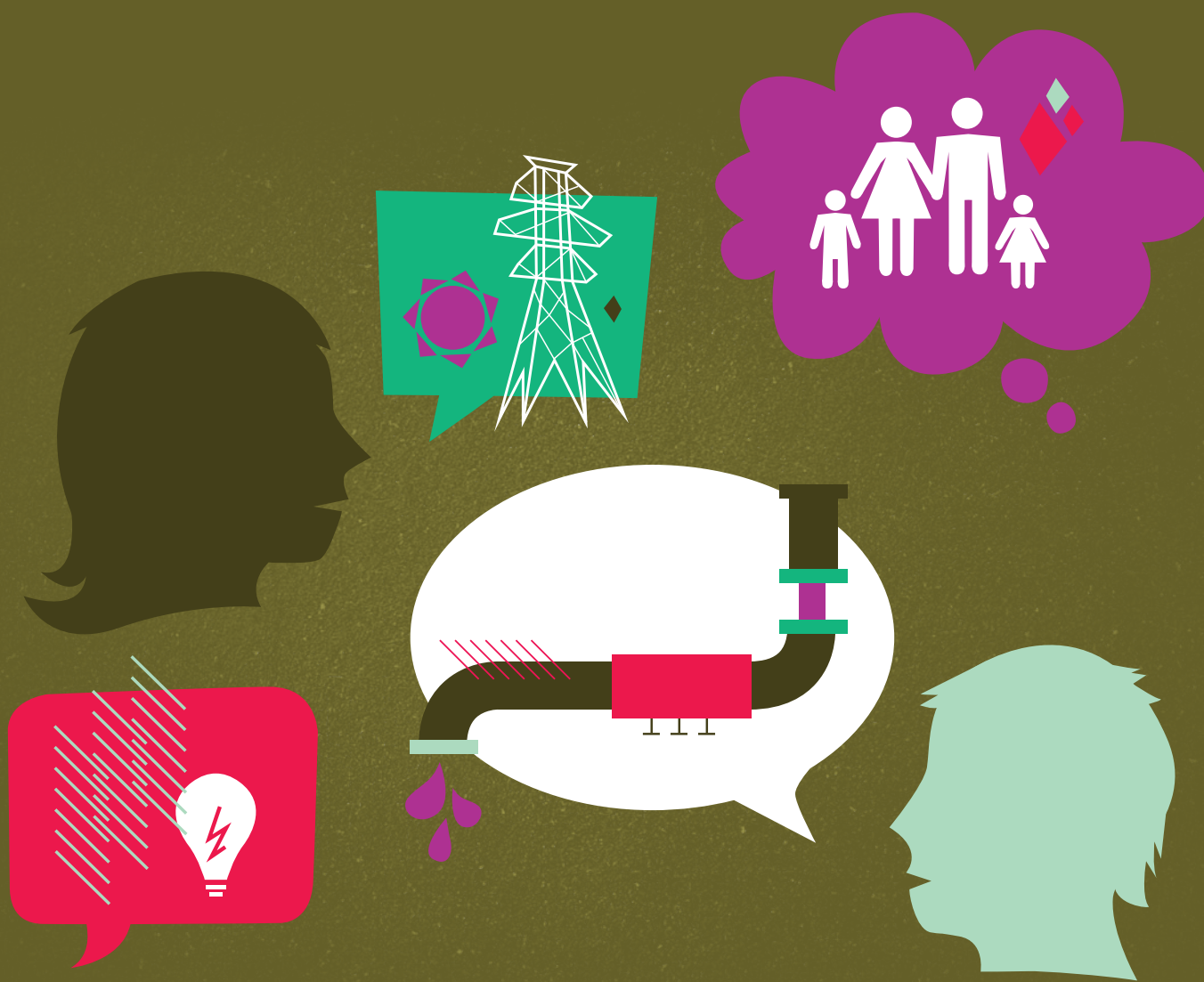


Re-energizing the Conversation

Engaging the Ontario Public on Energy Issues

BY RICHARD CARLSON & ERIC MARTIN



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There is need
for coordinated,
informed, and
literate engagement
on energy policy in
Ontario.

Executive Summary

Social licence—that is, the public’s acceptance or approval of a policy or project—is crucial for the successful implementation of energy policy and projects. This can be achieved through open dialogue, meaningful engagement, and information sharing with the public in a timely and transparent way.

Despite the need for social licence and its obvious benefits to proponents of energy projects, Ontario has not developed a good process for engaging the public in energy policy discussions. Ontario is not alone in this regard, as many jurisdictions struggle to secure social licence for their energy projects. A lack of social licence creates uncertainty, causes delays, and drives up costs.

Problems associated with securing social licence on energy issues are long-standing. Since the break-up of Ontario Hydro in 1998, the role of the public in energy planning has been poorly defined. This stands in stark contrast to some other jurisdictions, which have been proactive in clarifying the role of the public in energy planning. As a result, these jurisdictions have been more successful in securing social licence.

Moreover, securing social licence has become a crucial step for major infrastructure projects of all kinds. Our survey of comparative practice suggests that more structured public engagement in Ontario will lead to better outcomes.

The need for securing social licence through better forms of public engagement has been recognized by the Ontario government. In the summer of 2013, for example, there were four public consultations on aspects of future provincial energy policy. In 2014 the Ontario Energy Board has stated that it is moving towards a “consumer-centric” model of governance and initiated a number of public consultations.

