WHAT WORKS?

IDENTIFYING AND SCALING UP SUCCESSFUL INNOVATIONS IN CANADIAN ENERGY REGULATORY DECISION-MAKING

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EXECUTIVE SUMMARY

Ongoing innovation is needed in energy regulatory decision-making in Canada. Important broad drivers are the evolving social and values context, the need for operational decision-making efficiency, economic and market interests, rapid technological change, and demands for communication and stakeholder engagement, as well as policy uncertainty affecting each of these.

As Canadian energy regulators take action and introduce innovative processes, there are benefits, barriers, and trade-offs. At the same time, key success factors may influence what works in innovations in Canadian energy regulatory decision-making.

This study focused on quasi-judicial energy regulators[1] and examined the following two questions:

1. How might formal policymaker-regulator interactions be strengthened while maintaining regulatory independence?
2. What innovative mechanisms support meaningful regulatory agency public engagement processes?

To answer these questions, we conducted interviews with senior executives representing regulatory and stakeholder organizations that created, implemented, use, or are affected by innovations in policymaker-regulator interactions or regulatory public engagement processes. Importantly, results may be useful to regulators in planning, implementing, or evaluating innovative practices.

Benefits, Barriers, and Success Factors in the Use of Formal Agreements

The case study on policymaker-regulator interactions (Section 3) focused on five formal agreements or agreement types implemented in provincial and federal jurisdictions, including one between a regulator and an Indigenous group. A good relationship pre-dated each formal agreement, and parties were well aware of the rules of engagement and how to work together.

Some of the benefits mentioned were:

- Demonstrated commitment and understanding;
- Mutual assistance and support;
- Improved communication;
- Attention to stakeholder interests.

Agreement negotiation necessarily confirms roles and responsibilities for mutual benefit in day-to-day operations, as well as provides a regular opportunity to discuss policy issues if desirable. Details for interactions are worked out while developing the document rather than when tensions arise under decision-making timeline constraints. There is also a benefit to stakeholders because the rules, boundaries, and interactions outlined in an agreement are known prior to submitting a proposal to the regulator.

1. This group of regulators are agencies (sometimes referred as tribunals) with varying levels of independence from government, i.e., not 'line department' regulators within a government department or ministry. They are typically masters of their own procedure in decision-making processes.

Our findings suggest that barriers to effective development and implementation of agreements originate in two areas:

- Organizational leadership and other actors;
- A discrepancy between organizations with respect to priorities, capacity, and resources.

Developing and implementing formal agreements takes time. If negotiation starts or ends deeper within an organization, senior executives may be less engaged, resulting in less priority being placed on related activities with inadequate capacity and resourcing.

Key success factors that help realize benefits or address barriers are under the control of each party individually:

- The role of senior leadership in signalling commitment;
- Prior experience and longevity of staff;
- Participation and buy-in from all departments;
- Efforts to uphold a schedule and commitment;
- Adequate funding and resources to support implementation.

Additional key success factors concern both parties working together:

- Mutually signalling the importance of and commitment to the agreement;
- Agreed intentions and goal setting;
- Clarity and understanding about what is important to each party;
- Demonstrated flexibility and respect;
- Clarity about roles and responsibilities.

Benefits, Barriers, and Success Factors in Innovative Public Engagement Processes

To answer the research question about meaningful public engagement, the study focused on two specific processes related to distributed energy resources: the Alberta Utilities Commission's *Distribution System Inquiry* and the Ontario Energy Board's *Responding to Distributed Energy Resources* consultation.

Results from these case studies indicate benefit and barrier trade-offs in three areas:

- The benefit of an open process raised concerns about uncertainty and longer timelines;
- The benefit of taking a systems-based perspective raised concerns about reduced clarity over the purpose of the process;
- The benefit of having diverse participants raised concerns about their capacity and resources.

The interview findings suggest key success factors that could address these trade-offs, some of which are being implemented by one or both regulatory bodies, and all of which could be considered by the regulatory community.

With respect to strengthening regulators' engagement ***processes***:

- Provide a vision and an objective for the engagement;
- Provide a process roadmap, a schedule, and timelines in advance, albeit with some flexibility;
- Coordinate with other public authorities engaged in the same issue;
- Use a third-party facilitator, with expertise in the process more so than the content;
- Let stakeholders speak and hear each other directly;
- Leverage stakeholder expertise and connections to broaden reach.

With respect to strengthening engagement ***content***:

- Start with the viewpoint of the customer or consumer;
- Provide opportunities to talk about benefits, not just risks and costs;
- Link engagement with what is evolving in other consultation or decision-making processes;
- Encourage openness and transparency.

With respect to ***participant representation***, the research underscored the importance of ensuring stakeholder inclusivity and diversity:

- Include the utility, the customer, and non-government organizations;
- Include the associated policymaking authority;
- Provide adequate funding, including a goal to support organizational capacity;
- Include opportunities for stakeholder consensus-building.

With respect to ***reporting***:

- Identify areas with more or less agreement among participants;
- Demonstrate how information is used (or not) in reaching conclusions;
- Provide clarity with respect to agendas and timelines for next steps.

What Works? Questions Regulators Might Ask Themselves

This report also presents a set of questions regulators might ask themselves to prioritize success factors in these two issue areas. Presented as a tool, the questions may be reviewed and enhanced to suit the needs of the regulator's context. To provide just two examples:

- Do we have a formal agreement as a signal of our commitment to work together?
  - If not, are we paying (adequate) attention to the policymaker-regulator relationship?
  - If not, to what extent might implementation of a formal agreement address challenges to the relationship?
- Can concurrent public engagement processes (sometimes undertaken by multiple public authorities) be better aligned?

Study results also point to further research opportunities:

- to consider whether factors of success are similar in other jurisdictions (for example, under a federal-provincial formal agreement or engagement process);
- to identify the frequency and reasons that some stakeholders, notably Indigenous groups, are sometimes missing from public engagement processes;
- to identify criteria or performance metrics that can be used to measure progress in innovative practices, including impacts on process efficiency and effectiveness of decision-making outcomes.

This report is the result of a collaborative research project between Positive Energy and CAMPUT, the non-profit association of Canada's provincial, territorial, and federal energy and utility regulators.

CAMPUT often works with academics and researchers to explore important regulatory issues, with the goal of promoting regulatory excellence through conferences, training, information sharing, and relationship building.

CAMPUT welcomed the opportunity to engage with Positive Energy to enhance understanding of the dynamics and drivers of innovation in energy regulatory decision-making. Learnings will be shared across the association and more broadly.

ACRONYMS

AEP	Alberta Ministry of Environment and Parks
AESO	Alberta Electric System Operator
AG	Advisory Group (for this research project)
AUC	Alberta Utilities Commission
BCEMPR	British Columbia Ministry of Energy, Mines, and Petroleum Resources
BCOGC	British Columbia Oil and Gas Commission
CER	Canada Energy Regulator
CNSC	Canadian Nuclear Safety Commission
DER	Distributed Energy Resource
DSI	Distribution System Inquiry (hearings-based process in Alberta)
IAAC	Impact Assessment Agency of Canada
IESO	Independent Electricity System Operator (Ontario)
MNO	Métis Nation of Ontario
MPMA	Major Projects Management Agreement
MPMO	Major Projects Management Office (at Natural Resources Canada)
NEB	National Energy Board
NRCan	Natural Resources Canada
OEB	Ontario Energy Board
RDER	Responding to Distributed Energy Resources (consultation process in Ontario)

1. INTRODUCTION

1.1 RESEARCH OBJECTIVES

Positive Energy's research and engagement are focused on how Canada, an energy-intensive federal democracy with a large resource base, can build and maintain public confidence in public authorities making decisions about the country's energy future in an age of climate change (see Box 1). These authorities include federal, provincial, and territorial policymakers and regulators; Indigenous governments; municipal governments; and the courts. One of the most pivotal but understudied factors shaping Canada's energy and greenhouse gas emissions future is its ability to clearly articulate and strengthen confidence in the roles and responsibilities of public authorities.

With respect to quasi-judicial energy regulators, the subject of this research project, Bird (2018) defines the governance relationships of public authorities as follows: policymakers determine the institutional design of regulators through legislation, and enact policies for regulators to implement. Regulators often have discretion over how to achieve the stated policy objectives.

Whether focused on resource development, economics (such as rate setting), system infrastructure and operations, or health and environmental protection, regulators operate within well-established principles of independence from their policymaking authority. This includes activities related to their role in developing, implementing, and interpreting rules, standards, and guidelines in support of policy objectives. Other Positive Energy research explains the origins, rationale, and key features of regulatory independence in Canada's energy system (Cleland et al., 2020; Thomson, 2020).

Roles and responsibilities in energy decision-making are changing, and regulators are "playing an increasingly important role in delivering economic and societal objectives as well as being tasked with regulating more complex situations" (OECD, 2014, p. 15). Common issue areas include the evolving social, environmental, and values context; the growing variety of stakeholders in decision-making; rapid technological change in upstream production, delivery, and end-use systems; and an operational emphasis on risk-based regulatory delivery,[2] as well as policy uncertainty affecting each of these.

To learn about what is working in Canadian energy regulatory decision-making and where there is potential to scale up successful innovations, this research examined two questions:

1. How might formal policymaker-regulator interactions be strengthened while maintaining regulatory independence?
2. What innovative mechanisms support meaningful regulatory public engagement processes?

Positive Energy collaborated with CAMPUT, the non-profit association representing Canada's provincial, territorial, and federal energy and utility regulators. Positive Energy led the research project, but did so in collaboration with a seven-member Advisory Group (AG) composed of senior representatives of CAMPUT and Positive Energy. This helped to ensure the research was both relevant and feasible, and fostered trust and shared purpose between researchers and regulators, while maintaining academic independence and rigour.

2. Risk-based regulatory delivery targets the deployment of regulatory resources based on the probability and severity of the consequence of non-compliance (but is deceptively complex; see, for example, Julia Black, 2010, "Really Responsive Risk-based Regulation").

A word on these research questions. First, while we have taken a broad view of who is a "policymaker," the formal interactions examined are only with quasi-judicial regulators in Canadian jurisdictions. These agencies are typically masters of their own decision-making procedures, with a level of independence from government as they are not housed in a "line department." Second, in this research, regulatory independence is focused solely on the government-regulator relationship, and not on independence of the regulator from other actors. Third, energy regulatory innovation refers to institutional decision-making processes and not technological innovation.

The research began with an online survey of a diversity of stakeholders. Our goal was to understand the relative importance of broad drivers of innovation in energy regulatory decision-making, as well as drivers of policymaker-regulator interactions and regulators' public engagement processes (Section 2).

Drawing on findings from the survey, we selected two case study areas to examine the benefits, barriers, and success factors of formal interactions, as well as regulators' innovative consultation processes. The first case area focused on policymaker-regulator interactions and examined five formal agreements or agreement types implemented in Canadian jurisdictions (Section 3).

The second case topic delved into two engagement processes focused on emerging and disruptive distributed energy resource (DER) technologies: the Alberta Utilities Commission (AUC) Distribution System Inquiry (DSI) and the Ontario Energy Board (OEB) Responding to Distributed Energy Resources (RDER) consultation (Section 4). While distributed energy is a particular context in the energy system, the case study findings offer insights for other public engagement processes.

As part of Positive Energy's broader research stream on roles and responsibilities (see Box 1), our findings also consider *What Works?* in innovation in energy regulatory decision-making through the lens of "informed reform" of decision-making systems and "durable balance" in decision-making outcomes (Cleland and Gattinger, 2017, 2018). We provide an overview of these principles and propose a series of questions regulators might ask themselves when an innovation is initiated or evaluated (Section 5). Presented as a tool, the questions could be used to help regulators' innovative practices succeed.

The report concludes with final thoughts and potential next steps, including future research opportunities (Section 6).

1.2 METHODOLOGY

Step 1: In June 2020, CAMPUT distributed an online survey designed by Positive Energy to approximately 160 representatives of a range of organizations engaged in regulatory affairs in Canada: regulators and policymaking authorities, utilities, environmental and other non-government organizations, large and small customers, Indigenous organizations, law firms, and universities. Participants rated the relative importance of drivers of innovation in energy regulatory decision-making and suggested emerging practices in policymaker-regulator interactions and regulator public engagement. Approximately 50 participants completed the survey, including 17 representatives of regulatory authorities.

Analysis of the survey results pointed to a number of potential case study areas. Consultation with the AG revealed that CAMPUT representatives were particularly interested in innovation in two domains: formal policymaker-regulator interactions and regulator public engagement practices.

Step 2: In-depth qualitative case study research included background document analysis and semi-structured telephone interviews conducted in the fall of 2020. Interviewees represented organizations that created, implemented, used, or were affected by the innovation. Questions considered benefits, barriers, intended and unintended consequences, and key success factors for process and outcomes.

Case study area 1, policymaker-regulator interactions (Section 3), examined five formal agreements or agreement types in both federal and provincial jurisdictions. We reviewed the agreements and conducted interviews with nine senior representatives of the regulator or associated policymaking authority. The participant list and interview guide are provided in Appendix 1.

Case study area 2, regulator public engagement practices (Section 4), focused on the AUC hearings-based DSI and the OEB RDER consultation process. These initiatives both concern DERs in general rather than a specific project proposal. We reviewed publicly available regulatory and stakeholder documents and conducted 13 interviews with 15 individuals representing the AUC and the OEB, as well as stakeholder organizations such as new-entrant companies, distribution utilities, environmental and other non-government organizations, residential consumers, and major power consumers. Most interviewees were members of the regulatory community – that is, representatives of organizations that routinely engage with the provincial regulator. However, no representatives of a large incumbent generator or association of major power producers accepted the invitation to participate in an interview. The participant list and interview guide are provided in Appendix 2.

BOX 1: POSITIVE ENERGY'S RESEARCH ON ROLES AND RESPONSIBILITIES

The second three-year phase of Positive Energy (2019-2021) aims to address the following question: How can Canada, an energy-intensive federal democracy with a large resource base, build and maintain public confidence in public authorities (federal, provincial, and territorial policymakers and regulators, Indigenous governments, municipal governments and the courts) making decisions about the country's energy future in an age of climate change?

Three fundamental questions form the research and engagement agenda. How can Canada effectively overcome polarization over its energy future? What are the respective roles and responsibilities between policymakers, regulators, the courts, municipalities and Indigenous governments, when it comes to decision-making about its energy future? What are the models of and limits to consensus-building on energy decisions? Clearly articulating and strengthening roles and responsibilities between and among public authorities is one of the most pivotal but understudied factors shaping Canada's energy future in an age of climate change. Confidence of the public, investors and communities in government decision-makers – be they policymakers, regulators, courts, Indigenous governments or municipalities – is a critical success factor in Canada's ability to successfully chart its energy and emissions future.

Positive Energy's research and engagement over the last five years reveals that answering two questions will be fundamental to confidence in public institutions: Who decides? How to decide? Positive Energy's research and engagement also underscores that two core principles should inform answers to these questions: Informed Reform and Durable Balance.

The roles and responsibilities research programme includes projects in the following areas:

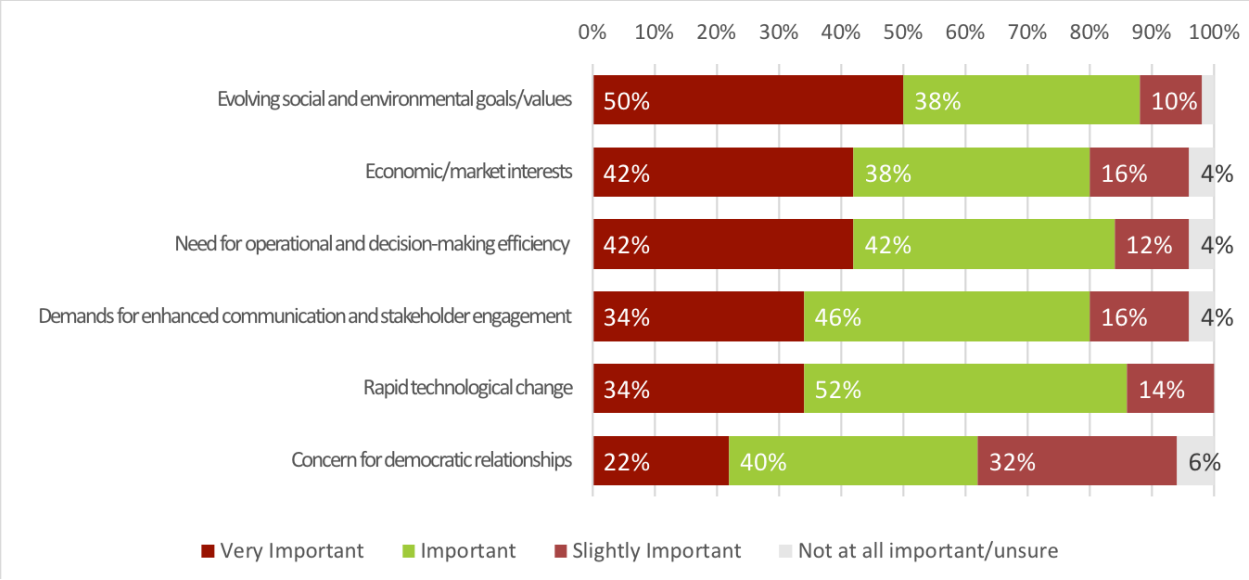
- Federal-provincial relations
  - A research report examining evolving models and practices for intergovernmental relations over energy and climate
  - A comparative study of factors driving final investment decisions for liquefied natural gas facilities in British Columbia and Western Australia
- Policy-regulatory-judicial relations
  - A literature review on regulatory independence in Canada's energy systems: origins, rationales and key features
  - Historical case studies of federal and provincial regulators exploring the evolution of regulatory independence over time
  - Policy-regulatory relations: analyzing innovations in policy-regulatory relations to identify 'What Works?' (research collaboration with CAMPUT) (present report)
  - A case study of the expanded role of the federal cabinet in pipeline projects (TC Energy's 2021 NGTL System Expansion)
- New imperatives in energy decision-making
  - Emerging technologies: interviews with provincial and municipal policymakers and regulators to identify the impact of emerging technologies on decision-making
  - Public engagement: analyzing innovations in regulators' engagement practices to identify 'What works?' (research collaboration with CAMPUT) (present report)

2. ONLINE SURVEY RESULTS

Our survey results revealed broad agreement on the need for innovation in regulatory decision-making.[3] Figure 1 illustrates the relative importance of seven drivers, with the following rated as the top three "very important" drivers: evolving social and environmental context, the need for operational decision-making efficiency, and economic/ market interests.

