[cxc] EPCOR's ethics policy states that deliberately making false complaints will result in disciplinary action.[cxci]

Appendix 1: Regulatory Governance of the Utility Sector in the United States

In the United States, the country with the longest history of private ownership in the utilities sector, the regulatory solution that emerged in the electricity industry during the beginning of the twentieth century was to move regulation one step up from local politics. Regulatory authority over electric distribution utilities was moved away from politicized municipal environments and toward state-wide independent administrative agencies (state Public Utility Commissions, hereafter "PUCs") with statutory authority to monitor utility performance and to set final rates. Since PUCs normally operate in systems where legislative power is divided among the executive and two legislative chambers, they generally have substantial autonomy to determine regulatory policy without the threat of legislative override or overwhelming political interference. While PUCs operate under broad statutory objectives ("reasonableness" is the typical criterion for rate levels) and have the power to disallow imprudent or anti-competitive managerial behaviour, their decisions cannot be made in an arbitrary fashion. First, the evolution of constitutional interpretation ensures that utilities are allowed to earn a fair return on their investments. Second, due process requirements enshrined in states' Administrative Procedure acts also ensure that PUC rulings must be based on the facts and evidence of the case (Vanden Bergh, 2000). In the event of disputes, utilities are able to challenge the PUC on both statutory and constitutional grounds in state and federal courts which, given the nature of judicial appointments, normally operate independently of the political establishment (Spiller and Vanden Bergh, 2003). In the electricity sector, a second level of protection against local opportunistic behaviour resides in that wholesale electricity generation markets, given the interconnection across states of transmission grids, are regulated at the federal rather than at the state level. Given their independence and nation-wide range of interests, federal agencies are less able to be manipulated by local or state officials. Private investors thus have some assurance that regulatory policy will be protected from immediate political pressures as well as from agency arbitrariness.

Implementing regulatory reforms at legislative and administrative levels in the U.S. is frequently a difficult and lengthy exercise, lending considerable weight to status quo policies. First, as a result of the nation's federal structure, as well as of its separation of political powers, legislative policy changes require the agreement of multiple institutions, all of which are subject to judicial review. Thus, in the presence of divergent interests it can be difficult to find mutually preferable new proposals. Consequently, drastic changes in regulatory policy – those that entail a redistribution of wealth among competing interest groups – are difficult to implement as the losing coalition will lobby against adoption. Thus, when political interests are fragmented, dramatic legislative proposals tend either to be rejected or else subsequently moderated.

Second, while the U.S. system of political checks and balances insulates interest groups against unfavorable *legislative* reforms, the logic of political delegation also ensures that regulatory agencies do not rapidly implement substantial policy changes against the wishes of their political principals through *administrative* means. A variety of governance mechanisms are used to safeguard against rapid administrative decision making which may distort legislators' preferences. Legislators undertake committee hearings, appointments of officials are reviewed, and agencies are subject to administrative procedures and due process requirements that provide interest groups with a role in decision-making procedures. Thus, even if the threat of legislative override is not credible, agency decisions cannot drift too far too fast from the status quo.

The combination of multiple legislative veto points, administrative controls and independent judicial review in the U.S. tends to insulate status quo public policies and the interests of stakeholder groups from dramatic reform. In such relatively credible regulatory governance environments, the risks of opportunistic regulations being implemented are substantially reduced.

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[i] Geoff Edwards & Leonard Waverman, "The Effects of Public Ownership and Regulatory Independence on Regulatory Outcomes" (2006) 29 Journal of Regulatory Economics 23 at 61.
[ii] *Ibid.* at 60.
[iii] *Ibid.*
[iv] *Ibid.* at 63.
[v] *Ibid.* at 59-60.
[vi] *Ibid.* at 61.
[vii] *Ibid.*
[viii] *Ibid.*
[ix] *Ibid.* at 59.
[x] *Ontario Energy Board Act*, R.S.O. 1998, c. 15, s. 28(1) [*OEB Act*].
[xi] *Ibid*., s. 28.1(2).
[xii] *Ibid*., s. 27.2(2).
[xiii] *Ibid*., s. 28.6(2).
[xiv] *Ibid*., s. 27.2(7).
[xv] *Ibid*., s. 28.3(2)..
[xvi] *Green Energy and Green Economy Act*, S.O. 2009, Sched. D, s. 1.
[xvii] See *OEB Act*, s. 27(1) and *Electricity Act,* S.O. 1998, c. 15, Sched. A., s. 25.32(7).
[xviii] *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 3(1) [*UCA*].
[xix] *Ibid.*, s. 3(2).
[xx] *Ibid.*, s. 125(5).
[xxi] *Ibid.*, s. 125.1(4)(e).
[xxii] *Ibid.*, s. 22(2)
[xxiii] *Alberta Utilities Commission Act*, S.A. 2007, c. A-37.2, s. 8(5) [*AUCA*].
[xxiv] See *Electric Utilities Act*, S.A. 2003, c. E-5.1, s. 88, 99, 108, 115, 142.1 [*EUA*].
[xxv] *Ibid.*, s. 99(c).
[xxvi] *Ibid.*, s. 108(e).
[xxvii] *Ibid.*, s. 108(i).
[xxviii] *Ibid.*, s. 154(1).
[xxix] Ontario Energy Board, *Annual Report 2007-08*, (Toronto: OEB, 2008) at 27.
[xxx] *OEB Act*, *supra* note 11, s. 26(d).
[xxxi] British Columbia Utilities Commission, *Annual Report 2008/09*, (Vancouver: BCUC, 2009) at 33.
[xxxii] *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 125 [*UCA*]..
[xxxiii] Ministry of Energy, *Energy Annual Report 2008-2009* (Edmonton: Government of Alberta, 2009) at 103.
[xxxiv] *AUCA*, *supra* note 24, s. 70(2).
[xxxv] *Ibid.*, s. 70(3).
[xxxvi] *Ibid.*, s. 70(7).
[xxxvii] *OEB Act*, *supra* note 11, s. 4.1(2); *AUCA*, *supra* note 24, s. 3(1); Government of Alberta's Agency Recruitment and Appointment Principles, online: Government of Alberta <http://alberta.ca/home/documents/GOA_Recruitment_Principles.pdf>.
[xxxviii] *OEB Act*, *supra* note 11, s. 4.1(1).
[xxxix] *Ibid.*, s. 4.1(5).
[xl] Ministers themselves are appointed by the Premier without any obligation to obtain approval from a committee or governing body, and may be replaced at any point. This flexibility in political leadership is visible in Ontario's succession of Ministers of Energy over the past two administrations. The Premier of Ontario named four different members of the provincial parliament to the position between 2003 and 2008, and combined the Minister of Energy with the Ministry of Infrastructure in 2008. Given the short-term nature of appointments, ministers have an incentive to be sensitive to policy views of the Premier.