As we know, effective public engagement requires more than just periodic consultations. Effective public engagement has to be undertaken throughout all stages of the decision-making process. If we provide the public with the time and information to make decisions, they can contribute to complex decision-making processes.

This report builds upon Mowat Energy’s *Getting the Green Light: The Path to Public Support for Ontario’s Power Plans*. It looks at how the public and small consumers—in most cases the same people—can be effectively engaged and represented in three crucial areas of energy policy debates to help secure social licence:

- » **Policy:** When the government develops new energy policies;
- » **Regulatory:** When regulators decide how policies will be implemented, how rates will be designed and how costs will be allocated; and

» **Siting:** When decisions about the local siting of new energy infrastructure are made.

Energy literacy is one of the foundations for effective engagement in all three of these areas. Without a full understanding of the facts, or access to the required information when needed, the public cannot make informed choices about their own energy use, let alone the policies that affect the community more broadly.

Meaningful engagement needs to be included in a cohesive framework in all three areas. While there is effective consumer representation in regulatory hearings at the Ontario Energy Board (OEB), the province's energy regulator, there is a lack of coordinated engagement throughout the energy policy process.

As the Ontario government explores options to realize its commitment to better public engagement, it could learn from other jurisdictions that have had more success. This report looks at six jurisdictions to see how they engage the public on the policy and regulatory questions at the provincial or national levels: Alberta, New Brunswick, Nova Scotia, Ohio, California, and the United Kingdom. In addition, and because infrastructure siting is even more controversial, we sought examples of jurisdictions that have been successful at securing social licence around siting at the local level: British Columbia, New South Wales, the City of Burlington, and two infrastructure agencies in the Greater Toronto Area: Metrolinx and Waterfront Toronto.

Based on these experiences, we conclude that Ontario can improve energy policy engagement. There is need for coordinated, informed, and literate engagement on energy policy in Ontario. This engagement should be designed to respond to the single most pressing policy problem in energy planning: insufficient public dialogue and understanding of the real trade-offs inherent in energy policy as decision-makers try to balance environmental, economic, and reliability considerations. When the public does not understand the reality of the choices that the community faces, energy policy and planning are exceptionally difficult.

In practice, our research leads to three recommendations:

RECOMMENDATION 1:

Establish a public energy consumer advocate to engage the public and advocate on its behalf in policy and regulatory areas

An independent, arms-length energy consumer advocate would engage and inform small consumers (residential and small business), and advocate for the public in regulatory and policy forums. It should follow best practices from other jurisdictions that have similar bodies to engage with and advocate on behalf of the public and protect consumer interests. It will also communicate with the public, using plain language to explain complex policy issues. Although it will advocate for consumers, the Ontario energy consumer advocate will not displace the successful funded intervenor system that is currently in place in regulatory hearings, but complement it and make it more cost-efficient.

RECOMMENDATION 2:

Create a charter of citizens' rights for energy infrastructure siting

Siting of new energy infrastructure is possibly the most contentious aspect of energy policy. When the public is insufficiently engaged, public opposition is often directed towards siting decisions. At the same time, the benefits of strong and concerted public engagement can have long-lasting benefits. Of course, the effectiveness of public engagement on siting varies widely depending upon the project and the project's proponent, whether that be a public sector body or a private developer. Some ensure that best practices are followed; others just do the minimum required. A charter of citizens' rights for energy infrastructure siting would ensure that a project proponent's public consultation plan could be consistently evaluated against a descriptive set of principles for effective public engagement. It would also clarify what can be expected in the process for both the public and the proponent, and require that the decision demonstrate how public concerns were considered.

RECOMMENDATION 3:

Formalize the roles of intervenors in the regulatory process

The current funded intervenor model at the Ontario Energy Board, in which independent intervenors can receive payment to cover the costs of appearing before the regulator, has provided good value for consumers' money, when measured from a strictly short-term financial perspective. However, there is significant room for improvement, primarily in formalizing the collaboration and accountability of these independent intervenors. Formalizing the independent intervenor system will ensure that a diversity of opinions are included in the regulatory process and that resources are allocated efficiently, while also examining long-term concerns.

The challenges in Ontario are long-standing but we can learn from other jurisdictions. Clarifying the role of the public, politicians, and expert planners is crucial since they all play important roles in the energy planning process. But it is imperative to define clearly where and when each exercises its power.

Like all areas of public policy, energy policy choices involve trade-offs. It is not usually possible to have inexpensive, reliable, and clean energy. Choices must be made to privilege some of these objectives over others. When consumers and the public do not understand the consequences of their choices—and, importantly, do not have to immediately or directly pay for their choices—energy policy becomes all the more challenging. By allowing the public to understand and grapple with complexity and make informed choices, public agencies can secure the social licence needed to carry out energy policy choices. By implementing the three recommendations in this report, Ontario can benefit from a better informed public more able to deliberate on and support the trade-offs inherent in energy policy.

Taken together, these three recommendations could lead to securing social licence through a more transparent and trusted public engagement process as well as a more energy-literate public in Ontario. Although some of these recommendations will have financial implications, the experience of other jurisdictions suggests that attaining social licence will lead to long-term savings.