Moreover, at least 80 per cent of participants rated each broad driver in the survey as "very important" or "important," with the exception of a concern for democratic relationships.

FIGURE 1: RELATIVE IMPORTANCE OF BROAD DRIVERS FOR INNOVATION IN ENERGY REGULATORY DECISION-MAKING (LARKIN, 2020)



3. Additional survey reporting is available at https://www.uottawa.ca/positive-energy/content/what-works-identifying-and-scaling-successful-innovations-canadian-energy-regulatory

We also observed important differences in responses across represented sectors. For example, non-regulators identified economic and market interests as the most important driver of energy regulatory innovation, while regulators described them as the least important. Conversely, regulators identified demands for enhanced communication and stakeholder engagement as the most important driver, compared with non-regulator participants, who ranked this fifth.

Participants were also invited to raise additional issues on an open-ended basis, and noted the need to clarify the role of regulators in unresolved policy issues, including reconciliation with Indigenous peoples, and the lack of policy alignment between environment, energy, and economic development.

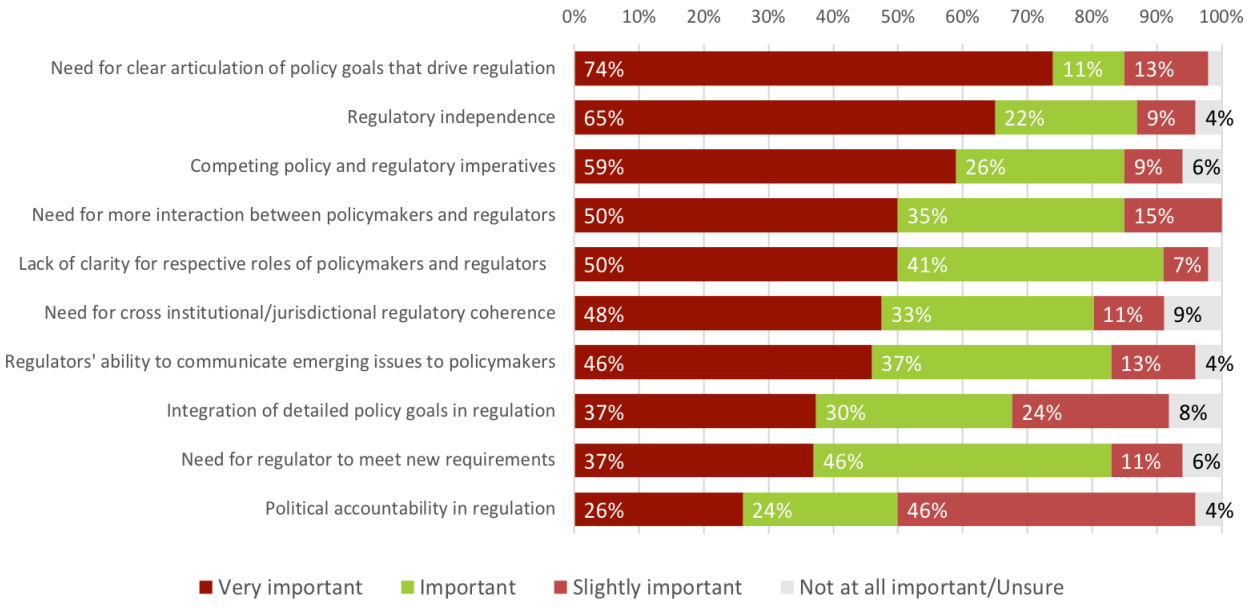
2.1 POLICYMAKER-REGULATOR INTERACTIONS

In general terms, a strong majority of survey participants saw the need for innovation in policymaker-regulator interactions (88 per cent) while fewer reported observing innovation in the workplace (40 per cent).

Participants then rated the importance of 10 drivers of innovation (Figure 2). Across all participants, the top three "very important" drivers were:

- The need for clear articulation of policy goals that drive regulation;
- Regulatory independence, with regulators identifying this as the most important driver, and
- Competing policy and regulatory imperatives (e.g., market, environment, Indigenous, security, affordability concerns), although this driver was rated relatively less important by respondents from Ontario and Quebec compared with participants from Atlantic Canada.

FIGURE 2: RELATIVE IMPORTANCE OF DRIVERS FOR INNOVATION IN POLICYMAKER-REGULATOR INTERACTIONS (LARKIN, 2020)



Overall, respondents indicated that political accountability in regulatory processes or outcomes was the least important driver.

Survey participants recommended the use of formal agreements in support of policymaker-regulator interactions and suggested other innovative approaches to help inform public policy, to facilitate general knowledge exchange, and to help build relationships. Examples include:

- Regulators complete ad hoc reviews and assessments of legislative proposals;
- Policymakers use ministerial directives;
- Active adjudication;
- Single-window regulatory institutional design;
- Regulator attendance at non-government and industry forums or workshops focused on specific project proposals, and
- Briefings by senior regulatory staff to new board members and newly elected members of federal/provincial/territorial legislatures.

Additional issues in policymaker-regulator interactions raised by survey participants included the importance of and challenges related to:

- Corporate memory in sustaining the separation of policy and regulatory functions;
- Transparency;
- Innovation within the confines of regulatory independence, and
- The external perception of poor relations and oversight between policymakers, regulators, and the courts.

2.2 REGULATORS' PUBLIC ENGAGEMENT PROCESSES

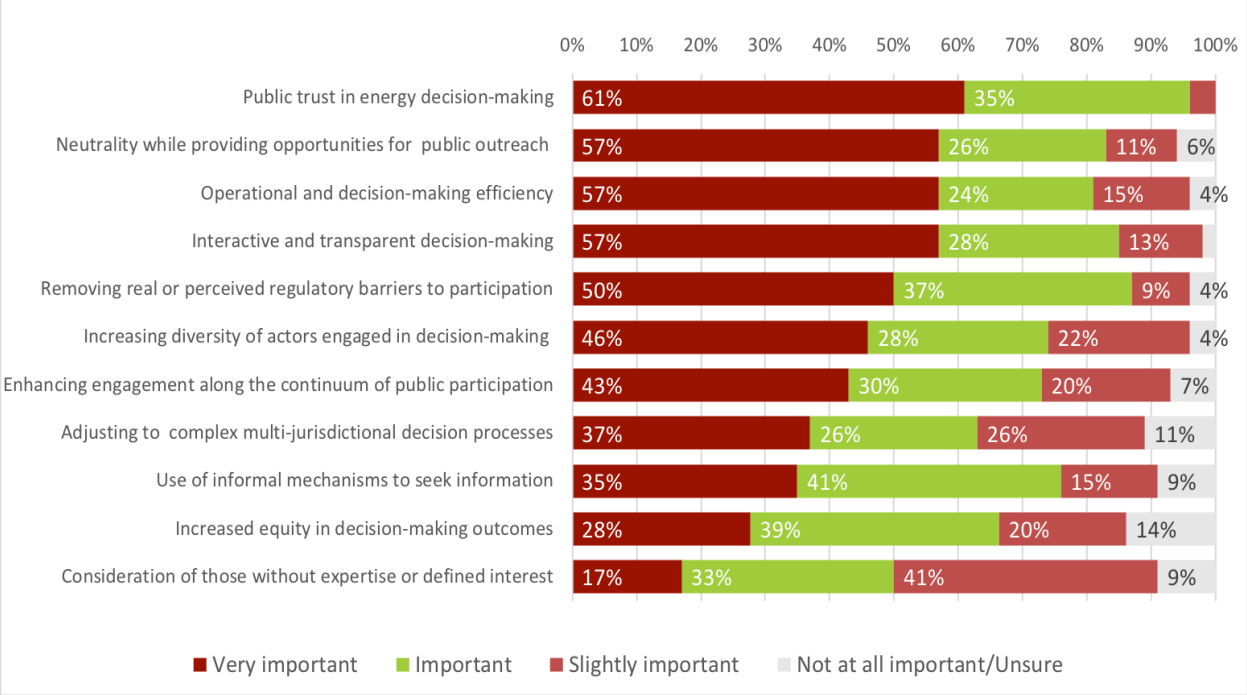
As with policymaker-regulator interactions, the survey results indicated broad agreement on the need for innovation in regulators' public engagement practices. Again, 88 per cent of survey participants saw the need for innovation in this area, this time with 70 per cent of participants observing related activities in their work.[4]

Survey participants were asked to rate the relative importance of 11 drivers for regulator innovation in public engagement (Figure 3). The top driver rated as "very important" was public trust in energy decision-making. This was one of the top three drivers across all regions and sectors.

The next three "very important" drivers were:

- Interactive and transparent decision-making;
- The need for operational and decision-making efficiency, including a workable balance between breadth and depth of engagement, and
- Maintaining neutrality while providing opportunities for public outreach, with broad agreement across regions and sectors.

FIGURE 3: RELATIVE IMPORTANCE OF DRIVERS FOR INNOVATION IN REGULATORS' PUBLIC ENGAGEMENT PROCESSES (LARKIN, 2020)



4. We suggest that this is likely because there are more opportunities for stakeholders to observe and/or participate in regulator public engagement than in policymaker-regulator interactions.

The need to collect and consider views of individuals and organizations without expertise or defined interests was rated the least important driver.

Again, respondents were invited to suggest innovative practices in regulators' public engagement processes. Suggestions included:

- Enhanced Indigenous engagement respected by participants (highlighted by multiple respondents);
- The use of pre-hearing outreach and engagement opportunities with potentially affected communities;
- Sandboxing (see QUEST and Pollution Probe (2020a, 2020b));
- Intervenor funding, and
- The use of survey research to identify best practices in regulators' engagement processes.

Participants also raised additional concerns for public engagement, including:

- The role of enabling legislation in framing the regulator's process, and
- Regulators' challenge to provide stable, predictable, equitable decision-making that is procedurally fair and considers the effects on all ratepayers, including low-income and vulnerable Canadians.

Additionally, respondents suggested ways to strengthen stakeholder participation in decision-making processes:

- Level the playing field with funding that assists less experienced stakeholders in navigating the complexities of regulatory applications, and
- Expand activities beyond outreach, education, and the ability to provide brief comments.

One participant suggested a layered approach to engagement activities depending on the scale of the project or concern – for example, province-wide engagement for policymaking, a regional scope for land-use planning, and local activities for project-level decisions.

3. FORMAL POLICYMAKER-REGULATOR INTERACTIONS – AGREEMENTS ARE KEY TO RELATIONSHIP-BUILDING

This case study considered the development and implementation of five formal agreements or agreement types:

1. Memorandum of Understanding (MOU) between the British Columbia Ministry of Energy, Mines, and Petroleum Resources (MEMPR) and the British Columbia Oil and Gas Commission (BCOGC)
2. Roles and Responsibilities of Alberta Environment and Parks (AEP) and the Alberta Utilities Commission (AUC) in applications to construct and operate wind and solar power plants
3. Major Projects Management Agreements (MPMAs) using the example of the National Energy Board (NEB) and the Major Projects Management Office (MPMO)
4. MOU concerning Integrated Impact Assessments under the Impact Assessment Act between the Impact Assessment Agency of Canada (IAAC) and the Canada Energy Regulator (CER)
5. Terms of Reference (ToR) for an Indigenous group[5] and the Canadian Nuclear Safety Commission (CNSC), using the example of an ongoing engagement

We recognize that the ToR between an Indigenous group and the CNSC is not a policymaker-regulator agreement, because Indigenous groups are not the CNSC's associated public authority. However, this is an example of a regulator entering into a formal agreement to foster long-term relationship building and clarity in roles and responsibilities, as compared with ad hoc engagement during a particular consultation or project application.

Table 1 summarizes the timeline, the underlying basis of the agreement, and the scope of application for each agreement. As shown:

- Four agreements were established in the past three years, and implementation is ongoing. The exception is that since promulgation of the Impact Assessment Act (Government of Canada, 2019b), federal MPMAs are no longer negotiated through the MPMO.
- Three agreements are at the federal level, each enforced by a directive or legislation. The provincial agreements are voluntary.
- Federal agreements emphasize engagement with Indigenous groups.
- With respect to the scope of application, MPMAs are project specific, while Alberta's Roles and Responsibilities and the IAAC-CER MOU provide a broad framework for interactions during project review.
- The MEMPR-BCOGC MOU and the Indigenous group-CNSC ToR do not apply to project proposals; rather, they are focused on a continued commitment in more general terms.
- With the exception of the Alberta Roles and Responsibilities tool, each agreement includes an addendum that specifies actions not included in the main document.

Section 3.1 provides an overview of each agreement's context and content. Section 3.2 discusses themes that reflect interviewees' perceived benefits and barriers in developing and implementing agreements, as well as key success factors that could help realize or address the benefits and barriers identified in Section 3.3.

5. A generic ToR was provided to Positive Energy.

TABLE 1: TIMELINE, BASIS, AND SCOPE OF APPLICATION FOR FIVE FORMAL POLICYMAKER-REGULATOR AGREEMENTS OR AGREEMENT TYPES

Element	Agreement				
	MOU between MEMPR and BCOGC	Roles and Responsibilities in applications to construct and operate wind and solar power plan	MPMAs	MOU between IAAC and CER regarding integrated impact assessments	ToR for ongoing CNSC engagement with an Indigenous group
Jurisdiction and timeline					
Organizations[6]	MEMPR and BCOGC	AEP and AUC	NEB and MPMO	IAAC and CER	CNSC and Indigenous group [7]
Jurisdiction	British Columbia	Alberta	Federal	Federal	Federal-Indigenous
Year	2019	2018	2009-2019[8]	2019	2019
New		√		√	√
Previous version or precursor	2011		1996, 2007	MPMAs	
Underlying basis					
Directive or legislation			√	√	√
Voluntary	√	√			
Scope of application					
Project proposals		√	√		
Ongoing commitment	√			√	√
Includes addendum[9]	√	Possibly forthcoming	√	√	√

6. Acronyms: AEP – Alberta Ministry of Environment and Parks; AUC – Alberta Utilities Commission; BCOGC – BC Oil and Gas Commission; CER – Canada Energy Regulator; CNSC – Canadian Nuclear Safety Commission; MEMPR – BC Ministry of Energy, Mines, and Petroleum Resources; IAAC – Impact Assessment Agency of Canada; MNO – Métis Nation of Ontario; MPMA – Major Projects Management Agreement; MPMO – Major Projects Management Office; NEB – National Energy Board.
7. Not a policymaker in the sense of an associated public authority.
8. Cabinet Directive applied to federal departments, not to the NEB as an arm's-length regulator.
9. To specify actions not included in the main document.

3.1 AGREEMENT CONTEXT AND CONTENT

a) MOU between the Ministry of Energy, Mines and Petroleum Resources and the British Columbia Oil and Gas Commission

The MEMPR (now the Ministry of Energy, Mines and Low Carbon Innovation) sets policy direction for energy-related sectors. The MEMPR is also the lead ministry in coordinating policy interests of other government agencies, industry, Indigenous peoples, and stakeholders as related to the development of oil and gas resources. The BCOGC, for its part, is a single-window regulator that develops operational regulations and associated guidance for oil, gas, and geothermal activities. The goal of the BCOGC is to protect public safety and safeguard the environment from exploration through to final project reclamation.

