

# Governance and Regulation in the Electricity Sector

## Balancing Independence With Accountability

June 4, 2010 Toronto, Ontario, Canada

Richard Ivey School of Business  
The University of Western Ontario

**IVEY**

Council for  Clean & Reliable Electricity  
transforming the way we think about power

UNIVERSITY OF  
**WATERLOO**

**WISE**  
Waterloo Institute for Sustainable Energy

## ABOUT THE COUNCIL FOR CLEAN & RELIABLE ELECTRICITY

The Council is a federally incorporated non-profit organization that was formed to provide a platform for open public dialogue and a solutions-oriented approach to the challenges of the energy sector. Representatives from universities, public and private sector business leaders, and strategic planning professionals have collaborated to broaden the public debate on energy issues. The Council has organized four previous conferences on distributed generation, biomass, coal and nuclear, and the year ahead will focus on public sector governance in the electricity sector.

## ABOUT THE IVEY SCHOOL OF BUSINESS, UNIVERSITY OF WESTERN ONTARIO

*Energy @ Ivey* is the centre of expertise at the Ivey School of Business focused on national energy business issues and public policies. Its goals are to conduct and disseminate first class research on energy policy; and to promote informed debate on public policy in the sector through supporting conferences and workshops that bring together industry, government, academia and other stakeholders in a neutral forum. *Energy @ Ivey* draws on leading edge research by Ivey faculty as well as by faculty within the broader Western University community. The conference is also supported by the Lawrence National Centre for Policy and Management, the forum at Ivey for bridging public policy and business strategy on major policy issues.

## ABOUT THE WATERLOO INSTITUTE FOR SUSTAINABLE ENERGY

The Waterloo Institute for Sustainable Energy (WISE) was established at the University of Waterloo in 2008 and is the focal point at UW for research in sustainable energy studies. In collaboration with utilities, private sector partners, government agencies and civil society groups, the Institute's goal is to foster the development of innovative technologies and alternatives to existing energy production and delivery systems, and to promote energy efficiency and environmental sustainability.

The vision of WISE is to be recognized internationally as a centre of excellence in energy research and to contribute to the development of energy policies and strategies that enhance the social, economic, and environmental performance of energy systems. WISE emphasizes innovation as the key driver in the transformation of the global energy system. Our focus is on research initiatives that provide both timely solutions for the near term and shape the evolution of energy use over the longer term.

## ABOUT THE GOVERNANCE INITIATIVE

The Council for Clean & Reliable Electricity in partnership with the Richard Ivey School of Business at the University of Western Ontario will be fostering dialogue and public debate on *Governance and Regulation in the Electricity Sector: Balancing Independence with Accountability* by way of a two-phased approach:

- Phase 1 – A Governance Conference for thought leaders to discuss current governance arrangements in Canada’s electric utility industry, potential policy options for reform, and areas for further research; and,
- Phase 2 – A draft policy paper on governance to be circulated to stakeholders.

## ABOUT THE GOVERNANCE CONFERENCE – PHASE 1

The Governance Conference is an event for opinion leaders interested in improving the governance of Canada’s agencies and crown corporations in the electricity sector. The conference will bring together leading experts in the electricity sector from industry, labour, government and academia to assess and debate several key governance issues. The objective is to initiate the development of a draft policy paper on governance in Canada’s electric utility industry. The purpose of the paper will be to stimulate debate among stakeholders and within government on how reforms in governance can improve electricity sector performance.

## THE GOVERNANCE POLICY DEBATE

As governments around the world have sought to improve the operational performance of electric utility industries and encourage private investment in infrastructure, a policy debate has emerged on the best practices for regulating both privately-owned and state-owned utilities. A central element of this debate concerns optimal governance practices including:

- governance arrangements for regulatory agencies; and,
- governance structures for state-owned utilities.

*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*. Academic research has found that the structure of regulatory governance has a particularly significant effect on the ability of governments to attract and sustain private investment in the utilities sector. Policy institutions such as the OECD, World Bank and the Public Utility Research Center emphasize model governance principles such as regulatory independence and expertise.

*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. Research suggests that greater arms-length independence between state-owned utilities and government owners leads to greater productivity and improved operational performance.

## POLICY CONTEXT

In common with other jurisdictions and countries, most provinces are actively seeking new private sector investment to compensate for forecast capacity shortages in power generation, transmission and distribution network assets. Developing renewable energy capabilities has been a particular priority for Canada.

Jurisdictional competition for private investment is strong, and there is limited availability globally of private capital in the current economic climate, as well as a limited number of companies with deep renewable energy expertise. Potential investors and energy firms are thus paying increased attention to the quality of the regulatory environment before committing large amounts of capital.

Provinces and American states with more favorable regulatory climates will experience greater success in bringing in new energy investment. Initial research on the regulatory environment in Canada suggests there is scope to improve its attractiveness to the private sector.

While government 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 potential investors and on utility operations and performance as do regulatory policies. A comprehensive public policy approach to electricity sector reform thus requires an integrated assessment of regulatory policies and regulatory governance regimes.