We cannot underestimate the challenge in Ontario, where the debate has become highly charged and frequently distorted, but a more open, transparent, and deliberate process that coordinates all the areas—policy, regulatory, and siting—is necessary. Such a process would put the public at the centre of decision-making.

To foster effective public engagement, the public must be involved in decision-making early and continuously.

1

Introduction and Principles for Effective Public Engagement on Energy Issues

1.1 INTRODUCTION

In the summer of 2013 the Ontario government held four large and important consultations: one on regional energy planning, a second on revising the province's Long-Term Energy Plan, a third on the community's role in renewable energy development and planning, and a fourth on meeting the province's energy conservation goals. These consultations were only one reflection of a broader trend: in Ontario, the energy sector is undergoing profound changes.

This is why social licence is at the core of this report. Without securing social licence for these changes, there will be further difficulties and politicization of the process in the future.

In our context, social licence can be understood as public buy-in for an energy project, service, or policy.¹ This does not mean that everyone will support a project, just that a broad majority do not actively oppose it. As discussed in Mowat Energy's *Getting the Green Light: The Path to Public Support for Ontario's Power Plans*,² to achieve social licence the public needs to be engaged in energy planning and know that its concerns are respected. Although gaining social licence through comprehensive engagement has obvious time and financial costs, the rewards are attractive: high quality energy plans or energy infrastructure development projects that have faced public scrutiny and have proactively assessed and addressed their public concerns prior to implementation.³

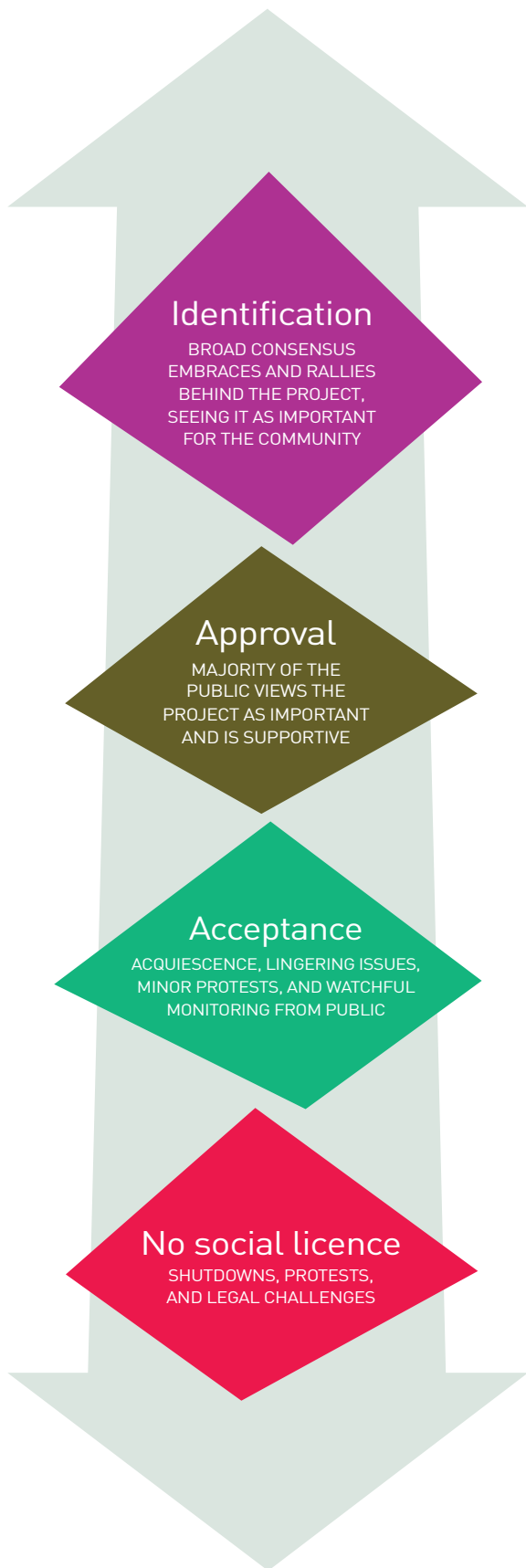
However, social licence is not a matter of "having it or not." It exists on a continuum and is measured in terms of the degree to which a community accepts and supports a particular project. There are four degrees of social licence: none, simple public acceptance, public approval, and public identification. It is not necessary to have everyone buy into an energy-related project or policy. Figure 1 shows what can happen at different points along the scale.

1 Note that this report does not examine the specific legal obligation of the Crown to consult with First Nations.

2 Richard Carlson, Eric Martin, Pamela Nowina and Mary Ellen Richardson, *Getting the Green Light: The Path to Public Support for Ontario's Power Plans* (Toronto: Mowat Centre, 2013). At <http://mowatcentre.ca/getting-the-green-light/>.

3 Michael Cleland, *Unpacking Social Licence: Discussion Paper* (Calgary: Canada West Foundation, November 19, 2013). At http://cwf.ca/pdf-docs/publications/Unpacking%20Social%20Licence_Fall2013RRT.pdf.

FIGURE 1
Results of achieving social licence⁴



The consultations in Ontario in the summer of 2013 were a good sign that the government was trying to consult widely with the public. But to achieve social licence, effective public engagement requires more than just holding periodic consultations. Along the spectrum of possible public participation methods, consultation has a relatively low level of public impact.