Under the MOU, each party remains solely responsible for exercising its statutory authority under the *Oil and Gas Activities Act* (OGAA), the *Petroleum and Natural Gas Act*, and the *Geothermal Resources Act*. The BCOGC exercises authority and develops operational regulations under the OGAA. It also exercises authority under other Acts, such as those affecting forestry, water, waste discharges, archaeology, and land allocation.

The 2019 MOU, a voluntary agreement, replaced an original 2011 agreement. The MEMPR-BCOGC relationship had matured, so the MOU renewed provisions for how the organizations work together. The MOU is signed by the Deputy Minister of MEMPR and the Commissioner and CEO of the BCOGC. The parties review it yearly but may agree to amend the terms or add appendices at any time.

Interviewees pointed to drivers of innovation being the appointment of new senior executives seeking to clarify and confirm the working relationship, especially in terms of information sharing, and the desire to confirm and reflect the BCOGC's operations as they had evolved in practice over the intervening years.

The MOU's four stated purposes reflect a continued commitment to:

- advance responsible development of oil, gas, and geothermal resources for the benefit of all British Columbians;
- maintain an effective working relationship between the organizations;
- facilitate effective communication and collaboration that supports understanding and delivery of mandates and accountabilities, and
- foster a commitment to shared learning within the organizations.

The emphasis on communication and information sharing between organizations includes provisions for:

- timeliness, including when an internal issue or initiative could affect the other organization or non-government stakeholders such as investors and local communities;
- open sharing of data that may be beneficial to each in delivering mandates and responsibilities;
- early notification of any third-party agreement that could affect respective decision-making or mandates, and
- staff availability to consult on areas of mutual interest.

The terms outline:

- the governance framework establishing the co-chairs of the Executive Committee (ADM MEMPR and Executive Vice-President BCOGC), with escalation to higher executives for unresolved issues;
- that both operational and policy issues may be discussed, and a process is in place to ensure that each party may review legislative/regulatory reform proposals that might affect the other;
- meeting schedules, with ToR added as an appendix to the MOU that outline expectations for meeting attendance and operations, and
- the potential establishment of working groups.

b) Roles and Responsibilities of Alberta Environment and Parks and the Alberta Utilities Commission in applications to construct and operate wind and solar power plants

The voluntary agreement was approved in 2018 in anticipation of 5,000 megawatts of renewable power production being added to Alberta's electricity supply, a result of the province's move to retire coal power plants and invite wind and solar power proposals under the *Climate Leadership Plan* (Government of Alberta, 2018). With both AEP and the AUC having regulatory authority over various aspects of approval, construction, operation, and monitoring of wind and solar power plant projects, the goal was to mutually confirm each organization's environmental and regulatory responsibilities, particularly with respect to impacts on wildlife and wildlife habitat.

The agreement was driven in large part by the expected change in the AUC's operating environment in anticipation of an increase in project proposals. There was also concern for the regulatory framework, namely AEP's ability to regulate impacts and the AUC's ability to leverage AEP expertise and capacity on a provincial basis within its approval process and monitoring. The AUC also wanted to formalize best practices with a consistent application and review process that was well understood by all stakeholders.

The agreement outlines responsibilities for each public authority: AEP under the *Wildlife Act*, the *Environmental Protection and Enhancement Act*, and other policies, directives, and guidelines that apply to the construction and operation of wind and solar plants; and the AUC with respect to approving the construction and operation of power plants under the *Hydro and Electric Energy Act* and *the Alberta Utilities Commission Act*.

AUC Rule 007 sets out requirements for project applications, including the need for an applicant to align a project with AEP's policies. A sequential process requires the proponent to first provide wildlife-related project details to AEP for review and assessment. Based on this, AEP provides a referral report to the AUC as part of its project review. If the AUC determines that a public hearing is needed, AEP may participate fully, and both agencies may question the applicant on environmental and wildlife concerns identified in the referral report. If the project is deemed to be in the public interest, the AUC then prepares an approval with any conditions that may be appropriate, including those related to wildlife protection that AEP may have highlighted.

During construction and operations, the agencies may work together, but the agreement confirms the AUC's responsibilities for monitoring, surveillance and site inspections, requests for corrective action, and enforcement. With respect to wildlife monitoring reports, the AUC asks AEP to review and advise whether corrective actions are required, and the AUC notifies AEP when wildlife-related action is taken.

Additional work between the public authorities is ongoing to better outline the roles and responsibilities of the two agencies in situations where a second referral report is requested to address project amendments.

c) Federal Major Project Management Agreements, using the case of the National Energy Board and the Major Projects Management Office

MPMAs are the longest-standing formal agreement included in this research. They were established in the mid-1990s to improve coordination between federal regulators and departments involved in regulatory processes for major projects. The use of MPMAs ceased with promulgation of the *Impact Assessment Act* (2019b) and the *Canadian Energy Regulator Act* (2019a) (discussed next).

The case study is focused on MPMAs in relation to NEB activities. The first MPMA was initiated unofficially with the first joint NEB-Canadian Environmental Assessment Agency panel review under the *Canadian Environmental Assessment Act* (1996). The federal government was seeing heightened interest in Indigenous consultation, an ongoing focus of the MPMAs discussed in this section, as well as, in the mid-2000s, the first Indigenous challenge to an NEB hearing.

The MPMO Initiative was established in 2007 to coordinate federal departments during a project review and provide "overarching project management and accountability" (Government of Canada, 2020). Twelve federal departments and agencies were included under the MPMO umbrella,[10] with a focus on activities related to supplementary Crown-Indigenous engagement and consultation. Deputy ministers of relevant departments or, in the case of the NEB, the Chair of the Board and CEO, signed off on each MPMA.

The Cabinet Directive *Improving the Performance of the Regulatory System for Major Resource Projects* (2009) then formalized a governance framework to facilitate effective, coordinated, and concurrent discharge of an affected agency's statutory duties, functions, and obligations. Although the Directive could not compel the NEB, as an arm's-length regulator, to take action, the NEB viewed MPMAs as important to the discharge of its duties, particularly with respect to collaboration and coordination with other federal authorities during a review process. For example, the permitted uses of the information acquired through consultation needed to be clear in order to uphold the NEB's legal responsibilities and not create a hearing process that could be challenged in the courts. The Directive also encouraged departments to work together to identify where the regulatory system could be improved with respect to accountability, transparency, timeliness, and predictability (NRCan, 2021).

Concerns for environmental assessment and Indigenous consultation continued to evolve during the period in which the *Canadian Environmental Assessment Act* (2012) was in force (2012-2019). In the Act's final years, MPMAs typically included a preamble outlining the components of the project under federal jurisdiction, as well as when and how federal organizations would work together "for the benefit of the proponent, the general public, Indigenous peoples whose asserted or established Indigenous or Treaty rights may be impacted, and other potential interested parties."

10. NRCan (Chair), Fisheries and Oceans Canada, Environment and Climate Change Canada, Indigenous and Northern Affairs Canada (now Crown-Indigenous Relations and Northern Affairs Canada), Industry Canada (now Innovation, Science and Economic Development), Health Canada, Department of Justice, Privy Council Office, Canadian Environmental Assessment Agency (now Impact Assessment Agency of Canada), Canadian Northern Economic Development Agency, Canadian Nuclear Safety Commission, and the National Energy Board (now the Canada Energy Regulator).

It described mechanisms related to issues resolution, amendments, and termination of the Agreement (at the conclusion of the Project Review), as well as assessment "Milestones and Timelines" and "Statutory Authorization Timelines," usually as an Annex.

MPMAs did assist with resolving coordination issues, but the context for hearings continued to evolve through the 2010s. There was a continued upsurge in the desire and right of Indigenous groups to be consulted and accommodated, including their active engagement in hearing processes. MPMAs were therefore a precursor to the next agreement included in the case study.

d) MOU concerning Integrated Impact Assessments under the *Impact Assessment Act* between the Impact Assessment Agency of Canada and the Canada Energy Regulator

In the context of the 2019 *Impact Assessment Act* (Government of Canada, 2019b), the IAAC has signed voluntary MOUs covering participation of federal authorities in impact assessments, as well as MOUs with the CER and the CNSC that outline roles and responsibilities when undertaking Integrated Impact Assessments (Government of Canada, 2019c). The IAAC-CER MOU was signed by the President of the IAAC and the Chief Executive Officer of the CER. Since the IAAC is not the CER's policymaking authority, the policymaker NRCan monitored development of the MOU to ensure policy-level awareness for what the CER would be undertaking.

The IAAC-CER MOU is a follow-on from the MPMA provisions for NEB project reviews. The MPMO/MPMA experience was integrated in as well as enhanced within the *Impact Assessment Act* legislative framework. Instead of reinventing an agreement on a project-by-project basis, the MOU outlines the principles and framework for process, timelines, and planning decisions.

A key driver in completing the IAAC-CER MOU was the desire to operationalize the new *Impact Assessment Act*, such that coordination and communication that would ensure an efficient joint review was in place on Day 1 of the Act's implementation. The MOU applies to any designated project and lays out the following five objectives (Government of Canada, 2019c):

1. To allow for a single, comprehensive process for integrated impact assessments that is fair, inclusive, transparent, and efficient;
2. To describe the roles and responsibilities of the parties;
3. To facilitate coordinated public engagement and Indigenous consultation activities;
4. To ensure the statutory requirements of both the *Impact Assessment Act* and the *Canadian Energy Regulator Act* can be fulfilled, and
5. To facilitate timely and consistent information sharing and coordination between the parties.

The IAAC and the CER agreed to the timeline for the Impact Assessment Phase, the setting up of project-specific teams, and cost sharing where required. Participant funding is the responsibility of IAAC.

The MOU also sets out that each integrated assessment will include a set of publicly available documents explaining the principles and details necessary to facilitate the implementation of an Integrated Impact Assessment (Government of Canada, 2019c), further to provisions under the *Impact Assessment Act*. While the MoU is applicable across projects, specificity is achieved through individual project workplans.

e) Terms of Reference between an Indigenous group[11] and the Canadian Nuclear Safety Commission

The vision in establishing ToR as voluntary agreements between Indigenous groups and the CNSC was to formalize continued collaboration and engagement outside of a regulatory hearing process. Interviewees described the initiative as unprecedented.

A key driver for this innovation was growing public and Indigenous interest in CNSC licensing, environmental assessment, and regulatory review processes, combined with increasing time gaps between these regulatory processes that triggered formal engagement or consultation requirements. The CNSC was concerned about potentially losing opportunities for engagement and communications with Indigenous groups while the complexity of matters was increasing. Moreover, the CNSC was increasingly challenged organizationally in supporting relationships with Indigenous peoples and discussing issues and concerns effectively in the short timeframe and intense process of regulatory project reviews. The ToRs were thus developed to avoid misunderstandings and facilitate a smooth and healthy relationship between Indigenous nations and the CNSC throughout the licensing terms and life cycles of nuclear facilities and activities.

In 2018, CNSC staff were developing preliminary ideas of what a ToR would look like with the Saugeen Ojibway Nation of Ontario (the first such arrangement to be established), when a Commission decision requested that staff formalize the approach through an agreement. In effect, CNSC staff members were directed to continue the approach of long-term engagement with Indigenous groups by the Commission.

The CNSC developed a number of templates as a starting place to negotiate individual ToRs. Some inclusions came from regulatory innovations for major pipeline projects such as the Trans Mountain Expansion, including establishing Indigenous advisory committees to be involved in oversight, compliance, and monitoring. Each Indigenous group chooses the level of detail that reflects its desired level of ongoing engagement, complexity in governance structure, and breadth and depth of interests or concerns in relation to CNSC-regulated facilities and activities within its territory.

The governance structure detailed in the ToRs includes a summary of respective roles and responsibilities for a Steering Committee and Working Group, meeting frequency, review processes, and reporting. A workplan is included as an addendum to the ToR, to be updated bi-annually or as appropriate. Experts and other participants may also be involved in matters considered under the ToR, including licensee representatives, academics, other Indigenous communities, and members of the public, upon agreement between both parties. Technical Working Groups may be established on an ad hoc basis to address specific issues and topics.

11. Agreements have been established with specificity for the individual Indigenous group.

Developing and implementing a ToR takes approximately one year because of complex negotiation and approval processes for both the CNSC and Indigenous groups, culminating in a formal signing ceremony between CNSC management and the Indigenous group's leadership. At least once per year, the Indigenous group and CNSC staff, possibly in collaboration through a single submission, report to the Commission on progress and outcomes through the CNSC's Regulatory Oversight Reports. The ToR is an "evergreen document," reviewed annually, and may be amended by mutual agreement. However, if either party finds that the ToR no longer facilitates meaningful collaboration on issues or concerns of interest to the Indigenous community, the ToR can be terminated with 60 days' notice by either party.

The CNSC has established four ToRs as of April 2021, with nine others under consideration and one being actively negotiated. None have been amended or terminated to date.

f) Summary of drivers and content

In summary, regulator and policymaker interviewees identified a number of common drivers for formal agreements:

- To confirm, renew, or reinvigorate aspects of a good working relationship;
- To promote information sharing and communication;
- To respond more effectively to an evolving social, environmental, and technological context;
- To effectively accommodate an evolving operational context with the need to ensure certainty, consistency, and clarity for regulatory processes among stakeholders;
- To increase organizational accountability of all parties, and
- To effectively address limitations of an underlying legislative framework.

These drivers align with the broad drivers regulators considered to be most important for energy regulatory decision-making (Section 2): demands for enhanced communication and stakeholder engagement, evolving social and environmental goals and values, and the need for operational and decision-making efficiency. As well, they are similar to regulators' survey responses about the most important drivers of innovation in policymaker-regulator interactions: regulatory independence, the need for clear articulation of policy goals that drive regulation, and competing policy and regulatory imperatives (e.g., market, environment, Indigenous, security, affordability).

While the context for each formal agreement clearly varies, common elements of their content include:

- Senior executive sign-off that demonstrates a commitment of the two organizations at the highest levels.
- Confirmation of principles, roles, and responsibilities for each organization in decision-making, approvals, and operations. This includes setting the structure, boundaries, and guidelines for who is going to do what and when.
- Mechanisms to ensure clear, timely communication.
- Initiative and focus of federal agreements on Indigenous consultation and engagement.
- Descriptions of governance structures, including organizational representation and meeting frequency.
- Formalization of existing informal practices, possibly with enhancements, including the role of experts.

Four agreements include further specificities in an annex or addendum, and another may be added in Alberta.

3.2 KEY FINDINGS: BENEFITS AND BARRIERS OF FORMAL AGREEMENTS

For all five agreements, good relationships predated the innovation, and parties were well aware of the rules of engagement and how to work together. Interviewees did not note any concerns about maintaining regulatory independence when implementing activities associated with the formal agreement.

a) Benefits of agreement development and implementation

Key benefits of formal agreements in policymaker-regulator interactions include: demonstrated commitment and understanding, mutual assistance and support, and improved communication. Interviewees also mentioned the benefits of formal agreements for stakeholders in the project approval process.

Demonstrated commitment and understanding

Several interviewees asked rhetorically: "Is the policymaker-regulator relationship improved because of an agreement? Has it changed the interactions?"

Our findings suggest that the benefit of the process of developing an agreement is as important as the outcome. A formal agreement creates clarity and certainty about the roles and responsibilities of the two public authorities within their legislative framework. Moreover, senior-level signatories signal organizational leadership awareness, endorsement, and accountability for the agreed interactions.

Internal consultation processes provide an opportunity to highlight the structures and responsibilities of the working relationship to staff, with bilateral negotiations raising awareness and understanding of how the two organizations, with two cultures, will work together. Ongoing communication and collaborative interaction help to "tone down adversity" and indeed build trust through increased candour and understanding, as well as the sharing of information, expertise, and best practices. Continuity and consistency of bilateral staff contacts is a benefit, providing clarity about who to contact and fostering increased responsiveness.

In sum, developing and implementing an agreement demonstrates a constructive commitment to engagement and relationship building and an understanding of the need to work together compared with an ad hoc approach. Long-term planning for the relationship may also result, given the regular contact.

Is it worth it? There was clear agreement among interview participants about the value of each initiative as a tool in their kit that helps to sustain attention to the relationship. As suggested by one interviewee: "While informal communication remains important – and there is no substitute for picking up the phone – the rigour of an agreement puts attention and value on relationship building."

Mutual assistance and support

An agreement creates the opportunity for mutual assistance to meet mandated requirements and, as put forward by one interview participant, "supports the entire system to move in the same direction." Creating an agreement permits both parties to highlight their respective needs and expectations in a clear and written format, ensuring the two organizations, at all levels, are on the same page with respect to principles and objectives.