[xli] The OEB is currently composed of one chair, two vice chairs, four full-time members and one part-time member. The BCUC has one chair, one full-time member and eight part-time members. The AUC has one chair, one vice chair and seven full-time members.
[xlii] BCUC *Annual Report*, *supra* note 34 at 7-8.
[xliii] *Ibid*. at 8.
[xliv] Alberta Utilities Commission, *Business Plan* 2009-2012.
[xlv] *OEB Act*, *supra* note 11, s. 33(1).
[xlvi] *Ibid.*, s.44, 70.1. S. 44 allows the Board to make rules regarding gas transmitters, distributors and storage companies. S. 70.1 allows the Board to issue codes that may be incorporated as license conditions.
[xlvii] *Ibid.*, s. 34(1).
[xlviii] *Ibid.*, s. 34(3).
[xlix] *UCA*, *supra* note 19, s. 101.
[l] *Ibid.*, s. 3(3).
[li] *AUCA,* s. 29
[lii] Crown Corp Governance, p. 5
[liii] CICA Publication qtd in Agency Review Panel, p. 5
[liv] OECD Guidelines, p. 23
[lv] OECD Guidelines, p. 24
[lvi] OECD Guidelines, p. 24
[lvii] http://www.hydroone.com/OurCompany/Documents/Governance/MOA_Shareholder_Agreement_March_27_2008.pdf, p. 2
[lviii] Annual Report, p. 34
[lix] Shareholder Agreement
[lx] Shareholder Agreement, p. 2
[lxi] http://www.hydroone.com/OurCompany/Documents/Governance/MOA_Shareholder_Agreement_March_27_2008.pdf
[lxii] See, for example: Hydro and Power Authority Act, s. 12, s. 21, s. 35, s. 38.
[lxiii] Hydro and Power Authority Act, s. 12, s. 21
[lxiv] HPAA, s. 21(16)
[lxv] HPAA, s. 35
[lxvi] http://www.bchydro.com/etc/medialib/internet/documents/policies/pdf/bchydro_sle_2010.Par.0001.File.bchydro_sle_2010.pdf
[lxvii] Bylaw 11071
[lxviii] Charter, p. 1
[lxix] Charter
[lxx] C473C
[lxxi] OECD Guidelines, p. 24
[lxxii] OECD Guidelines, p. 24
[lxxiii] OECD Guidelines, p. 25
[lxxiv] http://www.pas.gov.on.ca/scripts/en/BoardDetails.asp?boardID=125201
[lxxv] http://www.pas.gov.on.ca/scripts/en/generalInfo.asp?#4
[lxxvi] Hydro and Power Authority Act, s. 4
[lxxvii] http://www.fin.gov.bc.ca/BRDO/
[lxxviii] AIF, p. 26
[lxxix] City Policy C472F
[lxxx] OECD Guidelines, p. 26
[lxxxi] OECD Guidelines, p. 26
[lxxxii] OECD Guidelines, p. 26
[lxxxiii] http://www.fin.gov.bc.ca/ocg/fmb/manuals/TBDirs/TBD2-10.pdf
[lxxxiv] http://www.fin.gov.bc.ca/TBS/CAMF.htm
[lxxxv] http://www.gov.bc.ca/caro/attachments/final_shareholders_manual_february_2010.pdf, p. 1
[lxxxvi] http://www.edmonton.ca/city_government/city_organization/policies-and-procedures-governing-civic-agencies.aspx
[lxxxvii] OECD Guidelines, p. 27
[lxxxviii] OECD Guidelines, p. 27
[lxxxix] OECD Guidelines, p. 28
[xc] *Electricity Act*, s. 50.4(1)
[xci] Budget Transparency and Accountability Act, s. 13