To foster effective public engagement, the public must be involved in decision-making early and continuously. It is not enough to just canvass opinions at occasional consultations.⁵ As the Council of European Energy Regulators argues, “engaging consumers needs to be embedded in energy policy.”⁶ This has been recognized by the Ontario Energy Board (OEB), the province’s energy regulator, whose chair said that the energy sector as a whole has a “responsibility to inform” consumers and to ensure that they are equipped to make informed choices.⁷

For public engagement to be purposeful, it needs to include a sustained dialogue on substantive matters on which the public can offer informed opinions, and to show that public input has been considered in a given decision. This moves the marker along the social licence spectrum from *acceptance*, through to *approval*, and finally, to *identification*.

There is of course a flip side to more engagement. It has been all too easy in the past for the public—as well as the government of the day—to avoid making tough choices about the province’s energy future. Public engagement also means public deliberation, which requires educating people so that consumers can understand the trade-offs in energy planning

4 Adapted from Sociallicence.com, “Measuring Social Licence,” 2010. At <http://sociallicence.com/measure.html>.

5 International Association of Public Consultation, *IAP2 Spectrum of Public Consultation*, 2007. At http://www.iap2.org/associations/4748/files/IAP2%20Spectrum_vertical.pdf.

6 Council of European Energy Regulators, “Regulators Praise the Council for Tackling the Elephant in the Room,” Press release PR-14-04, June 13, 2014. At http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/PRESS_RELEASES/2014/PR-14-03.

7 Rosemarie T. Leclair, Chair of the Ontario Energy Board, *Consumer-centric Regulation: From Vision to Reality*, Speech delivered at the Ontario Energy Network, Toronto, April 28, 2014, pp. 11-12. At http://www.ontarioenergyboard.ca/oeb/_Documents/Speeches/speech_leclair_OEN_20140428.pdf.

as environmental, economic, and reliability considerations are balanced. Energy literacy is thus a precondition of social licence.

Getting the Green Light offered 12 recommendations for developing more effective energy plans and planning processes. This report focuses on two key recommendations concerned with improving public deliberation and engagement:

- » Introduce a public participation charter for public engagement in the siting of energy infrastructure; and
- » Establish a public energy advocate to represent the interests of small energy consumers.

Any form of public engagement in the energy sector needs to look at the needs of small consumers—residential, rural, and small business. Engagement with small consumers is engagement with the public.

Currently, there are three areas of energy policy where the interests and needs of small consumers generally need to be considered:

- » the **policy** area, in which new energy policies are developed by the government;
- » the **regulatory area**, in which energy regulators decide how policies will be implemented, how rates will be designed and how costs will be allocated; and
- » the **local siting area**, in which decisions are made regarding where to build new energy infrastructure.

In addition, there is a need for better and a more consistent and sustained public outreach to keep the public informed about new developments in the energy sector and to provide them with the tools to understand the issues. Without this knowledge, engagement will always remain limited, and the possibility of achieving social licence will be more difficult.

These areas are all inter-connected: policy decisions affect regulatory decisions, and both guide short-term and long-term investments in new infrastructure. In many cases energy policy changes created a need for new investment, affecting the

regulatory process, as regulated utilities have to raise rates to pay for the investments. Energy literacy is required for effective engagement in all three areas. The Office of Ratepayer Advocates, the California body that represents consumers and is part of the state's energy regulator, argues that it does not see a separation between regulatory and policy decisions as consumers are affected by both.⁸

This does not mean that each energy policy area can be approached the same way, or that they follow the same process. Policy discussions involve the entire province, while regulatory hearings are complex quasi-judicial forums that require specialist knowledge, and siting decisions directly involve specific communities and local governments. Yet they are all part of the energy debate. The public should not be excluded from an area of energy policy, such as regulatory hearings, because it is seen as too technical. The OEB itself argues that being more open to the public and including consumers in discussions will make it more trusted and improve the regulatory process.⁹

With the exception of the regulatory area in Ontario, which has funding for outside intervenors that represent consumer interests in hearings, there is a lack of structure, process, and culture of engaging consumers. And while the consumer is represented in the regulatory area, this representation is not directly coordinated with representation in any of the other energy policy areas and tends to be focused on short-term financial concerns. As a result, and despite the 2013 consultations, there continues to be a lack of informed and effective public input on Ontario's energy policies.

8 Interview with Linda Serizawa, Deputy Director for Energy, Office of Ratepayer Advocates, July 23, 2013.

9 Rosemarie T. Leclair, Chair of the Ontario Energy Board, *Consumer-centric Regulation: From Vision to Reality*, Speech delivered at the Ontario Energy Network, Toronto, April 28, 2014. At http://www.ontarioenergyboard.ca/oeb/_Documents/Speeches/speech_leclair_OEN_20140428.pdf.

There can be little doubt that public engagement can help fulfill Ontario's energy policies. But first, people need to be informed and involved in the decisions that affect them.

At the same time, there is no body with the resources and responsibility to challenge the government on behalf of consumers in all areas of energy policy and to represent the public interest in energy policy in both the short and long terms. Nor is there an organization to help consumers educate themselves on the trade-offs involved in Ontario's energy plans.

Creating a culture of engagement is not easy. With a few notable exceptions, Ontario has a legacy of poor public engagement regarding changes in the energy sector. In electricity this problem reaches back to at least 1998 when the initial decision was made to restructure Ontario Hydro and open up the electricity market to competition. Since then the government has repeatedly made major energy policy changes without substantive input from consumers. There has been a trend towards less public engagement in recent years because of the removal of local planning restrictions for renewable energy plants under the *Green Energy and Economy Act*.

