



Utility Corporate Governance and Regulation

CCRE Annual Energy Leaders Roundtable

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Regulatory Approach to Corporate Governance to Date

- OEB interest in utility corporate governance is not new
 - Affiliate Relationships Codes
 - Corporate Governance Filing Requirements
 - Review of Corporate Governance in rate hearings
 - Case specific Decision to require majority of independent directors to approve dividend payments

Regulatory Approach to Corporate Governance to Date

- Consultation on the Development of Corporate Governance Guidance for OEB Rate Regulated Utilities
 - KPMG jurisdictional review and current practices report in the Review of Corporate Governance of Electricity Distributors (April 2015)
 - Elenchus Research Associates report and proposed Guidance in Corporate Governance for Regulated Natural Gas and Electricity Utilities (December 2016)

OEB Goals for the Guidance

- *The guidance is to be reflective of Ontario's utility sector, it is to leverage existing requirements, it is to be principles based not prescriptive and should apply to all rate-regulated utilities.*
- *The OEB believes that providing guidance on good corporate governance will contribute to:*
 - *Effectiveness of regulation*
 - *Achievement of the OEB's legislative objectives*
 - *Delivering the outcomes established in the Renewed Regulatory Framework (customer focus, operational effectiveness, public policy responsiveness, financial performance)*

Good Corporate Governance and Regulation

- National and International governance trends
- Focus for Ontario utilities with transition from prescriptive to more outcomes-based regulation
- In many ways good corporate governance and effective economic regulation are aligned. Both focus on strategic objectives, ensuring strong processes, monitoring results, managing risk and taking corrective action when required (Elenchus report, p. 10)
- Benefits: enhance performance, reduce risk, instill confidence

Structure of the Elenchus Report

- Discusses the context for the OEB's interest in utility corporate governance
- Presents the fundamentals of good corporate governance including a discussion of key court cases and a review of best practices
- Discusses the governance issues that arise from the variety of ownership structures of utilities
- Provides a proposed Guidance on corporate governance for Ontario's regulated natural gas and electricity utilities, including recommendations, stakeholder input and rationale for recommendations
- Provides recommendations for Monitoring and Assessing corporate governance

Key Elenchus Principles for Report Recommendations

- OEB Guidance should:
 - Be grounded in established and recognized best practices
 - Align with similar guidance in place in other contexts such as guidance by securities regulators and OSFI
 - Emphasize the principles of good corporate governance with more detail and/or specific practices limited to areas most important to achieving regulatory objectives
 - Leverage good corporate governance to enhance regulatory effectiveness
 - Embody a culture of continuous improvement and assessment within a framework of appropriate independence, due diligence, processes and responsible disclosure

Key Elenchus Principles for Report Recommendations

- OEB Monitoring of utility corporate governance should:
 - Aim to provide greater transparency around utility corporate governance through baseline reporting and disclosure
 - Assist the OEB in assessing whether utility corporate governance practices are aligned with regulatory objectives

Key Elenchus Principles for Report Recommendations

- OEB Assessment of utility corporate governance should:
 - Identify best practices amongst utilities, signs of continuous improvement and potential governance gaps
 - Review the quality of utility disclosure and whether utility corporate governance practices align with the OEB Guidance through a strategic and risk-based approach

Key Issues Arising from Elenchus Stakeholder Consultations

- Stakeholders want:
 - Assurance that Guidance will not be mandatory
 - Clarity as to why the OEB is undertaking the initiative
 - Clarity as to potential consequences of Monitoring and Assessment
 - To ensure that reporting/disclosure does not increase costs significantly, cause duplication or impact confidentiality
 - Flexibility to recognize different corporate practices may be appropriate in different circumstances
 - Assurance that the Guidance will not cause undue regulatory burden

Key Issues Arising from Elenchus Stakeholder Consultations

- The proposals around independent directors and the definition of independence caused concern for a significant number of stakeholders:
 - Lack of independence can result in potential conflict of interest, dual loyalties and undue influence
 - Elenchus concluded that best practice from a regulatory perspective would be that a majority of directors of the regulated utility be independent of management, of affiliates, and are not employees or councillors of shareholders

Key Issues Arising from Elenchus Stakeholder Consultations

- Continued
 - Stakeholders had a variety of views about what constitutes an “independent director” or how “independence” should be interpreted
 - A number of stakeholders supported a majority of independent directors at the HoldCo level, but not necessarily at the regulated utility level
 - Some stakeholders took the position that municipal councillors are in effect the elected representatives of customers and therefore contribute significantly to the governance of the utility
 - Elenchus recognized that there should be flexibility to use different approaches to achieve maximum independence

Elenchus Final Report (December 2016) and Next Steps

- In its final report, Elenchus made significant changes to its draft Guidance and recommendations to address stakeholder concerns
- OEB posted Elenchus Final Report on February 9, 2017
- OEB is “reviewing the recommendations of the report as it considers the matter of corporate governance within the context of its performance-based regulatory framework.”