[xcii] http://www.gov.bc.ca/caro/attachments/final_shareholders_manual_february_2010.pdf p. 6
[xciii] http://www.gov.bc.ca/caro/attachments/final_shareholders_manual_february_2010.pdf p. 9
[xciv] OECD Guidelines, p. 18
[xcv] OECD Guidelines, p. 22
[xcvi] OECD Guidelines, p. 22
[xcvii] OECD Guidelines, p. 19
[xcviii] OECD Guidelines, p. 20
[xcix] OECD Guidelines, p. 20
[c] OECD Guidelines, p. 21
[ci] OECD Guidelines, p. 21
[cii] Annual Report, p. 76
[ciii] Annual Report, p. 33
[civ] http://www.hydroone.com/InvestorRelations/Documents/HydroOne_ShortTerm.pdf, p.1
[cv] *Electricity Act*, s. 49(1)
[cvi] Annual Report, p. 34
[cvii] Annual Report, p. 112
[cviii] Annual Report, p. 112; Hydro and Power Authority Act, s. 23
[cix] Annual Report, p. 77
[cx] Annual Report, p. 89
[cxi] Annual Report, p. 131
[cxii] OECD Guidelines, p. 47
[cxiii] OECD Guidelines, p. 48-49
[cxiv] OECD Guidelines, p. 47
[cxv] OECD Guidelines, p. 48
[cxvi]http://www.hydroone.com/OurCompany/Documents/Governance/MOA_Shareholder_Agreement_March_27_2008.pdf
[cxvii] The lone exception is the indemnification provisions under Part 5, Division 5.
[cxviii] Hydro One Annual Report, p, 2-3.
[cxix] Annual Report, p. 2-3
[cxx] OECD Guidelines, p. 49
[cxxi] OECD Guidelines, p. 49-50
[cxxii] OECD Guidelines, p. 49
[cxxiii] Agency Review Panel, p. 11
[cxxiv] Agency Review Panel, p. 11
[cxxv] Agency Review Panel, p. 22
[cxxvi] AIF, p. 108
[cxxvii] Terms of Reference for Board, p. 2
[cxxviii] AIF, p. 108
[cxxix] AIF, p. 73
[cxxx] AIF, p, 71
[cxxxi]http://www.hydroone.com/InvestorRelations/Documents/Annual_Information_Forms/Hydro_One_Annual_Information_Form_2009.pdf p. 92
[cxxxii] AIF, p. 92
[cxxxiii] Board of Directors Guidelines, p. 2
[cxxxiv] Board of Directors Guidelines, p. 2
[cxxxv] Annual Report, p. 29-30
[cxxxvi] AIF, Appendix II
[cxxxvii] OECD Guidelines, p. 49
[cxxxviii] OECD Guidelines, p. 49
[cxxxix] OECD Guidelines, p. 49-50
[cxl] OECD Guidelines, p. 50-51
[cxli] OECD Guidelines, p. 52
[cxlii] http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2009-0096/Exhibit%20A/A-08-02_Hydro_One_Governance_and_Control%20Framework.pdf, p. 3
[cxliii] http://www.hydroone.com/RegulatoryAffairs/Documents/EB-2009-0096/Exhibit%20A/A-08-02_Hydro_One_Governance_and_Control%20Framework.pdf, p. 3
[cxliv] http://www.ontla.on.ca/web/committee-proceedings/committees_detail.do?locale=en&detailPage=mandate&ID=142

[cxlv] AIF, p. 96-97
[cxlvi] AIF, p. 96.
[cxlvii] http://www.fin.gov.bc.ca/brdo/appoint/AppointmentGuidelines_PublicAgencies.pdf, p. 5-6
[cxlviii] http://www.bchydro.com/etc/medialib/internet/documents/policies/pdf/policies_corp_gov_terms_of_reference_for_the_corporate1.Par.0001.File.terms_of_reference_for_corporate_governance_committee.pdf
[cxlix] http://www.fin.gov.bc.ca/brdo/appoint/AppointmentGuidelines_PublicAgencies.pdf, p. 13
[cl] Dan Doyle was the former B.C. Deputy Minister of Transportation and Wanda Costuros is the Chair of the Land Title and Survey Authority of B.C..
[cli] Board of Directors Guidelines, p. 6
[clii] City Policy C472F
[cliii] City Policy C473C, Annual Report, p. 18
[cliv] Mitchell is a partner in a law firm providing legal services to EPCOR.
[clv] http://www.epcor.ca/en-ca/about-epcor/Governance/Pages/governance-practices.aspx#8
[clvi] OECD Guidelines, p. 44-45
[clvii] OECD Guidelines, p. 43
[clviii] OECD Guidelines, p. 43
[clix] Agency Review, p. 21
[clx] Hydro One Annual Report, p. 76.
[clxi] Annual Report, p. 47.
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