In the 16 years since the Ontario Hydro restructuring, the energy sector has changed significantly and rapidly shifting policy agendas have increased confusion over these changes. Consumers are understandably unclear about what exactly is in their best interest. These same consumers are also increasingly asked to be proactive and to take responsibility for their own energy use and conservation.

There can be little doubt that public engagement can help fulfill Ontario's energy policies. But first, people need to be informed and involved in the decisions that affect them.

Energy literacy is integral to this process. The public needs to be provided with the tools to understand the issues, something which becomes especially crucial during discussions about the siting of energy infrastructure.¹⁰ A low level of energy literacy means that the public will not have the information necessary to make informed decisions on the future of energy in Ontario, and what the trade-offs are to any decision in terms of environmental sustainability, price, and reliability.¹¹ Energy literacy will also help ensure that policies have long-term social licence, leading to greater stability in investment decisions.

This problem is not confined to Ontario. A July 2012 report by the federal Standing Senate Committee on Energy, the Environment and Natural Resources concluded that the problem of low levels of energy literacy was common across Canada and that efforts needed to be undertaken to improve public understanding.¹²

This report identifies five principles for effective public engagement and deliberation, namely that it be informative, inclusive, sustained, transparent, and accountable. By following these principles and the recommendations that flow from them, it is possible to bring the values of representation, accountability, and transparency to the entirety of the province's energy policy decision-making.

This report's specific recommendations are based on those five principles and are informed by cases of small consumer representation and engagement in Ontario and six other energy markets (Alberta,

10 Greg Lyle, Innovative Research Group, "How Getting Consultation Right Leads to Getting Things Done," Presentation at the IESO Stakeholder Conference, February 11, 2014. At http://ieso-public.sharepoint.com/Documents/consult/summit/Part%20II%20Keynote%20Speaker_GLyle_IESO%202014%20Summit.pdf.

11 Department of Energy (US), *Energy Literacy: Essential Principles and Fundamental Concepts for Energy Education*, March 2012. At http://www1.eere.energy.gov/education/pdfs/energy_literacy_1_0_high_res.pdf; Rosemarie T. Leclair, Chair of the Ontario Energy Board, Consumer-centric Regulation: From Vision to Reality, Speech delivered at the Ontario Energy Network, Toronto, April 28, 2014. At http://www.ontarioenergyboard.ca/oeb/_Documents/Speeches/speech_leclair_OEN_20140428.pdf.

12 Standing Senate Committee on Energy, the Environment and Natural Resources, *Now or Never: Canada Must Act Urgently to Seize its Place in the New Energy World Order*, July 2012, pp. 34-38. At <http://www.parl.gc.ca/Content/SEN/Committee/411/enev/rep/rep04jul12-e.pdf>.

New Brunswick, Nova Scotia, Ohio, California, and the UK). Additionally, we examine best practices in public engagement in infrastructure siting from British Columbia and New South Wales. To compare with how infrastructure planning is conducted in other sectors in Ontario, we look at three cases, the City of Burlington; Metrolinx, the regional transportation authority for the Greater Toronto and Hamilton Area (GTHA); and Waterfront Toronto.

These cases and the lessons they offer are laid out in sections 2 and 3.

1.2 PRINCIPLES FOR EFFECTIVE PUBLIC ENGAGEMENT ON ENERGY ISSUES

When we seek to improve public engagement on energy issues, clear principles should guide the work. The following section addresses the principles for effective public engagement on energy issues. They are based on the *International Association for Public Participation's Core Values of Public Participation*¹³ and *Code of Ethics for Public Participation Practitioner*,¹⁴ as well as interviews with international and Ontario energy and infrastructure planning and public engagement practitioners. Taken together, these principles exemplify the values that are important to both consumers and policy-makers. If followed, they can help foster a healthy culture of engagement and enable the public to have a meaningful impact on decisions related to Ontario energy policy.

1. Informative

Knowledge is an indispensable factor in any good decision. Consumers cannot make informed decisions about public policy without reliable information. Individuals and consumer groups do not have the resources available to industry or utilities to conduct/commission research into different issues. These information asymmetries

must be overcome as part of the engagement process if the public is to meaningfully take part in decision-making and to have access to trusted and independent information.

2. Inclusive

There is no one “public.” The public is a diverse group of consumers with different needs and interests that must be represented in the policy-making process. Any public engagement needs to be inclusive to ensure fair and equitable representation of diverse voices and interests.

3. Sustained

It is important that the public is engaged throughout the development of a project or policy. Engagement needs to be continuous for the duration of any initiative to enable the public to feel part of the conversation and able to contribute. Engagement should be a built-in feature of any policy cycle. Repeated engagement over multiple initiatives will help establish patterns of working together and can build trust.

4. Transparent

The organization that is carrying out the public engagement has to be viewed as trustworthy and accountable by the public. Building public trust involves a commitment to openness about what is happening and why. This also means that public engagement should not be treated as a formality. Participants must be confident that they will be taken seriously, and policy-makers must demonstrate that the public's inputs and concerns were reflected upon and taken into consideration during decision-making.