For project-based agreements, details for interactions are worked out while developing the document rather than when tensions are raised under regulatory timeline constraints. This could include full life-cycle integration, from pre-application to construction and monitoring, with enforcement also potentially facilitated. Interviewees also commented on the benefit of reduced duplication, particularly when an overarching agreement is in place rather than one-off project agreements.

The agreement may also encourage the policymaker and regulator to move along the "interaction" continuum sooner – from basic information sharing and coordination, to discussing more substantive policy issues at an earlier stage. Formal government consultation processes certainly include regulators, but an opportunity for earlier discussions could include a review of the policy and regulatory framework such that the parties can begin to solve issues of mutual concern sooner.

Improved communication

A key benefit of formal agreements is to clearly outline expectations for communications between the parties, thereby eliminating surprises in internal day-to-day activities or in interaction with external stakeholders. In the short and long term, regular contact at all levels results in earlier problem solving and discussions about both concerns and opportunities.

Moreover, interviewees pointed out that an agreement can help avoid difficulties and pitfalls with new staff appointments, because timelines and expectations are clear.

Stakeholder interests

Of interest to proponents and stakeholders alike, a formal agreement may outline the criteria, related deliverables, and timelines for public authorities to follow during a project review. As noted in the agreement between AEP and the AUC and between the IAAC and the CER, rules, boundaries, and interactions are known to stakeholders prior to a project proposal. As well, where public authority roles and responsibilities are made known in an open and transparent manner, evolution in these matters can be followed, endorsed, or debated by stakeholder groups.

A related benefit arises in the case of multi-agency interactions with the same stakeholder groups. Where a list of shared stakeholders is developed, the policymaker can inform the regulator when it reaches out to particular stakeholders, and vice versa. This has a potential positive effect on stakeholder relationships, if both authorities demonstrate an equal commitment to transparency and building trust through engagement.

As noted in Section 3.1, the federal agreements have a particular focus on Indigenous engagement and consultation at the project level and in ongoing information sharing. The MPMAs and the IAAC-CER MOU outline agency responsibilities such that a regulatory review is undertaken according to legislative requirements. On the other hand, the ToRs strengthen the relationship through ongoing, respectful, and open dialogue. Implementation permits both scientific principles and Indigenous knowledge to inform oversight for nuclear facilities and activities in Indigenous territories, not only as an environmental or regulatory matter, but also with respect to the potential effect on Indigenous and treaty rights.

b) Barriers to effective development and implementation

Concerns about the development and implementation of formal agreements centred on two themes: organizational leadership and other actors, and competing priorities, capacity, and resources.

Organizational leadership and other actors

Senior leaders entering into a formal agreement need to demonstrate an interest in developing or renewing an agreement and then live up to their commitments. Barriers to development and implementation centre on two scenarios.

First, if executive management supports a set of principles or structures, lower-level staff may be responsible for completing the negotiating process and implementation, which risks a disconnect between original intent and execution. Alternatively, negotiation may start and end deeper within an organization, with the senior executive signatory being less engaged in the process, thus raising a question about the actual level of commitment at the highest levels.

A second concern, mainly relevant to the planning phase of an agreement, is the potential for representatives to have vested interests based on their long history with an organization and its "turf," or the past or usual approach to addressing a challenge and interacting with colleagues in another organization. These circumstances can affect timelines and priorities, as discussed further below.

Interviewees also noted that relationships are made with people, and that when contacts change, implementation can be negatively affected because relationship building must begin anew. However, senior leadership can help address this concern with regular review and evaluation, as is the case with the agreements included in this research. Moreover, staff turnover could have a positive impact in initiating review and reinvigoration.

Competing priorities, capacity, and resources

While a benefit of an agreement is to confirm roles and responsibilities, interviewees made the point that negotiating an agreement can take a long time. Time is of course required in both negotiation and implementation. As implementation unfolds, upholding commitments may require an enhancement or addendum as a follow-on activity, although these details could also add further clarity and consistency in interactions. AEP and the AUC are in the middle of this step regarding how to proceed with a second referral report, and the IAAC and the CER will assess whether their MOU is sufficient or further detail is required as they complete their first Integrated Impact Assessment.

Moreover, public authorities have competing priorities and pressures in undertaking their responsibilities. In the project context, an agreement may assist with upholding a shared (e.g., NEB-MPMO, IACC-CER) or sequential (e.g., AEP-AUC) approval process. While interview participants did not suggest that an agreement be "waved in the air" should compliance come into question, they raised concerns about discrepancies between the parties over timeliness in decision-making.

While some participants suggested that more funding was desirable to support agreements, insufficient funding did not seem to detract from agreement implementation. None of the BCOGC, the MEMPR, or the AUC identified the need for additional capacity or resources to support implementation.

Moreover, Indigenous groups with a ToR might well save some time in writing funding applications because the CNSC provides stable funding to support participation. Indeed, the ToR was of "excellent value" in the view of both the CNSC and MNO representatives, with success generating interest from other Indigenous groups. This may require new resources or a reallocation of resources at the CNSC to develop and implement more agreements. In terms of the IAAC-CER MOU, the increased level of effort under the *Impact Assessment Act* compared with using an MPMA is attributed to the *Impact Assessment Act*'s scope and timelines compared to the 2012 *Canadian Environmental Assessment Act.* However, the IAAC and the CER were provided with additional funding for the first five years after the act came into force, and interviewees suggested that implementation of the MOU may decrease financial demands over time.

Finally, a change in government could be positive or negative in terms of public authorities' capacity and resources directed to formal agreements. However, participants also made the point that in times of change, having an agreement at the highest level may help provide stability. On the other hand, as one interviewee suggested, if a new government "has a different kind of policy objective compared with when the agreement was initiated, it will turn its back on the agreement quite readily." The transparency that comes with a formal agreement could hold a government to account, provided there is a reliable mechanism in place to alert the broader public and other stakeholders to its existence and/or termination.

3.3 KEY SUCCESS FACTORS

The research also delved into success factors for the development and implementation of formal agreements as an innovation in policymaker-regulator interactions.

Table 2 presents key success factors under the purview of each party individually and for both parties working together. Regulators' attention to these elements will help realize the benefits and address the barriers discussed above.

Section 5.2 proposes a series of questions based on these success factors that regulators considering formal agreements might ask themselves as they embark on the process.

TABLE 2: KEY SUCCESS FACTORS WITHIN AND BETWEEN ORGANIZATIONS THAT ARE PARTY TO A FORMAL AGREEMENT: REALIZING BENEFITS AND ADDRESSING BARRIERS

Success factors	Realize benefits				Address barriers	
	Demonstrated commitment	Mutual assistance	Improved communication	Stakeholder interests	Leadership and other actors	Priorities, capacity, resources
Concerns within each party individually						
Role of senior executive in signalling commitment	√				√	√
Prior experience and longevity of staff	√	√			√	
Participation and buy-in of all internal departments	√	√	√		√	
Effort to uphold schedule and commitment	√		√		√	√
Funding and resources	√				√	√
Concerns for both organizations working together						
Mutually signal importance and commitment	√	√		√	√	√
Agreed intention and goal setting	√	√	√	√	√	√
Clarity and understanding of what is important	√			√	√	√
Demonstrated flexibility and respect	√	√			√	
Clear roles and responsibilities	√	√	√	√	√	√

4. REGULATOR PUBLIC ENGAGEMENT – TRADE-OFFS TO BE IRONED OUT

This case study researched two CAMPUT-member initiatives related to DERs: the AUC's hearings-based DSI and the OEB's RDER consultation process. Box 2 provides a general overview of DERs.

Section 4.1 describes the context of the two regulators' initiatives, including drivers for the engagement process and the process components. Sections 4.2 and 4.3 share key findings from regulator and stakeholder interviews, including trade-offs when it comes to effective participation and success factors for process and outcomes.

BOX 2: DISTRIBUTED ENERGY RESOURCES IN BRIEF

A broad range of technological systems generate electricity and control loads. In the context of distributed energy, this includes power sourced from solar panels, wind, combined heat and power plants (co-generation), electricity storage, small natural gas-fuelled generators, electric vehicles, and controllable loads, such as HVAC systems and electric water heaters (IESO, 2020b; Winfield and Gelfant, 2019).

Systems are often located at or near customers' premises, providing all or some of their immediate needs. Alternatively, the technology may be connected to a local distribution system or to a host facility within the local distribution system to supply the distribution grid (IESO, 2020b; Winfield and Gelfant, 2019). These systems differ from traditional generation, which typically has much higher capacity and is located on the transmission grid.

Benefits of these technologies include system resiliency and mitigation of greenhouse gas emissions causing climate change. This is because the smaller-scale diversified energy resources are in closer proximity to users and because of the range of technologies that harness renewable low-carbon energy. These systems may also defer the need for additional transmission or centralized generation infrastructure. Consumers may also benefit by having greater choice and control over their power supply or even become "prosumers" – that is, have the dual role of both participating in energy markets and consuming energy in one place.

On the other hand, widespread and increasing installation and use of DERs presents challenges in several areas. Large incumbent energy generators may experience a decrease in baseload grid demand; interconnections between energy distribution and transmission may become increasingly complex (for example, creating a situation where the transmission system operator may have limited knowledge of the extent of the resources in a distribution system, thereby complicating load forecasting and increasing uncertainty in operations); and system safety may be compromised due to the integration of emerging technologies.

4.1 REGULATORY CONTEXT, DRIVERS, AND PROCESS COMPONENTS

a) Regulatory contexts

The AUC's mandate with respect to energy[12] is to regulate Alberta's investor-owned electric and gas utilities and certain municipally owned electric utilities to ensure that customers receive safe and reliable service at just and reasonable rates. The AUC also regulates routes, tolls, and tariffs for energy transmission, and provides an adjudicative function for issues arising in the electricity and natural gas markets (AUC, 2021b).

In Ontario, the OEB mandate is to set just and reasonable energy rates, and it must balance the interests of different classes of ratepayers and the interests of the utilities themselves, as set out in the OEB Modernization Review Panel report (2018) and legislation. The OEB makes adjudicated decisions for rates and facilities (among other things) for the energy sector. It also has a defined legislated policymaking function through setting rules that prescribe how activities are undertaken by both rate-regulated and non-rate-regulated entities. In this capacity, it advises the government about natural gas and electricity services, with the goal of supporting a sustainable and reliable energy sector and helping consumers receive value. Almost all generation in Ontario is either rate regulated or under contract, with much of the generation Crown owned by Ontario Power Generation. Distribution is primarily municipally owned (65%), and transmission is almost entirely undertaken by Hydro One, which is half owned by the province. Thus, the Ontario framework limits consumer choice in electricity supply given the absence of a robust role for retailers and because there is no choice for delivery.

Regulators in both Alberta and Ontario suggested that the respective DSI and RDER engagement processes demonstrated an evolving enhancement to their overall engagement strategy, including for DERs. In Alberta, earlier or linked consultation processes both within and outside the AUC included the Distributed Generation Review (AUC, 2017) and the Alberta Electric System Operator's (AESO's) DER Roadmap (AESO, 2020). The AESO's primary focus is on the transmission system and electricity market.

In Ontario, the RDER sits within the OEB's "sector evolution consultations" (OEB, 2021a). Additional DER activities include the Regulated Price Plan Roadmap (OEB, 2016), the Staff Report to the Board for Rate Design (OEB, 2019b), the DER Connections Review (OEB, 2020b), and the Utility Remuneration consultation (OEB, 2020d), the latter being undertaken in coordination with the consultation examined by this research. As well, the Independent Electricity System Operator (IESO) is consulting on DER – for example, through a survey to better understand its role in the Industrial Conservation Initiative (IESO, 2020a), by developing standardized DER test cases (IESO, 2020d), and through distributed generation funding (IESO, 2020c).

12. The AUC also regulates water utilities.

Furthermore, DSI and RDER engagement both took place in the context of a change in government and a consequent legislative change. In Alberta, the DSI was completed under the new government's *Red Tape Reduction Implementation Act* that mandated more streamlined and efficient processes in order to limit the cost burden to ratepayers. As well, two significant replacements occurred at the AUC during the period of the DSI: a new chair was appointed a few weeks prior to the deadline for final stakeholder submissions, and three of four new commissioners were appointed by the government following final submissions. These changes are important because the final report of the Inquiry is a Commission-endorsed report and not a staff discussion or white paper. Final reporting was delayed from the original timeline (fall 2020), with release in February 2021, in large part because the new leadership had to be brought up to speed with Inquiry discussions prior to being in a position to endorse the report's content and direction. The final report is available through the AUC (2021a).

In Ontario, the consultation began during a change in governance and leadership based on the recommendations of the OEB Modernization Review Panel (2018). For a period, the OEB abided by the government's request to not move forward on any major policy initiatives until revised legislation took effect and new leadership was appointed. The initial steps of the RDER were seen as an opportunity to undertake information gathering from stakeholders about views on DER issues and priorities. In October 2020, the new legislation was proclaimed (Legislative Assembly of Ontario, 2021) and the new leadership took the helm. A change to the legislation added an objective: "to facilitate innovation in the electricity sector" (OEB, 2021b).

b) Broad drivers for the engagement processes

Both engagement processes were proactively initiated without government direction. The DSI was launched in December 2018, "in order to understand the technology-induced changes confronting Alberta's electricity and natural gas distribution systems, and the potential regulatory implications" (Kolesar, 2019). Then-AUC Chair Mark Kolesar described a number of drivers:

- Shifts for utilities as a result of technological change and societal tastes and expectations;
- Effective management of change, which is central to the public interest mandate of the AUC, and
- Regulatory scrutiny and approvals for utilities and new entrants.

The RDER was launched in March 2019, "to develop a more comprehensive regulatory framework that facilitates investment and operation of DERs on the basis of value to consumers and supports effective DER integration so the benefits of sector evolution can be realized" (OEB, 2020c).

Interview participants highlighted a broad range of drivers to advance DERs in general, as well as for the DSI and RDER engagement initiatives in particular. Noted drivers related to regulators focused on their need to:

- improve understanding about the development and implementation of these technologies in order to get ahead of the curve;
- improve stakeholder engagement;
- manage capital investment and the implications for rate cases and utility rate applications;
- consider roles and responsibilities of distributors in the context of a potential future distributed energy market;
- create a tariff structure to incentivize the technologies while also addressing grid defection, and
- develop a regulatory framework that supports business, while also giving customers choice.

Interviewees also suggested drivers from the generation utilities' point of view, namely to:

- address concerns about stranded assets (which also applies to transmission and distribution facilities) where underused or overbuilt relative to eventual need, and
- attempt to maintain a robust regulated monopoly and revenue sources (with decreasing DER costs, smaller players are seen as "bleeding the system").

For distribution facility owners, interviewees stressed drivers to:

- develop a regulatory framework to manage risks and costs of technologies, and
- increase clarity and certainty about the role of distributors in enabling projects.

Interviewees mentioned a number of additional drivers propelling the engagement processes, including socio-economic drivers:

- The implications of distributed energy market decisions on ratepayers, including the socialized cost to ratepayers (allowing the costs to be spread widely among ratepayers) and related impacts;
- Customer choice, and
- Support for energy independence.

In terms of the environment, suggested drivers included climate change, greenhouse gas mitigation, and energy transition, along with identifying opportunities to support clean energy or increase conservation.

These drivers reflect the survey responses for the broad drivers of energy regulatory innovation overall (see Section 2). In particular, interviewees' emphasis on economic and market interests is consistent with the survey results for non-regulator respondents, who also identified this as most important. Further, survey respondents in Ontario pointed to the need for increased equity in decision-making outcomes as the fourth-most important driver for public engagement (of 11 options), a point of view that mirrors to some extent the socio-economic concerns for ratepayers noted above.

c) Regulators' engagement components

The text below provides a high-level summary of each process. A more detailed chronology appears in Appendix 3. Further details on the DSI and RDER stakeholder engagement are available on the respective web pages: AUC (2020), Proceeding 24166 on the eFiling portal, and OEB (2020c), Case number EB-2018-0288.

The DSI was announced in December 2018, with stakeholder engagement beginning in earnest in July 2019. Two aspects of the engagement process were new. This was the AUC's first self-initiated inquiry, and as a comprehensive fact-finding mission, the process did not follow the format of a formal hearing or contested proceeding. The DSI did not require legal formalities when stakeholders and staff presented to Commissioners.

Registered stakeholders were given an opportunity to comment on the proposed process and content for the first phase (Module One) and were asked to respond to AUC "information requests"[13] prior to the in-person kick-off meeting held in September 2019. The three-day meeting was held at Red Deer College, located midway between the major cities of Calgary and Edmonton. Module One was conceived with a focus on science and engineering, and the meeting addressed technological aspects of distributed systems. Stakeholders' supplemental submissions were due November 11, 2020, the date Module One was deemed complete.