## **WHAT ARE THE GOVERNANCE ISSUES TO BE DISCUSSED?**

The Governance Conference will discuss and assess major governance issues including:

### **1. Governance of Regulatory Agencies**

- a. How do existing governance structures between agencies and ministries affect agency decision-making? To what extent are regulatory agencies able to operate independently from political pressures? How accountable are agencies?
- b. What are the implications for utility operations, performance and strategy (both private and state-owned utilities) of existing regulatory agency governance arrangements?
- c. Should reforms be made to governance arrangements? Should agencies be more or less independent? If so, should reforms be made to:
  - i. Agency mandates and authority?
  - ii. Appointments procedures?
  - iii. Budget processes?
  - iv. Ministerial scope of authority (e.g. directive powers)?
  - v. Agency decision-making processes
- d. What advantages or disadvantages would be associated with reforming regulatory agency governance? Which stakeholders would support or oppose specific reforms?
- e. What can be learned from other jurisdictions or sectors in terms of 'optimal' regulatory governance arrangements?

### **2. Governance of State-Owned Utilities**

- a. How do existing governance structures between state-owned utilities and the government affect utility operations, performance and strategy?
- b. To what extent are state-owned utilities able to operate as commercial enterprises? How do utilities balance commercial with political or social policy objectives?
- c. Should reforms be made to the structure of state-owned utility governance? For example to:
  - i. Appointment procedures to Boards of Directors?
  - ii. Compensation setting?
  - iii. Ministerial scope of authority?
  - iv. Parliamentary monitoring and oversight?
- d. What advantages or disadvantages would be associated with reforming utility governance? Which stakeholders would support or oppose specific reforms?
- e. What can be learned from other jurisdictions or sectors in terms of 'optimal' utility governance arrangements?

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### **Conference Agenda**

8:00 – 8:30 am *Breakfast*

8:30 – 9:00 am **Welcome and Opening Remarks**

Glen Wright, Chair, Council for Clean & Reliable Electricity

Jan Carr, former CEO, Ontario Power Authority and former Vice Chair, Ontario Energy Board

9:00 – 10:30 am **Governance of Regulatory Agencies**

*Panel Chair: George Todd, former Founding President and CEO Barrie Hydro*

Guy Holburn, Associate Professor, Business, Economics and Public Policy, Director, Energy @ Ivey, Richard Ivey School of Business, University of Western Ontario

Robert Warren, Partner, Weir Foulds

Sean Conway, former Cabinet Minister, Government of Ontario; Fellow, School of Policy Studies, Queen's University

10:30 – 10:45 am *Break*

10:45 – 11:45 am **Academic Perspectives**

*Panel Chair: Guy Holburn, Director, Energy @ Ivey, University of Western Ontario*

Len Waverman, Dean, Haskayne School of Business, University of Calgary

George Yarrow, Chairman, Regulatory Policy Institute and Emeritus Fellow, Hertford College, Oxford University

## **Conference Agenda (continued)**

11:45 – 12:45 pm

### **Lunch and Keynote Address**

*Chair: Ron Stewart, former President & CEO, Ottawa Hydro*

Terence Corcoran, Editor and Columnist, The Financial Post

12:45 – 2:00 pm

### **Lessons from International Experience**

*Panel Chair: Frank Carnevale, President & CEO, Bridgepoint Group Ltd.*

Jeff Makholm, SVP, NERA Consultants

Roberta Brown, Board Member, IESO (Ontario) and ISO-NE (New England)

JoAnne Butler, Vice President Generation, Ontario Power Authority, former President, TransAlta Mexico

2:00 – 3:30 pm

### **Governance of State-owned Utilities**

*Panel Chair: Jatin Nathwani, Executive Director, Waterloo Institute for Sustainable Energy; Professor, Faculty of Engineering and Faculty of Environmental Studies, University of Waterloo*

Don Lowry, President & CEO, EPCOR Utilities Inc.

David Hay, former CEO, New Brunswick Power

Glenna Carr, Chair, Atomic Energy Canada Ltd.

3:30 – 3:45 pm

*Break*

3:45 – 4:45 pm

### **Panel Discussion: Policy Report and Future Research**

*Moderator: Jan Carr, former CEO, Ontario Power Authority and former Vice Chair, Ontario Energy Board*

Brian Armstrong, Executive Vice President and General Counsel, Bruce Power

Guy Holburn, Director, Energy @ Ivey, University of Western Ontario

Don MacKinnon, President, Power Workers Union

Eileen Mercier, Chair, Ontario Teacher's Pension Plan Board

4:45 – 5:00 pm

### **Closing Remarks**

Glen Wright, Chair, Council for Clean & Reliable Electricity

## **WHAT IS THE PLANNED OUTCOME?**

The thought leaders will identify sub issues that warrant further research and discussion. Based on the output of the Governance Conference and subsequent research, a draft policy paper on optimal governance in Canada's electric utility sector will be prepared. The purpose of the paper will be to stimulate debate among stakeholders and within government on how reforms in governance can improve electricity sector performance.