5. Efficient

Public engagement requires resources. It is necessary, however, to avoid wasting resources while ensuring robust public consultation. Public opinion about the consultation process may turn negative if it is seen as wasteful.

13 International Association for Public Participation (IAP2), *Core Values of Public Participation*. At www.iap2.org/resource/resmgr/imported/CoreValues.pdf.

14 International Association for Public Participation (IAP2), *Code of Ethics for Public Participation Practitioner*. At <http://www.iap2.org/?8>.

The principles of effective public engagement can move the social licence needle towards public identification, whereby the public fully embraces the project and sees it as important for the community.

2

How Other Jurisdictions Deal with These Issues: Comparison by Principles

The principles of effective public engagement can move the social licence needle towards public identification, whereby the public fully embraces the project and sees it as important for the community. These principles need to cut across policy, regulatory, and siting decisions as well as to efforts to increase energy literacy.

In our case studies, two primary mechanisms are used to ensure adequate public representation and engagement: a public energy consumer advocate (PECA) for policy and regulatory affairs, and a *framework or terms of reference* for infrastructure siting, which is not always related directly to energy infrastructure.

In the first section, we examine jurisdictions that have public energy consumer advocates (PECAs), namely Alberta, New Brunswick, Nova Scotia, Ohio, California, and the UK.¹⁵ We also compare the PECA's in those jurisdictions to the principles of effective public engagement, identifying best practices. The second section explores the best practices in formalizing public engagement in local infrastructure siting by looking at British Columbia and New South Wales (Australia). We also examine case studies of public engagement policies in Ontario from outside the energy sector. Specifically, we look at the City of Burlington, Metrolinx, and Waterfront Toronto.

2.1 PUBLIC ENERGY CONSUMER ADVOCATES (PECA)

2.1.1 Overview of Public Energy Consumer Advocates

There are many different models for a public energy consumer advocate (PECA). In general, a PECA is an independent, or quasi-independent, government agency that ensures small consumers—residential and small businesses—maintain secure access to affordable, reliable, safe, and sustainable energy. Emphasis is usually placed on vulnerable and disadvantaged consumers.¹⁶

Each jurisdiction examined in this section has some type of PECA, although each PECA operates differently. In some jurisdictions, the PECA represents consumers only in regulatory proceedings, while in others the PECA also represents consumers in policy debates. Organizational and funding structures also vary considerably. Table 1 below provides an overview of the jurisdictions examined for this report.

¹⁵ See the appendices for more details on the public energy consumer advocates mentioned in this report.

¹⁶ Definition from Gordon Renouf and Polly Porteous, *Making Energy Markets Work for Consumers: The Role of Consumer Advocacy*, February 2, 2011. At http://cms.qut.edu.au/__data/assets/pdf_file/0004/132916/Making-Energy-Markets-Work-Final-June-2011-Desktop-version.pdf.

TABLE 1
Overview of public energy consumer advocates

Jurisdiction	PECA	Intervenes in		Organizational relationship	Funding structure
		POLICY	REGULATORY		
ALBERTA	Utilities Consumer Advocate (UCA)	✓	✓	Under Services Alberta ministry	Direct surcharge on the energy sector
CALIFORNIA	Office of Ratepayer Advocates (ORA)	✓	✓	A division of the regulator	Separate budget
NEW BRUNSWICK	Public Intervenor	✗	✓	Appointed by the attorney general	Paid by the attorney general's office following a surcharge on energy companies
NOVA SCOTIA	Consumer Advocate	✗	✓	Independent legal counsel, appointed by the regulator	Regulated surcharge on utilities
OHIO	Office of the Ohio Consumers' Counsel	✓	✓	Independent government organization	Financed through a direct surcharge on the energy sector, but budget set by the legislature
UNITED KINGDOM	Citizens Advice Bureau (Consumer Futures)	✓	✓	Independent not-for-profit organization	Direct surcharge on the energy sector

2.1.2 How the PECAs follow the five principles

Informative

A resource bias against consumers in the regulatory process is a common concern as industry organizations and the energy utilities have greater financial ability to conduct in-depth research to argue their positions. A PECA's ability to conduct research and survey consumers makes it a source of reliable information and helps to even out this information imbalance. In California and the UK, energy companies must supply the PECA with any information requested, which allows these PECAs to present a complete picture of the energy sector. In this sense, research is an important part of public education, which strengthens public engagement in energy policy.

Understanding consumers through research allows for better-informed, higher quality input and can lead to better regulatory decision-making. It also ensures that a broad range of consumer opinion is accounted for, and that the needs of special groups, such as vulnerable and disadvantaged consumers, are protected.

PECAs that operate a complaints line (Alberta, and previously Ohio and the UK) agree that receiving customer complaints was a great way to understand consumers' concerns, particularly if one analyzes these complaints using advanced data analytics.

Another way of connecting with consumers is through public outreach and education. Of the PECAs examined in this report, the Office of the Ohio Consumers' Counsel has information on consumer rights, how to increase energy efficiency, and how the energy system works. In the UK, the Citizens Advice Bureau also provides information on energy issues to consumers. Alberta's Utilities Consumer Advocate (UCA) was set up to disseminate information on the regulatory process and to educate consumers about energy issues. As of April 2014, work has started in this area, and more is planned for the future.