The Commission decided to combine the anticipated Modules Two and Three into the "Combined Module" based on the parties' submissions in Module One, the Commission's learnings, and the overall objective to make proceedings more efficient, productive, and timely. The Combined Module included further information requests and stakeholder responses between November 2019 and June 2020. Topics were more relevant to economists and lawyers, including a discussion of business models and pricing.

A final one-day virtual meeting was held in June 2020. The format included four expert consultant presentations and the opportunity for questions from Commission members and staff. Stakeholders then had a final opportunity to submit concluding remarks with respect to the topics from the meeting and the inquiry as a whole by July 15, 2020. The final report was released on February 19, 2021.

In Ontario, the RDER was launched in March 2019, in conjunction with the Utility Remuneration consultation noted in Section 4.1(a) above ("Regulatory context"). The OEB published a letter outlining the approach to engagement in July 2019, followed by OEB consultant overview reports in August, regarding:

- approaches to utility remuneration and incentives, and
- the interconnections between data, services, and roles and responsibilities that create the value of DER to customers.

13. Information requests are a tool used by regulators to obtain particular information from a registered party.

A three-day kick-off meeting facilitated by a third party was held in September 2019 to hear overview presentations by approximately 25 stakeholders, with time for all present to participate in open discussions. All registered RDER participants, whether attending the meeting or not, then had an opportunity to submit written comments regarding the issues raised during the proceedings by October 22, 2019.

The OEB arranged a second stakeholder meeting in February 2020 to summarize input to date and to seek feedback to staff's proposed scope for the remainder of the consultation process. Stakeholders were invited to submit a written response to these discussions until April 30, 2020. The gap was longer because the timeline was extended twice due to COVID-19.

In September 2020, the OEB announced two expert studies to confirm the scope and next steps of the RDER in 2021. The first, the COVID-19 Impact Study (OEB, 2020a), was released in December. The second, the DER Impact Study, which focused on the major drivers of DER adoption, including cost savings, environmental benefits, better reliability, greater independence, and government incentives, was released in January 2021 (OEB, 2021a).

A third stakeholder meeting took place in early February 2021, as part of the OEB's policy and planning work and to discuss next steps. This allowed participants involved in the Utility Remuneration and RDER consultations to discuss the two papers and to provide input for the near-term priority workstreams. Approximately half of the agenda was allotted to open discussion and providing feedback. Stakeholders were invited to submit any additional comments in writing by February 19, 2021.

The OEB adopted two elements from the Energy East pipeline public consultation, namely, the facilitated open kick-off session and providing feedback to participants regarding lessons learned. The consultation took a go-slow approach beginning in April 2020, in part because of the transitional context mentioned above, but also because of the pandemic.

In March 2021, the RDER and associated Utility Remuneration consultations were refocused as the *Framework for Energy Innovation: Distributed Resources and Utility Incentives* consultation (OEB, 2021b). Two workstreams were created to address priority issues: DER Usage and DER Integration.[14]

For both the DSI and the RDER, it is important to note the process for stakeholders to apply for participant funding and cost awards. In Alberta, eligibility is predetermined on the basis of Rule 022 (AUC, 2016) and successful applicants are reimbursed based on a rate schedule by expert category (e.g., legal, other consultant). In Ontario, awards are based on the particular OEB activity (e.g., event, reporting), with an approved rate and limit for the number of billable hours for each type of expert (e.g., legal, other consultant). Detailed funding provisions for both regulators are provided in Appendix 4.

14. These recent activities are not discussed further here given the time lapse between the stakeholder interviews and this announcement.

4.2 KEY FINDINGS: TRADE-OFFS IN BENEFITS AND BARRIERS OF INNOVATIVE ENGAGEMENT

Many participants complimented their respective regulator for investigating the issue of DERs. They did not report having been involved in the same type of engagement approach in other regulatory processes, and most participated in each available opportunity.

A key finding from the interviews relates to trade-offs between the benefits of and barriers to effective participation:

- The benefit of an open process raised concern about uncertainty and longer timelines;
- The benefit of taking a systems-based perspective raised concern about reduced clarity regarding the purpose of the process, and
- The benefit of involving diverse participants raised concern about their capacity and resources.

a) The open process raised concern about uncertainty and longer timelines

In general, interviewees suggested that the process components succeeded in changing the atmosphere usually experienced in regulators' public engagement processes. For example, the informal hearing in Alberta created a different set of dynamics compared to the sometimes adversarial nature of litigated hearings – the AUC's usual formal regulatory process that "can have a chilling effect on stakeholders' willingness to exchange ideas." Interviewees noted that participants were more candid in their comments, and the mix of engagement styles provided opportunities that might not have been possible with the use of a traditional hearing process.

Participants from both Alberta and Ontario shared a strong appreciation for the open exchange at their respective kick-off events. These meetings were described as a "healthy place to start" in providing a "foundation to understand different points of view." Participants could identify alignment and contradictions, described by one interviewee as being "given the opportunity to hear others, challenge one's own position, go back, respond, update, and possibly change a point of view." On the other hand, seasoned stakeholders in public engagement processes felt the Ontario format was not terribly innovative, further suggesting the approach is current "best practice." Moreover, one Ontario interviewee remarked that "overall, the open floor was a success for all participants to hear impacts and points of view, but at some point someone has to prioritize and turn to action."

Some interviewees suggested the need for flexibility and adaptation as the DSI and RDER unfolded due to the complexity of the topic, while others wanted clear steps and timelines and to see results more quickly. For smaller organizations, where engagement might come at a large cost to work on other priorities, uncertainty in steps and timelines had two negative effects:

- The organization could not easily plan for the next engagement opportunity, and
- Extended time lapses between the regulator's "asks" were followed by a much shorter and time-consuming deadline to respond.

Interviewees also suggested that the long timelines in both provinces were associated with lost opportunities for findings to be incorporated sooner into hearings-based regulatory decision-making that was proceeding in parallel to the DSI and RDER processes. They also emphasized a lack of coordination or clear linkage with other distributed energy-related regulatory processes and consultations. According to interviewees, this opened the potential for outcomes to run at cross-purposes.

With respect to staffing, the DSI had a dedicated team with a mandate to generate broad-based internal knowledge and expertise. However, one interviewee held the view that the DSI was a "poor process to get into technological detail . . . and that it was an expensive way for [AUC] staff to gain baseline knowledge that could have been gleaned by reading reports about mature technologies." In Ontario, interviewees commented that the RDER provided staff with an opportunity to learn about both the technology and the OEB's potential role in innovation. This was viewed as a positive opportunity to address stakeholders' perception that OEB staff have an organizational bias toward "old school" regulatory models. Some interviewees noted a "positive shift in staff thinking regarding the place of the consumer in DER matters."

Also in Ontario, participants suggested a loss of momentum and transparency since the spring of 2020, and that the suspended RDER activity in fall 2020 (while the OEB ordered the two consultant reports noted in Section 4.1) began to erode the goodwill and confidence established at the outset. Indeed, OEB activities appeared to remain focused on non-technical input and advice on scope. Some interviewees specifically questioned the link between the COVID-19 study and the RDER and expressed concern that the OEB did not find a way for stakeholders to provide expert input into these initiatives. Discussion of process uncertainty continued at the most recent stakeholder meeting (see transcript, OEB, 2020c).

b) Taking a systems-based perspective raised concern about reduced clarity about the purpose of the process

Participants emphasized the benefit of the systems-based holistic DSI and RDER, described by one interviewee as "not being stuck in usual rate-making." Free-flowing information in both provinces helped the overall discussion and encouraged confidence and trust among the broad range of intervenors.

On the other hand, non-regulator interviewees in both jurisdictions repeatedly shared their concern that the lack of clarity regarding the purpose of the engagement was a barrier to effective participation. The broad perspective may not have provided enough direction or transparency in what the regulator wanted to achieve, thus resulting in some loss of focus.

The DSI and RDER systems perspective may also result in a trade-off in reporting. Being comprehensive may come at the expense of depth for any particular issue. Regulators need to decide whether wide-ranging input is material to the outcomes and whether reporting can attend to such a broad range of topics (see the DSI Final Report, AUC, 2021a).

Another suggestion made by numerous interviewees was that reporting needs to be inclusive as to what was heard and how input was incorporated (or not) into the proposed next steps. In general, interviewees questioned the potential of the engagement processes to result in a clear course of action in the final report.

c) Involving diverse participants raised concern about their capacity and resources

Interviewees represented a variety of stakeholders with a range of capacity and resources:

- Large utilities with a dedicated regulatory division or significant resources to hire expert consultants;
- New entrants interested in and affected by regulators' decisions regarding distributed energy, but inherently more focused on business development, and
- Environmental and other non-government organization representatives, including consumer groups, often dependent on external funding to support each activity.

While most interview participants worked in regulatory affairs or distributed energy as a core activity, a small number were new to the topic and described themselves as being on a steep learning curve with respect to the issues and sometimes the regulator's engagement process. With few exceptions, engagement was characterized as an enhanced activity at the participant's organization (rather than a new activity).

From the regulator's point of view, the AUC's backdrop of the *Red Tape Reduction Implementation Act* and the goal of process efficiency supported attempts to remove barriers to participation. Stakeholders with wide-ranging expertise and interests had an opportunity to interact, with approximately 90 participants registered on the DSI eFiling system by the end of the process (AUC, 2020). Red Deer College was chosen as a location that reduced travel and accommodation constraints as well as formality. In addition, an unintended benefit of the pandemic was the shift to a virtual format for the final session such that stakeholders could more easily attend the entire session.

For the OEB, the consultation format improved stakeholder engagement in terms of approach and representation, issues that had been the subject of recent criticism. Over 100 stakeholders engaged over the course of the RDER process.

Interviewees noted that all participants were given the same opportunity to present, comment, submit information, and feel heard, also recognizing that some participants are better resourced. Some interviewees indicated feeling disadvantaged in terms of their capacity to participate and the substance of their input – sometimes to the point of being unsustainable for smaller organizations. As an example, the comprehensive nature of the DSI resulted in a massive record of over 700 documents on the eFiling portal. Both regulator and non-regulator interviewees questioned the capacity of all stakeholders to keep up with the volume of information. One interviewee noted that inclusion of smaller and less familiar players seemed to slow the discussion from time to time, but added that this was not a significant concern.

Moreover, some interviewees noted the continued power dynamics based on the strength of some voices (such as the large utilities) compared to others (such as small non-government organizations). They also conveyed the idea that utility stakeholders have easier access to the regulator, compared with other interests, at any given point in time. While the question of regulatory independence in this study is focused on government-regulator interactions, this issue of access raises the topic of regulatory independence in terms of regulator-industry relations.

In terms of representation, interviewees identified two groups that did not participate: Indigenous groups in both provinces and consumers in Alberta who want or are able to participate in distributed energy. At the DSI, consumer groups were mostly concerned about risks and costs, while none were advocates for the opportunities of the technologies under study. A question therefore concerns the capacity of these missing groups to effectively participate. In addition, some interviewees identified the importance of policymaker representation at regulators' public engagement processes to ensure that those who provide the tools for decision-making are involved in the process.

Notwithstanding the above, an important element of the DSI and the RDER was the role of participant funding in enabling engagement activities. Interviewees suggested that funding made the process more informative and that without an award, some organizations would have produced either a very low-quality or short submission, or participation would not have occurred at all.

For others, funding levels were seen as a barrier to effective participation. Some interviewees noted that intervenor funding was not sufficient in either province. For example, Ontario's limits are per event or per hour of preparation for individual process components (see Appendix 4). Funding-dependent stakeholders are disadvantaged when compared with larger entities that have more resources for in-house or expert consultants. And some smaller industry stakeholders, being commercial entities, are ineligible for any funding award.

The timing of awarding funding contributions was also an issue. Here the concern centres on the financial risk and uncertainty for award eligibility and expense recovery even as work is already underway. The AUC attempted to remove this barrier by relaxing the rules for the Combined Module, a move that encouraged the use of external expert consultants.

4.3 KEY SUCCESS FACTORS

Aside from the benefits of and barriers to effective participation discussed as trade-offs above, interviewees also suggested key success factors for innovation in public engagement processes and outcomes (see Table 3).

We group the factors into four categories: regulator process, engagement content, participant representation, and reporting. Table 3 illustrates how attention to these elements is linked to realizing the benefits and addressing the concerns for each trade-off.

Section 5.3 proposes a series of questions regulators might ask themselves when they are assessing or contemplating innovative public engagement practices.

TABLE 3: SUCCESS FACTORS FOR INNOVATION IN PUBLIC ENGAGEMENT, WITH LINKS TO BENEFITS AND CONCERNS

Success factors	Trade-off 1		Trade-off 2		Trade-off 3	
	Benefit: Open-process	Concern: Uncertainty and timeline	Benefit: Systems-based perspective	Concern: Clarity about purpose	Benefit: Diversity in participation	Concern: Equity in capacity and resources
Regulator's process						
Provide a vision and an objective for the engagement				√		
Provide a process roadmap, schedule, and timelines in advance, albeit with some flexibility		√				
Coordinate with other public authorities engaged in the same issue			√		√	√
Use a third-party facilitator, with expertise in the process more so than the content	√					
Let stakeholders speak and hear each other directly	√				√	√
Leverage stakeholder expertise and connections to broaden reach			√		√	
Include opportunities for stakeholder consensus building	√		√		√	√
Complete process evaluation	√	√	√	√	√	√
Engagement content						
Start with the viewpoint of the customer or consumer	√			√	√	√
Link engagement with what is evolving in other processes	√	√	√	√		
Provide opportunities to talk about benefits, not just risks and costs	√		√		√	
Encourage openness and transparency	√			√	√	√
Participant representation						
Ensure stakeholder inclusivity and diversity	√		√		√	√
Include utilities, customers, non-government organizations, and Indigenous groups					√	√
Include associated policymaking authority			√	√	√	
Provide adequate funding, including a goal to support organizational capacity		√			√	√
Reporting						
Identify areas with more or less agreement	√		√			
Demonstrate how information is used or not in reaching conclusions	√		√	√		
Provide clarity, with agenda and timelines for next steps		√	√	√	√	√

5. WHAT WORKS? QUESTIONS REGULATORS MIGHT ASK THEMSELVES WHEN CONTEMPLATING AN INNOVATION

Identifying and scaling up successful innovations in Canadian energy regulatory decision-making contribute to two overarching objectives that are crucial to strengthening public confidence in energy decision-making (Cleland and Gattinger, 2017, 2018):

- To achieve informed reform of Canada's energy system;
- To support a durable balance in energy decision-making outcomes.

Positive Energy's research and engagement have identified six key principles that support informed reform. Section 5.1 provides a brief summary of each principle and how initiating informed reform will help achieve durable balance in decision-making.

Sections 5.2 and 5.3 propose sets of questions that regulators might ask themselves to inform the extent to which activities are incorporating key success factors for policymaker-regulator interactions and for public engagement. The sections also make the link to the principles of informed reform and durable balance.

5.1 OVERVIEW OF PRINCIPLES OF INFORMED REFORM AND DURABLE BALANCE

Start with a systems perspective

The first principle of informed reform underscores that innovation in energy decision-making should start from a systems perspective. Energy sector machinery begins with energy policy at one end of the continuum, moving through regulatory decision-making, and ending with the operation of energy production and delivery systems.

The division of responsibilities and authorities between different parts of the system is "forever a work in progress and a balancing act that should be made transparently" (Bird, 2018). Efforts to reform one part of the system must be undertaken with the broader system in mind, including relationships between policy, regulation, planning, and the physical and market energy systems. This includes recognizing and incorporating the authorities, roles, and responsibilities of Indigenous governments, as well as other multifaceted interests and connections.

Be clear about policy objectives

The second principle of informed reform is to be clear about policy objectives. Wide-ranging policy objectives affect the energy system, including a goal to limit health and environmental impacts; dimensions of energy security, such as safety, availability, and affordability; and decision-making costs and timeliness, including effects on economic competitiveness and innovation.

Policymakers need to be clear about their objectives such that regulator outreach and decision-making do not take place in a vacuum (potentially requiring consultation processes to be repeated) and can be reasonably accomplished. For example, environmental and facilities assessment or rate-making hearings are not an appropriate venue for analysis and discussion of broader policy objectives such as low-carbon transition.

Context of physical energy and energy market systems

The policy-regulatory framework within a jurisdiction sits within the broader context of the physical energy and energy market systems. This principle of informed reform therefore addresses the need for consistency in support of efficient and competitive decision-making, including considering timelines for policy and regulatory development and project approvals, and any incentives or disincentives for investment and innovation.

Communication and exchange

The fourth and fifth principles of informed reform consider communication and exchange: *to address the overarching context of social and value change*, including social media communications, and *to define relevant publics*. The context of social and value change indeed ranked as the most important driver in our stakeholder survey (see Section 2). Every reform needs to look to these forces and how an innovation will unfold in an evolving context.