Inclusive

Small consumers are diverse; in many ways there is no “typical small consumer.” While PECAs are able to represent consumers, they are not alone seen as sufficient to represent all points of view, and all consumers. Despite the presence of a PECA, independent intervenors also continue to participate in the regulatory process, in most cases receiving funding.¹⁷

PECAs have developed a number of strategies to ensure that all consumers are represented and that their needs are met. In California and Nova Scotia, funding for intervenors is based on a needs assessment of the intervenor and an analysis of whether the intervention would cause financial hardship. Ontario provides funding for all intervenors. In Alberta, funding for independent intervenors was phased out over a six-year period following 2002, as the regulator felt there was duplication with the UCA. Now cost recovery for intervention is only possible under very specific circumstances, but some organizations, mostly notably the Consumers Coalition of Alberta, continue to receive intervenor funding. In other jurisdictions, such as Ohio, independent intervenors are allowed to participate, but they do not receive any funding to cover their costs.

Having both a PECA and independent intervenors collaborate is seen as a better way to ensure that the diversity of consumers is adequately represented and understood. Where there are both and collaboration is common, such as in California, long-standing benefits for both are seen by both the PECAs and the independent intervenors. Such collaboration also reduces duplication and improves the information available to all participants.¹⁸

17 “Independent intervenor” refers to, among others, organizations working on behalf of specific consumer interests or vulnerable groups.
18 Council of European Regulators, *CEER Status Review on the Involvement of Consumer Organisations in the Regulatory Process as of 1st January 2013*, Ref: C13-CEM-65-03, October 30, 2013. At http://www.ceer.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Customers/2013/C13-CEM-65-03_SR%20on%20involvement%20of%20consumer%20organisations%20in%20the%20regulatory%20process.pdf. Interviews with Linda Serizawa, Deputy Director for Energy, Office of Ratepayer Advocates, July 23, 2013, and Mark W. Toney, Executive Director, TURN-The Utility Reform Network, July 9, 2013.

Sustained

As PECAs are standing bodies and are provided with resources for intervening on regulatory and policy issue, they can provide for sustained public engagement. They can also ensure that resources and information are available to other organizations working on consumer issues.

The types of issues that PECAs intervene in vary. All consumer advocates we examined work in regulatory advocacy, representing small consumers at regulatory hearings or proceedings conducted by federal and provincial/state regulators. Participation in these proceedings requires specialized expertise that is not available to the public at large.

Advocates in New Brunswick and Nova Scotia are only focused on participating in regulatory hearings and are quite small. In both cases, a respected lawyer is appointed to intervene in hearings and his/her time is charged to the government.

Other PECAs advocate for consumers on energy policy in addition to regulatory advocacy. Outreach activities include lobbying government about policy changes, participating in consultations, holding consumer information campaigns, and undertaking research on issues important to small consumers. Regulatory advocacy can be seen as a reaction to events (such as a rate application), while policy advocacy can be seen as proactive in that it advocates for consumers on present and on future issues, before the consumer is affected.

For example, the Office of Ratepayer Advocates (ORA) in California employs full-time advocates who have offices at the state legislature. For the ORA, regulatory and policy advocacy cannot be separated as policy changes can affect the costs to consumers as much as regulatory changes do.¹⁹ In this way, the regulatory and policy areas are combined.

19 Prior to September 2013, the ORA was known as the Division of Ratepayer Advocates (DRA). Interview with Linda Serizawa, Deputy Director for Energy, Office of Ratepayer Advocates, July 23, 2013.

The Citizens Advice Bureau, the energy consumer advocate in the UK,²⁰ likewise works in policy and regulatory issues. It was set up to intervene in policy debates and when legislation is developed, to ensure that consumers' interests are protected before problems arise. The regulator in the UK, the Office of Gas and Electricity Markets (Ofgem), also has a Consumer Challenge Group comprised of energy and consumer experts that provides input into regulatory cases.²¹

Alberta's UCA, in contrast, has worked only on regulatory issues to date and does not actively intervene in policy discussions. However, it is beginning to provide input on policy development in public consultations on energy policy. The Office of the Ohio Consumers' Counsel also lobbies the legislature when necessary, but focuses primarily on regulatory issues.

In the PECAs that work on policy advocacy, all highlight renewable energy and energy efficiency as policy areas that are important to small consumers. Energy efficiency programs in particular enjoy strong support because these help reduce costs. The PECAs are primarily concerned with ensuring that the costs of any programs are equitably distributed.

Transparent

Regardless of the areas in which a PECA works, and how sustained its engagement is, accountability and trust are indispensable and are achieved by a commitment to transparency. To gain the trust of consumers, independence is crucial for a PECA. Perceived independence is just as important as actual independence, since the perception of bias undermines trust.²² Consumer groups and consumers themselves scrutinise the work of PECAs, and the PECA must be seen to be working in the best interest of consumers and not blindly following government's or industry's positions.

20 In April 2014, the Citizens Advice Bureau, a not-for-profit, incorporated the previous consumer advocate, Consumer Futures, which was established by the government.

21 Ofgem, "Consumer Challenge Group." At <https://www.ofgem.gov.uk/network-regulation-%E2%80%93-riio-model/riio-forums-seminars-and-working-groups/consumer-challenge-group>.

22 KPMG, *Review of Consumer Advocacy Requirements - Report for User Participation Working Group*, March 2005.

To gain the trust of consumers, independence is crucial for a PECA. Perceived independence is just as important as actual independence, since the perception of bias undermines trust.