In policymaker-regulator interactions, the goal of communication and exchange is to identify, appropriately use, and, where necessary, expand activities in order to produce mutually beneficial and improved outcomes – both between public authorities and with common stakeholder groups. Operationally, this may include formal agreements, as discussed in Section 3, or informal exchange and collaboration, annual reporting, and ad hoc policymaker requests for advice and analysis. In all approaches, a regulator might ask whether staff know the mechanisms for communication and exchange, as well as their roles and responsibilities.

The principle of defining relevant publics is more relevant to regulators' public engagement processes. Public confidence in decision-making is essential, with a growing list of interested stakeholders engaged in public policy and regulatory choices, as described in Section 4. If a policymaker or regulator completes a process in the absence of their counterpart, this could result in unanticipated gaps or unresolved issues when revised policy or rules are implemented. One interviewee suggested that "the policy arm doesn't always understand the real implications of on-the-ground implementation," especially from a regulator's perspective.

Collaboration and cooperation

The sixth principle of informed reform is collaboration and cooperation, of equal importance to regulators and their stakeholders. Examples include mechanisms for cooperative policy and regulatory development, as well as project management and monitoring, all with an eye to collaborative decision-making where possible. Developing the institutional capacity of stakeholders would also benefit analysis that feeds into decision-making processes. This is because non-government stakeholders who work day-to-day in the energy system have unique and important knowledge that should be incorporated into regulatory thinking on an ongoing basis.

Two further issues relevant to the principle of collaboration and cooperation include a concerted effort by regulators to improve transparency and, where innovation in energy regulatory decision-making has been tried, to evaluate progress from all stakeholders' perspectives.

Adequate, reliable, accessible, and trusted information

Finally, Positive Energy highlights the critical role of adequate, reliable, accessible, and trusted information, a principle that lies at the heart of all reforms. While information gathering is an important precursor to innovation in energy regulatory decision-making, a key objective is transparency in dissemination among government and non-government stakeholders alike. Relevant information, flowing in all directions, extends beyond energy to include environmental, Indigenous, and socioeconomic issues.

Achieving durable balance

An energy system must be able to strike a workable balance between multiple imperatives that stands the test of time. Specifically, it needs to strike a durable balance between competing priorities and tensions, notably:

- demands of communities for engagement, involvement, transparency, and representation;
- requirements of investors for stability, timeliness, and predictability in decision-making processes and outcomes;
- the need to attend to the environmental impacts of energy production, distribution and consumption, including but not limited to climate change, and
- demands of consumers for safe, affordable, and reliable energy.

The case studies demonstrate two examples of how benefits and barriers might be experienced. Decisions about innovating policymaker-regulator interactions and regulator public engagement procedures inevitably require trade-offs. For example, efforts to increase policymaker-regulator interactions may be viewed as affecting regulatory independence, although this did not arise as a concern in the case study. Alternatively, extensive public engagement may satisfy communities' requests for involvement but not meet investor and other stakeholder expectations about timeliness.

We further suggest that regulators' attention to the principles of informed reform will support durable balance in decision-making outcomes. Innovations have the potential to be more durable with a commitment to informed reform when planning, implementing, or evaluating them. This in turn will encourage governments to stand behind the energy system and to be seen as having confidence in the system.

5.2 QUESTIONS REGULATORS MIGHT ASK THEMSELVES TO PROMOTE SUCCESS

Tables 4 and 5, offered as a tool, provide a series of questions regulators could use to inform discussions and decision-making for planned or existing innovations in our two case study areas. The questions are based on the factors of success identified in Sections 3.3 and 4.3, with an eye to the principles of informed reform in energy regulator decision-making.

The questions are not exhaustive. Myriad scholars and practitioners focus their work solely on goals, best practices, and criteria for success in the two issue areas. Bird (2018) provides a summary of criteria related to policymaker-regulator interactions, including the work of the Organisation for Economic Co-operation and Development (OECD) with respect to governance and accountability. For public engagement, our questions delve into recommendations similar to those proposed in Positive Energy research and engagement by Simard (2018), the public engagement toolkit from the Simon Fraser University Centre for Dialogue (2019), and public participation best practices promoted by IAP2 Canada (2021). Most recently, the National Association of Regulatory Utility Commissioners' (2021) stakeholder engagement decision-making framework includes key questions that may be asked to evaluate an energy regulator's scope, approach, meeting format, timelines, engagement outcomes, and follow-up. Some of those questions are similar to the ones proposed here.

a) What works in policymaker-regulator interactions?

Regulators could ask themselves these questions when beginning to think about initiating a formal agreement or a mode of communication, or during an evaluation of an existing arrangement. As noted in the case study (Section 3), interview participants indicated most agreements include a yearly review process. As these evaluations unfold, representatives could use the questions to pivot or give emphasis to the principles of informed reform.

Section 3.3 identified success factors in policymaker-regulator interactions. Table 4 now presents questions pertinent to internal operations and the parties working together. The relevant principle of informed reform is also indicated.

b) What works in regulator public engagement?

Table 5 proposes a series of questions regulators might ask themselves when planning, implementing, or evaluating a public engagement process. The OEB's third-party facilitator has completed a report including stakeholder feedback (OEB, 2020c), and both the OEB and the AUC have indicated that an evaluation will be completed post-DSI and post-RDER reporting.

The questions below relate to the four themes of success (see Section 4.3): the regulator's process; engagement content; stakeholder participation; and reporting. Each question is again linked to the principle of informed reform introduced in Section 5.1

TABLE 4: QUESTIONS REGULATORS MIGHT ASK THEMSELVES TO PROMOTE SUCCESS IN FORMAL AGREEMENTS

a) Questions pertinent to success factors of internal operations	Principle of Informed Reform
1. Role of senior executive in signalling commitment To realize benefits: Demonstrated commitment and understanding To address barriers: Leadership; Priorities, capacity, resources	
Do we have a formal policymaker-regulator agreement as a signal of our commitment to work together? • If not, are we paying (adequate) attention to the policymaker-regulator relationship? • If not, to what extent might implementation of a formal agreement address challenges to the relationship?	Systems perspective
Are there changes or additions to the current formal agreement that we want considered?	
Under the formal agreement, should we move further along the interaction "continuum"? For example, from information sharing and coordination to substantive policy issues?	Policy clarity
Do we have a good relationship with our policymaking authority?	Collaboration and cooperation
What are the process and timeline to evaluate and renew a formal agreement?	
Do we have an internal policy for openness and transparency? • If yes, when was the policy last reviewed or renewed?	Strength of information
2. Prior experience and longevity of staff To realize benefits: Demonstrated commitment; Mutual assistance and support To address barriers: Leadership	
Is the policymaker informed enough or demonstrating high enough priority to move forward on a policy issue?	Policy clarity
In planning innovations, do we draw on staff experience and longevity within the organization, yet acknowledge and address the potential for bias?	Communication and exchange

3. Participation and buy-in of all internal departments To realize benefits: Demonstrated commitment and understanding; Mutual assistance and support; Improved communication To address barriers: Leadership	
Is there clarity and understanding in a formal agreement for what is important to each internal department and what is "nice to have"?	Systems perspective
Do we support participation and buy-in of all internal departments? • If so, how?	Collaboration and cooperation
4. Effort to uphold schedule and commitment To realize benefits: Demonstrated commitment and understanding; Improved communication To address barriers: Leadership; Priorities, capacity and resources	
Do all staff know the mechanisms for communication and exchange with the policymaker(s), as well as their roles and responsibilities in these interactions?	Communication and exchange
Do we adhere to schedules and commitments?	Collaboration and cooperation
5. Funding and resources To realize benefits: Demonstrated commitment and understanding To address barriers: Leadership; Priorities, capacity, and resources	
What will be the impact of leadership and/or government change?	Policy clarity
Does funding/resources/capacity limit participation? • What can be done?	Collaboration and cooperation

TABLE 4 (CONTINUED)

b) Questions pertinent to success factors for policymakers and regulators working together	Principle of Informed Reform
1. Mutually signal importance and commitment to work together To realize benefits: Demonstrated commitment and understanding; Mutual assistance and support; Stakeholder interests To address barriers: Leadership; Priorities, capacity, resources	
Is there provision in the legislative framework for policymaker-regulator interactions? • Is there a perceived or real concern for regulatory independence?	Systems perspective
Do we have a formal policymaker-regulator agreement as a signal of our commitment to work together? • If not, are we paying (adequate) attention to the policymaker-regulator relationship? • If not, to what extent might implementation of a formal agreement address challenges to the relationship?	
Does the leadership culture support increased collaboration and cooperation within legislative mandates?	Collaboration and cooperation
2. Agreed intention and goal setting To realize benefits: Demonstrated commitment; Mutual assistance and support; Improved communication; Stakeholder interests To address barriers: Leadership; Priorities, capacity, and resources	
Is there provision in the legislative framework for interactions with additional ministries/departments in support of mutually desirable outcomes?	Systems perspective
Are interactions focused on project proposals, relationship building, or both?	
Are there changes or additions to the current formal agreement that we want considered?	
Under the formal agreement, should we move further along the interaction "continuum"? For example, from information sharing and coordination to substantive policy issues?	Policy clarity
Do we consider the social and values context during interactions?	Social and values context
Is there agreement about the intention of the interaction and goal setting?	Collaboration and cooperation
Do we encourage a good mix of interaction and engagement opportunities?	
Do we consider what has been tried and what has worked (or hasn't worked) in other jurisdictions?	Strength of information

3. Clarity and understanding of priorities To realize benefits: Demonstrated commitment and understanding; Mutual assistance and support; Stakeholder interests To address barriers: Leadership	
Is there clarity and understanding in a formal agreement over what is important to each agency and what is "nice to have"?	Systems perspective
Do we know/what is the long-term policy objective for the energy market system? • Do policymaker-regulator discussions include this objective?	Policy clarity
Is the policymaker informed enough or demonstrating high enough priority to move forward on a policy issue?	
4. Demonstrated flexibility and respect for informed opinion To realize benefits: Demonstrated commitment and understanding; Mutual assistance and support To address barriers: Leadership	
Do our two organizations engage with similar stakeholder groups such that a common approach might support or improve relations?	Define publics
In planning innovations, do we draw on staff experience and longevity within our organizations, yet acknowledge and address the potential for bias?	Communication and exchange
Is there flexibility and respect for informed opinion sharing during policymaker-regulator discussions?	Collaboration and cooperation
5. Clear roles and responsibilities/leads/contacts To realize benefits: Demonstrated commitment and understanding; Mutual assistance and support; Improved communication; Stakeholder interests To address barriers: Leadership; Priorities, capacity, and resources	
Is there clarity and certainty in the legislative framework regarding roles and responsibilities of the regulator and the associated policymaking authority?	Systems perspective
What will be the impact of leadership change and/or a change in government?	Policy clarity
Do all staff know the mechanisms for communication and exchange with the policymaker(s), as well as their roles and responsibilities in these interactions?	Communication and exchange

TABLE 5: QUESTIONS REGULATORS MIGHT ASK THEMSELVES TO PROMOTE SUCCESS IN PUBLIC ENGAGEMENT

a) Questions pertinent to key success factors for the regulator's process	Principle of Informed Reform
1. Provide a vision and an objective for the engagement To address concern: Clarity for purpose	
What is the (policy-related) purpose of the engagement process? • Is this clear to stakeholders?	Policy clarity
Are the objectives for the engagement known to stakeholders?	Social and values context
In planning innovations, do we draw on staff experience and longevity within the organization, yet acknowledge and address the potential for bias?	Communication and exchange
2. Provide a process roadmap, schedule, and timelines in advance, albeit with some flexibility To address concern: Uncertainty and timeline	
Are we providing stakeholders with clear steps and reasonable timelines, including a process roadmap?	Collaboration and cooperation
3. Coordinate with other public authorities engaged in the same issue To realize benefits: Systems-based perspective; Diversity in participation To address concern: Clarity of purpose; Equity in capacity and resources	
Can concurrent processes (sometimes undertaken by multiple public authorities) be better aligned to complement rather than conflict?	Systems perspective
Can we increase coordination and linkages between applications or consultation processes among public authorities?	Collaboration and cooperation
4. Use a third-party facilitator, with expertise in the process more so than the content To realize benefit: Open process	
Do we include an open workshop to kick off the engagement process? • If yes, is it facilitated by a third party?	Collaboration and cooperation

5. Let stakeholders speak and hear each other directly To realize benefits: Open process; Diversity in participation To address concern: Equity in capacity and resources	
Does the legislative framework prescribe the approach to regulator public engagement, or are there additional options to investigate?	Systems perspective
Do we encourage a good mix of interaction and engagement opportunities?	Collaboration and cooperation
6. Leverage stakeholder expertise and connections to broaden reach To realize benefits: Open process; Systems-based perspective; Diversity in participation	
Do we leverage stakeholder expertise and connections when undertaking studies? • For example, outreach through regional networks	Collaboration and cooperation
7. Include opportunities for stakeholder consensus-building To realize benefits: Open process; Systems-based perspective; Diversity in participation To address concern: Equity in capacity and resources	
Do we include an opportunity for consensus building during the engagement process?	Social and values context
8. Complete process evaluation To realize all benefits: Open process; Systems-based perspective; Diversity in participation To address all concerns: Uncertainty and timeline; Clarity of purpose; Equity in capacity and resources	
Do we consider what has been tried and what has worked (or hasn't worked) in other jurisdictions?	Strength of information
Do we evaluate the engagement process?	

TABLE 5 (CONTINUED)

b) Questions pertinent to key success factors for regulator engagement content	Principle of Informed Reform
1. Start with the viewpoint of the customer or consumer To realize benefits: Open process; Diversity in participation To address concerns: Clarity of purpose; Equity in capacity and resources	
Are we customer and consumer focused?	Define publics
2. Link engagement with what is evolving in other processes To realize benefits: Open process; Systems-based perspective; Diversity in participation To address concerns: Uncertainty and timeline; Clarity of purpose	
Can concurrent processes (sometimes undertaken by multiple public authorities) be better aligned to complement each other rather than conflict?	Systems perspective
Do we know/what is the long-term policy objective for the energy market system?	Policy clarity
3. Provide opportunities to talk about benefits, not just risks and costs To realize benefits: Open process; Systems-based perspective; Diversity in participation To address concerns: Clarity of purpose; Equity in capacity and resources	
Do we consider the social and values context during interactions?	Social and values context
Are benefits of a technological innovation discussed as much as risks and costs?	
4. Encourage openness and transparency To realize benefits: Open process; Systems-based perspective; Diversity in participation To address concerns: Clarity of purpose; Equity in capacity and resources	
Do we have an internal policy for openness and transparency? • If yes, when was the policy last reviewed or renewed?	Strength of information
During an engagement process, do we provide a common data set to stakeholders for their analysis?	

TABLE 5 (CONTINUED)

c) Questions pertinent to key success factors for participant representation	Principle of Informed Reform
1. Ensure stakeholder inclusivity and diversity To realize benefits: Open process; Systems-based perspective; Diversity in participation To address concerns: Equity in capacity and resources	
Do we have the best cross-section/diversity/inclusion of stakeholders possible?	Define publics
Are we attempting to level the playing field among engaged stakeholders?	Collaboration and cooperation
2. Include utilities, customers, non-government organizations, and Indigenous groups To realize benefits: Diversity in participation To address concerns: Equity in capacity and resources	
Are Indigenous groups invited and involved?	Define publics
3. Include associated policymaking authority To realize benefits: Systems-based perspective; Diversity in participation To address concerns: Clarity of purpose	
Are policymakers invited and involved?	Define publics
Is the policymaker informed enough or demonstrating high enough priority to move forward on a policy issue?	Policy clarity
What will be the impact of leadership change and/or a change in government?	
4. Provide adequate funding, including a goal to support organizational capacity To realize benefits: Diversity in participation To address concerns: Uncertainty and timelines; Equity in capacity and resources	
Does funding/resources/capacity limit participation? • What can be done?	Collaboration and cooperation
When did we last review the participant funding program? Does it need to be renewed?	
What approach might improve support (and therefore input) of stakeholders? • How can we support organizational capacity?	

TABLE 5 (CONTINUED)

d) Questions pertinent to key success factors for reporting	Principle of Informed Reform
1. Identify areas with more or less agreement To realize benefits: Open process; Systems-based perspective	
Do we identify areas with more or less agreement?	Strength of information
2. Demonstrate how information is used or not in reaching conclusions To realize benefits: Open process; Systems-based perspective To address concerns: Clarity of purpose	
Does reporting include "what was heard" and how participants' input is being addressed (or not)?	Strength of information
3. Provide clarity, with agenda and timelines for next steps To realize benefits: Systems-based perspective; Diversity in participation To address concerns: Uncertainty and timelines; Clarity of purpose; Equity in capacity and resources	
Do we provide an agenda and timelines for next steps?	Strength of information

6. CONCLUDING THOUGHTS AND NEXT STEPS

Identifying and scaling up successful innovations in energy regulatory decision-making need to follow a careful, deliberate, systems-based path forward. This research analyzed two case studies exploring benefits, barriers, trade-offs, and success factors for innovation in formal policymaker-regulator interactions (Section 3) and regulator public engagement (Section 4). We proposed a series of questions as a tool regulators could use when planning or assessing innovations in these issue areas (Section 5), or possibly others in related areas.

We complete the report with a few concluding thoughts and suggested next steps.

The dual purpose of our stakeholder survey was to gain a broad understanding of drivers of innovation in energy regulatory decision-making and to identify potential case study topics. In-depth interviews then focused on what is working in addressing important drivers: evolving social and environmental goals and values, the need to clarify the role of regulators in unresolved policy issues, and the need for operational and decision-making efficiency.

Regular review of existing policymaker-regulator agreements appears to be beneficial in terms of both process and content as senior staff and elected officials change. An agreement's provisions may be confirmed or enhanced, thereby remaining relevant and effective in an evolving context. In times of political or policy change, having an agreement signed off at a senior level may provide some additional stability for the regulator. Moreover, while the parties to the agreements included in this study had a pre-existing positive working relationship, initiating a formal agreement may be particularly important where the relationship is not as strong. The discussions and negotiation during the development of an agreement might very well improve trust in the process. While such activities take time, case study findings strongly suggest it is time well spent.

With respect to the case study focused on innovative mechanisms for regulators' public engagement processes, findings are a little more nuanced. Rather than finding clear benefits and barriers, the research identified trade-offs for the innovative approaches undertaken by the AUC and the OEB. Interviewees were generally positive about the engagement components, beginning with the proactive and less formal processes, but there was some ongoing concern about:

- reduced clarity over goals and outcomes;
- having a flexible and adaptable process while adhering to reasonable steps and timelines that could provide results more quickly, and
- the capacity of the regulator and stakeholders to keep up with the volume of information associated with an open and more inclusive process.

We also offer thoughts related to the purpose of formal agreements or public engagement processes. Is the purpose to define long-term policy objectives? Is it to determine next steps for the regulatory framework and regulatory agenda? Or is it limited to information sharing? These three activities span a variety of principles of informed reform and durable balance in energy regulatory decision-making. The use of formal agreements and explicit inclusion of policymakers in regulators' public engagement processes could nurture discussions that enable regulators and policymakers to work in concert to address evolving social and environmental goals and values. And this could be done in a way that is concurrent with regulators' needs for operational and decision-making efficiency.

Moreover, in public engagement, we concur with interviewees who underlined the importance of policymaker representation in regulators' processes for at least two reasons: policymakers create the tools through legislation and regulation that regulators use in decision-making, and stakeholders are heard firsthand, possibly averting a prolonged second consultation should the policymaker decide that a new or revised regulatory approach would be in the public interest. Moreover, this is a two-way street. If the policymaker or regulator completes a process in the absence of the other, this could result in unanticipated gaps or unresolved challenges when revised policy or rules are implemented.

Finally, the research question related to the use of formal agreements in strengthening policymaker-regulator interactions included the notion of doing so while "maintaining regulatory independence." Those involved in the agreements examined here did not raise regulatory independence as an issue of concern during the development or implementation of the agreements. Perhaps it is the public more generally that might perceive a problem. The benefits focus mostly on relationship building rather than a specific project-based decision-making process where the public may insist on expert-based regulators operating independently under the rules of the day. Here, findings suggest that the NEB's participation in MPMAs, an example of a Cabinet (policy) Directive for "line" government departments, also guided the interactions of the arm's-length regulator to complete its task without compromising its independence.

6.1 REGULATOR AND RESEARCH OPPORTUNITIES

These research findings support CAMPUT members and other regulators through improved understanding of shared challenges and opportunities. Future investigations, whether by regulators, academics, or in collaboration, could include the following topics.

Inquiries made with numerous Canadian regulators did not identify many instances of program or project evaluation. One exception is regular AUC stakeholder feedback following a pre-hearing information session and the use of post-hearing surveys. The set of questions proposed in this study could be integrated into new and existing evaluation processes. Research could identify criteria or performance metrics for measuring progress in innovation linked to informed reform and durable balance, including impacts on process efficiency and effectiveness of decision-making outcomes.

For example, the regulator public engagement case study identified a gap in participation by some stakeholders, notably Indigenous groups. Further research could delve into the reasons for this and identify potential solutions. Additionally, mechanisms to incorporate non-government stakeholders working in the energy system on a more regular basis could be investigated.

Regulators could also include progress toward informed reform and durable balance in strategic plans, results frameworks, performance standards and annual reports, including, as examples, those of the Canada Energy Regulator (2021a, 2021b), the Nova Scotia Utilities and Review Board (2021), or the AUC (2015, 2019).

Finally, while this research focused on intra-jurisdictional agreements and single-jurisdiction engagement processes, future research could examine the benefits, barriers, and success factors for formal agreements or public engagement that occurs between regulators in two or more jurisdictions.

REFERENCES

AESO (2020) 'AESO Distributed Energy Resources Roadmap'. Retrieved 21 December 2020, from https://aeso.ca/assets/Uploads/DER-Roadmap-2020-FINAL.pdf

AUC (2015) 'Bulletin 2015-09 Performance Standards for Processing Rate-Related Applications'. Retrieved 20 January 2021, from https://www.auc.ab.ca/News/2015/Bulletin%202015-09.pdf

AUC (2016) 'Rule 022: Rules on Costs in Utility Rate Proceedings'. Retrieved 25 January 2021, from https://www.auc.ab.ca/Shared%20Documents/rules/Rule022.pdf

AUC (2017) 'Distributed Generation Review, Proceeding 22534'. Retrieved 21 December 2020, from https://www.auc.ab.ca/regulatory_documents/Pages/Distributed-generation-review.aspx

AUC (2019) 'Bulletin 2019-15_New Performance Standards for Processing Facility Applications'. Retrieved 20 January 2021, from https://www.auc.ab.ca/News/2019/Bulletin%202019-15.pdf

AUC (2020) 'Alberta Utilities Commisssion eFiling System'. Retrieved, from https://www2.auc.ab.ca/Proceeding24116/SitePages/Home.aspx

AUC (2021a) 'Distribution System Inquiry Final Report'. Retrieved 11 March 2021, from https://www.auc.ab.ca/pages/distribution-system-inquiry.aspx

AUC (2021b) 'Who We Regulate'. Retrieved 27 January 2021, from https://www.auc.ab.ca/pages/who-we-regulate.aspx

Bird, S. (2018) 'The Policy-Regulatory Nexus in Canada's Energy Decision-Making: From Best Practices to Next Practices'. Ottawa: Positive Energy, University of Ottawa, Retrieved 18 March 2020, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/pe_the_policy_regulatory_nexus_in_canada_final.pdf

Black, J. and Baldwin, R. (2010) 'Really Responsive Risk-Based Regulation', Law & Policy, Vol. 32, No. 2, pp. 181-213. 10.1111/j.1467-9930.2010.00318.x

Canada Energy Regulator (2021a) '2019-20 Departmental Results Report'. Retrieved 20 January 2021, from https://www.cer-rec.gc.ca/en/about/publications-reports/departmental-results-reports/2019-2020/index.html

Canada Energy Regulator (2021b) '2020-21 Departmental Results Framework'. Retrieved 20 January 2021, from https://www.cer-rec.gc.ca/en/about/who-we-are-what-we-do/governance/departmental-results-framework/canada-energy-regulator-2020-21-departmental-results-framework.html#s4

Cleland, M. and Gattinger, M. (2017) 'System under Stress: Energy Decision-making in Canada and the Need for Informed Reform'. Ottawa: Positive Energy, University of Ottawa, Retrieved 2 July 2018, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/2_positive_energy-system_under_stress-cleland_and_gattinger.pdf

Cleland, M. and Gattinger, M. (2018) 'Durable Balance: Informed Reform of Energy Decision-Making in Canada, with Rafael Aguirre and Marisa Beck'. Ottawa: Positive Energy, University of Ottawa, Retrieved 19 January 2021, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/180418-db-report-final.pdf

Cleland, M., Thomson, I. T. D. and with Gattinger, M. (2020) 'Policymakers, Regulators and Courts - Who Decides What, When and How? The Evolution of Regulatory Independence '. Ottawa: Positive Energy, University of Ottawa, Retrieved 9 March 2021, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/policymakers_regulators_and_courts_-_who_decides_what_when_and_how_final.pdf

Government of Alberta (2018) 'Alberta's Climate Leadership Plan'. Retrieved 16 January 2021, from https://open.alberta.ca/publications/alberta-s-climate-leadership-plan-progressive-climate-policy

Government of Canada (2009) 'Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects'. Retrieved 3 December 2020, from https://www.ceaa.gc.ca/050/documents_staticpost/cearref_21799/83452/Vol1_-_Part03.pdf

Government of Canada (2012) 'Canadian Environmental Assessment Act, 2012 (S.C. 2012, c. 19, s. 52)'. Retrieved 13 January 2021, from https://laws-lois.justice.gc.ca/eng/acts/C-15.21/index.html

Government of Canada (2019a) 'Canadian Energy Regulator Act (S.C. 2019, c. 28, s. 10)'. Retrieved 13 January 2021, from https://laws-lois.justice.gc.ca/eng/acts/C-15.1/page-1.html#h-1161586

Government of Canada (2019b) 'Impact Assessment Act (S.C. 2019, c. 28, s. 1)'. Retrieved 13 January 2021, from https://laws-lois.justice.gc.ca/eng/acts/I-2.75/

Government of Canada (2019c) 'Memorandum of Understanding concerning Integrated Impact Assessments under the Impact Assessment Act Between the Impact Assessment Agency of Canada and the Canadian Energy Regulator (together, "the parties")'. Retrieved 12 January 2021, from https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations/memorandum-understanding-iaac-cer.html

Government of Canada (2020) 'Major Projects Management Office'. Retrieved 25 November 2020, from https://mpmo.gc.ca/home

IAP2 Canada (2021) 'IAP2 Canada Inspiring Better Decisions Together'. Retrieved 20 January 2021, from https://www.iap2canada.ca/

IESO (2020a) 'Distributed Energy Resources Survey'. Retrieved 21 December 2020, from https://ieso.ca/en/Sector-Participants/Engagement-Initiatives/Engagements/Distributed-Energy-Resources-Survey

IESO (2020b) 'Ontario's Power System'. Retrieved 26 November 2020, from https://www.ieso.ca/en/Learn/Ontario-Power-System/A-Smarter-Grid/Distributed-Energy-Resources

IESO (2020c) 'Renewable Distributed Generation Integration (RDGI) Fund'. Retrieved 21 December 2020, from https://ieso.ca/en/Sector-Participants/Engagement-Initiatives/Engagements/Renewable-Distributed-Generation-Integration-Fund

IESO (2020d) 'Standardized DER Test Cases'. Retrieved 21 December 2020, from https://www.ieso.ca/en/Get-Involved/Innovation/Projects

Kolesar, M. (2019) 'An interview with the Chair of the Alberta Utilities Commission (AUC)' Energy Regulation Quarterly. Retrieved 31 May 2021, from https://energyregulationquarterly.ca/interview-series/an-interview-with-the-chair-of-the-alberta-utilities-commission-auc#sthash.5f2OBSZm.dpbs

Larkin, P. (2020) 'What Works? Identifying and Scaling Up Successful Innovations in Canadian Energy Regulatory Decision-Making: Survey Results'. Ottawa: Positive Energy, University of Ottawa, Retrieved 25 May 2021, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/what_works_identifying_and_scaling_up_successful_innovations.pdf

Legislative Assembly of Ontario (2021) 'Bill 87: An Act to Amend Various Statutes Related to Energy' Minister of Energy Northern Development and Mines. Retrieved 11 March 2021, from https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2019/2019-05/b087ra_e.pdf

National Association of Regulatory Utility Commissioners (2021) 'Public Utility Commission Stakeholder Engagement: A Decision-Making Framework'. Retrieved 31 January 2021, from https://pubs.naruc.org/pub/7A519871-155D-0A36-3117-96A8D0ECB5DA

Nova Scotia Utility and Review Board (2021) 'Plans & Reports'. Retrieved 1 February 2021, from https://nsuarb.novascotia.ca/about/plans-reports

NRCan (2021) 'Major Projects Management Office Initiative (MPMOI)' Government of Canada Departmental Results Reports. Retrieved 12 January 2021, from https://www.nrcan.gc.ca/nrcan/transparency/reporting-accountability/plans-performance-reports/major-projects-management-office-initiative-mpmoi/21505

OEB (2016) 'Regulated Price Plan Roadmap: Guideline for Pilot Projects on RPP Pricing_EB-2016-0201'. Retrieved 21 December 2020, from https://www.oeb.ca/oeb/Documents/EB-2016-0201/RPP_Roadpmap_Guideline_Pilot_Projects.pdf

OEB (2019a) 'March 15, 2019, Letter to All Participants in EB-2018-0287 and EB-2018-0288; All Licensed Electricity Distributors, Natural Gas Distributors and Electricity Transmitters; and All Other Interested Stakeholders: Utility Remuneration and Responding to Distributed Energy Resources Consultation Initiation and Notice of Cost Awards Process'. Retrieved 25 January 2021, from https://www.oeb.ca/sites/default/files/OEB-Ltr-Remuneration-DER-20190315.pdf

OEB (2019b) 'Staff Report to the Board - Rate Design for Commercial and Industrial Electricity Customers'. Retrieved 21 December 2020, from https://www.oeb.ca/industry/policy-initiatives-and-consultations/rate-design-commercial-and-industrial-customers

OEB (2020a) 'December 16 2020, Letter to All Registered Stakeholders and All Other Interested Parties: Consultation on the Deferral Account – Impacts Arising from the COVID-19 Emergency (EB-2020-0133) Utility Remuneration and Responding to Distributed Energy Resources Integrated Consultations (EB-2018-0287 and EB-2018-0288)'. Retrieved 25 January 2021, from https://www.oeb.ca/sites/default/files/OEB_Ltr_COVID%20Reports_Deferral%20Account%20Staff%20Proposal_20201216.pdf

OEB (2020b) 'Distributed Energy Resources (DER) Connections Review'. Retrieved 21 December 2020, from https://www.oeb.ca/industry/policy-initiatives-and-consultations/distributed-energy-resources-der-connections-review

OEB (2020c) 'Responding to Distributed Energy Resources (DERs) - EB-2018-0288'. Retrieved 1 December 2020, from https://www.oeb.ca/industry/policy-initiatives-and-consultations/responding-distributed-energy-resources-ders

OEB (2020d) 'Utility Remuneration'. Retrieved 21 December 2020, from https://www.oeb.ca/industry/policy-initiatives-and-consultations/utility-remuneration

OEB (2021a) 'January 18 2021, Letter to All Registered Stakeholders and All Other Interested Parties: Sector Evolution Consultations Utility Remuneration (EB-2018-0287) and Responding to Distributed Energy Resources (EB-2018-0288)'. Retrieved 25 January 2021, from https://www.oeb.ca/sites/default/files/OEB-Ltr-Expert-Studies-Stakeholder-Mtg-Invite-20210118.pdf

OEB (2021b) 'March 23 2021, Letter to All Registered Stakeholders and All Other Interested Parties : Framework for Energy Innovation: Distributed Resources and Utility Incentives (EB-2021-0118)'. Retrieved 21 April 2021, from https://www.oeb.ca/sites/default/files/OEB-Ltr-FEI-Near-Term-Priorities-20210323.pdf

OECD (2014) 'OECD Best Practice Principles for Regulatory Policy: The Governance of Regulators'. Retrieved, from https://www-oecd-ilibrary-org.proxy.bib.uottawa.ca/governance/the-governance-of-regulators_9789264209015-en

Ontario Energy Board Modernization Review Panel (2018) 'Final Report, October 2018'. Retrieved 20 January 2021, from https://www.ontario.ca/document/ontario-energy-board-modernization-review-panel-final-report

QUEST and Pollution Probe (2020a) 'Enter the Sandbox - Developing Innovation Sandboxes for the Energy Sector'. Retrieved 26 November 2020, from https://questcanada.org/wp-content/uploads/2020/07/Innovation-Sandboxes-Report-1-EN.pdf

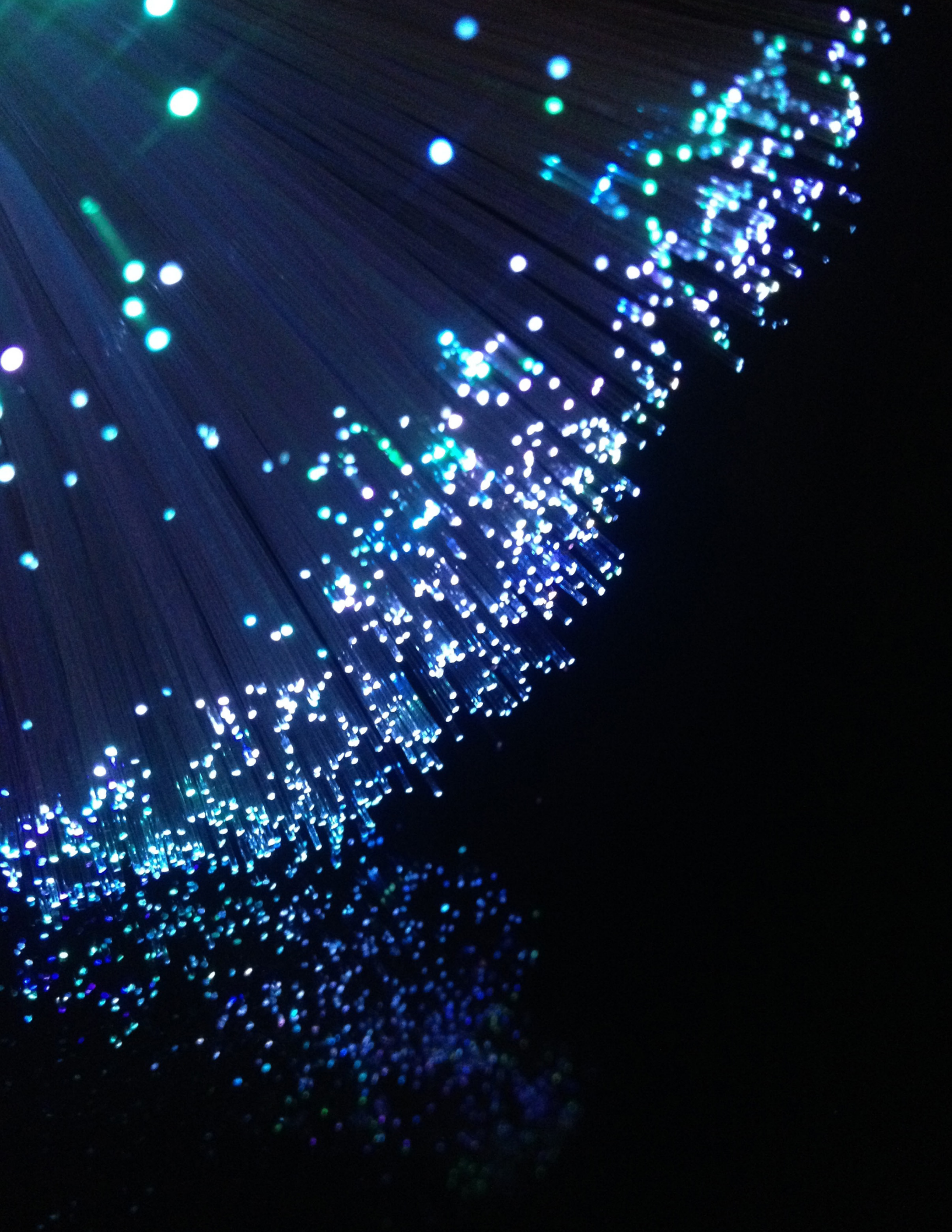
QUEST and Pollution Probe (2020b) 'Getting to Deployment - Bridging the Gaps in Energy Innovation in Canada'. Retrieved 26 November 2020, from https://questcanada.org/wp-content/uploads/2020/11/Innovation-Sandboxes-Report-2-EN.pdf

Simard, L. (2018) 'How to Decide? Engagement: Information and Capacity'. Ottawa: Positive Energy, University of Ottawa, Retrieved 18 March 2020, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/pe_louis_simard_final.pdf

Simon Fraser University Morris J. Wosk Centre for Dialogue (2019) 'Public Engagement Toolkit'. Retrieved 20 January 2021, from https://www.sfu.ca/dialogue.html

Thomson, I. T. D. (2020) 'A Literature Review on Regulatory Independence in Canada's Energy Systems: Origins, Rationale and Key Features'. Ottawa: Positive Energy, University of Ottawa, Retrieved 9 March 2021, from https://www.uottawa.ca/positive-energy/sites/www.uottawa.ca.positive-energy/files/a_literature_review_on_regulatory_independence_in_canadas_energy_systems_final.pdf

Winfield, M. and Gelfant, A. (2019) 'Distributed Energy Resource Development in Ontario: A Socio-Technical Transition in Progress', Energy Regulation Quarterly, Vol. 7, No. 4.



APPENDICES

APPENDIX 1 – FORMAL POLICYMAKER-REGULATOR INTERACTION CASE STUDY PARTICIPANT LIST AND INTERVIEW GUIDE

Participant list

- Jesse Fieldwebster, Manager, Nuclear Energy Lands Resources & Consultations, Métis Nation of Ontario
- Jim Fox, Vice President, Integrated Energy Information and Analysis, Canada Energy Regulator
- Paula Futoransky, Vice President, Energy Adjudication, Canada Energy Regulator
- Terence Hubbard, Vice-President, Operations Sector, Impact Assessment Agency of Canada
- Sébastien Labelle, Director General, Operations and Policy, Major Projects Management Office, NRCan
- Adam Levine, Team Lead, Indigenous Relations and Participant Funding, Canadian Nuclear Safety Commission
- May Mah-Paulson, Assistant Deputy Minister, Oil and Gas Division, BC Ministry of Energy, Mines, and Petroleum Resources
- Andrew Morgan, Executive Director, Regulatory Affairs and Corporate Strategy, BC Oil and Gas Commission
- JP Mousseau, Executive Director, Facilities, Alberta Utilities Commission

Interview guide

Part A: Background of the Participant

1. Please describe the nature of your involvement with the innovation.

2. What is your understanding about the driver for this innovation?
   i.e., what problem (or opportunity) is the innovation trying to solve (or capitalize upon)?

Part B: Development of the innovation

3. Based on your involvement, please describe the timeline for the innovation?
   a. Early discussion
   b. Decision to implement
   c. Start of implementation
   d. Expiration, if any

4. Would you characterize the initiative as:
   a. Early discussion?
   b. Decision to implement?
   c. Start of implementation?

Part C: Implementation – benefits, barriers, and success

5. In your experience, what do you see as the key benefits of the innovation for your organization?

6. What, if any, are key barriers or difficulties to effective implementation to date?

7. Have you noticed or experienced any trade-offs (intended consequences) or unintended impacts (benefits or negative impacts) from implementation of the innovation?

8. As you may recall, the title of our research project is "What works? Identifying and scaling-up successful innovations in Canadian energy regulatory decision-making."

   In terms of process:
   a. What do you suggest are key success factors for the planning of the [MOU/documented agreement]?
   b. What do you suggest are key success factors for implementing the [MOU/documented agreement], possibly compared with other formal mechanisms of interaction?

   In terms of outcomes:
   a. What do you suggest are key success factors for decision-making outcomes/results?
   b. What do you suggest are key success factors compared with informal interactions you have been involved in?

Part D: Replication and next steps

9. Is the innovation modelled after another [innovation]? Is there another management initiative using this approach?
   a. Own public authority?
   b. Other public authority? What jurisdiction/ policymaker/regulator?

10. Are there other issue areas you are involved with that use the same approach?
    a. If yes, title:

11. Are there plans or opportunities to further enhance this particular approach?
    a. If yes, are there plans to implement any of these enhancements?
    b. If yes, when?

12. Are you aware of an evaluation that may be undertaken for the innovation?
    a. Yes/no
    b. If yes, ask for any additional comments/ information

13. Open ended: Do you have any further advice for a regulator in another jurisdiction that may have a common interest in this approach?
    a. If yes, please expand

Part E: Documentation to support the case study

14. Could you please identify or provide internal discussion papers, guidance documents, and evaluations that may be available for review?

APPENDIX 2 – REGULATOR PUBLIC ENGAGEMENT CASE STUDY PARTICIPANT LIST AND INTERVIEW GUIDE

Participant list

- MaryAnne Aldred, Chief Operating Officer and General Counsel, Ontario Energy Board
- Colin Anderson, President, Association of Major Power Consumers in Ontario
- Vittoria Bellissimo, Executive Director, Industrial Power Consumers Association of Alberta
- Michael Brophy, Consultant to Pollution Probe
- Richard Carlson, Director, Energy Policy and Energy Exchange, Pollution Probe
- Richard Finn, Director, Regulatory and Corporate Strategy, FortisAlberta Inc.
- Erika Goddard, Director, Power Development, Lionstooth Energy
- Binnu Jeyakumar, Director, Clean Energy, Pembina Institute
- Geoff Lester, President and CEO, Lionstooth Energy
- Travis Lusney, Manager of Procurement and Power Systems, Power Advisory LLC
- Michael Pohlod, Director, Power Markets, Peak Power
- Raj Retnanandan, Principal Consultant, Energy Management and Regulatory Consulting, Consultant to Consumers' Coalition of Alberta
- Mark Rubenstein, Shepherd Rubenstein, Counsel to School Energy Coalition
- Teresa Sarkesian, President and CEO, Electricity Distributors Association
- Olexandr Vasetsky, Director, Technology and Innovation, Alberta Utilities Commission

Interview guide

Part A: Background of the Participant

1. What is your organization's interest in distributed energy resources?

2. Please describe the nature of your involvement with the OEB consultation/the AUC Inquiry.

3. What is your understanding of what is driving this innovative approach to consultation?
   i.e., what problem (or opportunity) is the process innovation trying to solve (or capitalize upon)?

Part B: Development of the innovation

4. Were you involved in the development of the consultation process components?
   e.g., input to the Innovation Committee or Modernization Panel, while not prescriptive ?
   a. Yes; go to #5
   b. Yes; go to #6

5. What parts of process development have you been engaged in? [Timeline?]:
   a. Early discussion
   b. Decision to implement
   c. Start of implementation
   d. Expiration, if any

6. Would you characterize the consultation process as:
   a. An "all-new" activity for your organization
   b. An existing activity in your organization with "modification/enhancement"
   c. In either case, does this consultation require additional capacity and/or resources to underpin your engagement?

Part C: Benefits, barriers, and criteria for success

As you may recall, the title of our research project is "What works? Identifying and scaling up successful innovations in Canadian energy regulatory decision-making."

7. Interviewer describes process to date. Does the interviewee agree?

8. In your experience, what do you see as the key benefits of the OEB/AUC engagement/ consultation as it is designed?

9. What are key barriers or difficulties with the engagement/consultation to date?

10. Have you noticed or experienced any trade-offs (intended consequences) or unintended consequences (benefits or negative impacts) from the OEB/AUC consultation process?

    Prompt:
    a. Are anticipated benefits aligned with the actual benefits?
    b. Unanticipated negative impacts to date?
    c. Potential reasons for these instances?

10. What do you suggest are key success factors for the consultation process (possibly compared with other formal/informal OEB/AUC processes you have been involved in)?

11. What do you see as success factors for decision-making outcomes/results for this consultation compared with other formal/informal OEB/AUC processes you have been involved in?

Part D: Next steps for OEB/AUC and replication

12. Are you aware of plans to further enhance the consultation approach/next steps?
    a. If yes, are there plans to implement any of these enhancements?
    b. If yes, when?

13. Are you aware of an evaluation that may be undertaken for the consultation process?
    a. Yes/no
    b. If yes, ask for any additional comments/ information
    c. If no, even at this stage, what suggestions/ opportunities can you offer for consideration for later stages/future processes?

14. Is there another OEB/AUC consultation you are involved with that is using the same approach?
    a. If yes, title:

15. Is the consultation approach modelled after another?
    a. If so, what jurisdiction/policymaker/ regulator?

16. Open ended: Do you have any further advice for a regulator in another jurisdiction that may have a common interest in this approach?

Part E: Documentation to support the case study

17. Could you please identify or provide internal discussion papers, guidance documents, and evaluations that may be available for review?

APPENDIX 3 – PUBLIC ENGAGEMENT CHRONOLOGY

a) Alberta Utilities Commission Distribution System Inquiry

Module One was deemed complete as of the filing of supplemental submissions on November 11, 2019.

Module One process steps	Date
Written submissions from parties on Module One	July 17, 2019
Information requests (IRs)	August 7, 2019
Responses to IRs	August 21, 2019
Technical conference at Red Deer College	September 10 to 12, 2019
Supplemental submissions	November 11, 2019

On November 12, 2019, as part of a broader initiative to make proceedings more efficient, productive and timely, the Commission combined Modules Two and Three, and renamed them the Combined Module. A process schedule was outlined for the Combined Module, which required adaptation in light of the COVID-19 pandemic. The significant process steps in the Combined Module appear below.

Combined Module process steps	Date
Commission preliminary IRs to all parties	November 29, 2019
Submissions for the Combined Module	March 13, 2020
Response submissions	May 13, 2020
Commission IRs to parties	June 3, 2020
Responses to Commission IRs	June 17, 2020
Virtual meeting held by webinar	June 24, 2020
Comments on virtual meeting topics and concluding remarks on the inquiry	July 15, 2020

The Combined Module was deemed complete, and, with it, the record of the inquiry closed on July 15, 2020.

Final Report	February 19, 2021

b) Ontario Energy Board Consultation Responding to Distributed Energy Resources and Utility Remuneration

Combined Module process steps	Date
Announcement	March 15, 2019
Letter outlining stakeholder engagement approach	July 17, 2019
Posted presentations prepared by staff consultants	August 28, 2019
Kick-off stakeholder meeting	September 17–19, 2019
Posted transcripts, comments, and presentations	September 17–October 22, 2019
Letter inviting additional written comments regarding objectives, problems, or issues to be addressed and guiding principles for the initiative	September 26, 2019
Posted facilitation report	October 9, 2019
Stakeholder meeting	February 20, 2019
Posted stakeholder comments following February meeting	April 9, 2020
OEB announcement of two expert studies	September 24, 2020
Posted series of reports related to COVID-19 pandemic	December 16, 2020
Posted DER Impact Study	January 18, 2021
Virtual stakeholder meeting to discuss reports and next steps	February 3, 2021
Posted stakeholder comments following February 3 meeting	February 19, 2021

APPENDIX 4 – COST AWARD PROVISIONS

a) Alberta Utilities Commission Awards (AUC, 2016)

AUC Rule 022 outlines the application process and requirements for cost recovery for participating in a rate proceeding. An intervenor who has a substantial interest in the subject matter of the proceeding and does not have the means to raise sufficient financial resources is eligible for costs. Costs are apportioned between Alberta generation, distribution, and transmission utilities.

The Commission is prepared to approve eligibility only for costs incremental to a participant's regular operations, such as hiring an external expert and/or travel for a participant (internal or external) to participate in the technical conference. As a general practice, the Commission does not award costs to a participant's salaried employees or internal experts. Accordingly, the Commission considers that only external technical experts will be eligible for cost recovery of their time, up to the scale of costs set out in Rule 022.

Professional fees are reimbursed based on an hourly rate cost scale.

b) Ontario Energy Board Cost Awards (OEB, 2019a)

Cost awards will be available under section 30 of the Ontario Energy Board Act, 1998 to eligible participants for their participation in one or both of the initiatives. Costs awarded for integrated consultation activities (e.g., stakeholder conferences addressing both initiatives) will be recovered as follows:

- 80% from all rate-regulated licensed electricity distributors
- 20% from all rate-regulated licensed transmitters

Costs awarded for activities specific to each initiative will be recovered as follows:

Utility Remuneration (EB-2018-0287)

- 70% from all rate-regulated licensed electricity distributors
- 30% from all rate-regulated licensed transmitters
- Responding to DERs (EB-2018-0288)
- 90% from all rate-regulated licensed electricity distributors
- 10% from all rate-regulated licensed transmitters

Costs will be apportioned based on the cost assessment model.

Activity Eligible for Cost Awards	Max Number Hrs
Preparation for, attendance at, and reporting of the stakeholder	Actual meeting time
Meeting (for eligible participants and/or their consultants)	+ 4 hours
Preparation of presentation for stakeholder meeting	6 hours
Responding to OEB staff report TBD	TBD

NOTES

POSITIVE ENERGY AT THE UNIVERSITY OF OTTAWA USES THE CONVENING POWER OF THE UNIVERSITY TO BRING TOGETHER ACADEMIC RESEARCHERS WITH EMERGING AND SENIOR DECISION-MAKERS FROM INDUSTRY, GOVERNMENT, INDIGENOUS COMMUNITIES, LOCAL COMMUNITIES AND ENVIRONMENTAL ORGANIZATIONS TO DETERMINE HOW TO STRENGTHEN PUBLIC CONFIDENCE IN ENERGY DECISION-MAKING.

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