Independence can be maintained by limiting the amount of control the government can have over the work of the PECA and over its budget. Independence of funding is crucial, and a PECA's independence can be improved by a set budgetary formula that is independent of the government's general budgetary allocations.

Independence is an ongoing concern, and there have been attempts to limit it. In Ohio, while the government cannot interfere with the mandate of the Office of the Ohio Consumers' Counsel, the legislature can revise its budget. In 2011, the Ohio legislature significantly cut the Counsel's budget, resulting in staff cuts and diminished capacity. On a more positive note, the government of Alberta is considering whether the UCA needs to be a stand-alone, arms-length agency and how this could be accomplished.

In California, there have been concerns about the ORA being part of the energy regulator. The ORA has to regularly confront the energy regulator, often in regulatory hearings or court. A recently passed law gives it greater independence and autonomy over its legal team and budget, while keeping the advocate as part of the regulator.

In April 2014 the responsibilities and funding for the PECA in the UK was transferred to the Citizens Advice Bureau, a not-for-profit organization that provides advice to and represents consumers in a number of areas.

The accountability of the PECAs studied here also varies depending on the institutional structure. In California and the UK, almost all information and research reports are available on the PECA's website. In comparison, the PECAs in New Brunswick and Nova Scotia have very little information available and they do not conduct in-depth consumer research. Alberta's UCA falls between these two models. However, the Alberta advocate has ambitious plans to conduct more research and to post all reports and information on all its regulatory interventions on its website.

Efficient

While it is important that the public be an engaged part of the decision-making process, the costs of providing this should not be a financial burden.

One method for efficiency used in some jurisdictions is for the PECA and other third-party intervenors to collaborate in research and in representation at regulatory hearings. This is common in the UK and California, where such collaboration is seen as a major benefit by both the PECA and intervenors, as it allows the different organizations to focus on their priority concerns. Collaboration with consumer organizations is also common in Europe.

Another technique is for the PECA to share all information and results publicly to enable others to benefit from its work. Having a PECA promote research and engagement also ensures that it is easier for the public to learn how to become involved in issues that affect them directly. For other organizations that also look into consumer issues, having publicly available research would reduce duplication, while ensuring that high quality research is available to all.

Establishing a PECA can also control the costs of intervenor funding to ensure that while there is effective representation of all viewpoints, the financial burden is contained. Prior to the establishment of the UCA, approximately \$19 million²³ was awarded to interveners in 2002 for

23 Unless other specified, the Canadian dollar is used in all cases.



the cost recovery of intervenor's expenditures at regulatory hearings in Alberta. The annual budget for the UCA, which has replaced most intervenors before regulatory hearings, is approximately \$9 million a year, and the UCA has greater responsibilities, including consumer education and mediation of disputes between customers and their service provider, than solely appearing before regulatory hearings.²⁴

Also, funding a PECA can help ensure that consumers' costs are contained. For example, in California in 2013, the ORA reviewed utility requests for revenue increases and programs that totalled more than US\$38 billion, and its advocacy efforts aided in saving ratepayers US\$1.5 billion. The budget for the ORA was US\$24.4 million in 2013, meaning that every dollar invested in the ORA was associated with an average of US\$61 in annual savings for every consumer.²⁵

2.2 PUBLIC ENGAGEMENT ON INFRASTRUCTURE SITING

2.2.1 Community Charters

The question of where to site energy infrastructure has the potential to generate more intense resistance than any other energy policy issue. Issues like the construction of power plants, transmission lines and pipelines can touch a public nerve and have lasting effects on social licence. When it comes to public engagement in infrastructure siting, the public engagement process is equally, if not more, important than institutional design.

Community charters are used in a number of jurisdictions to increase public engagement in infrastructure siting decisions. Community charters detail the roles of various organizations and the public, thereby meeting a number of the principles identified earlier. Charters allow participants to

24 Interview with Rob Spragins, Utility Consumer Advocate, Alberta, July 5, 2013. Alberta Utilities Commission, *Applicant and Intervenor Costs for All Hearing Categories*, May 2008. At http://www.auc.ab.ca/rule-development/intervener-costs/Documents/May%2026%202008/Cost_Graphs.pdf.

25 California Office of Ratepayer Advocates, *2013 Annual Report*. At <http://www.ora.ca.gov/AR2013.aspx>.

understand the process in which they are engaging and the issues at stake, thereby satisfying the principle of an informed public. They tend to involve institutions like municipalities, which contribute to the foundations of trust. Charters allow for early and on-going engagement. And, by preventing duplication, they assure that resources are used efficiently.

One model is British Columbia's Community Charter legislation. The main focus of this legislation is to define the roles and responsibilities of municipalities and the province, but it also clearly stipulates cases in which municipalities and/or the province are required to consult with the public. It also defines what qualifies as sufficient consultation, and which procedures are required.²⁶

A second example is from the state of New South Wales in Australia, which introduced a new planning law in October 2013. The New South Wales government announced that it would include a Community Participation Charter, designed "to provide opportunities for early and on-going community participation in strategic planning and to promote transparent decision-making."²⁷ Under the *Planning Bill 2013*, planning authorities need to prepare a Community Participation Plan that indicates how the community will be actively engaged. The law also provides best practices and has regulations on how consultations should be structured, and how local planning is to be incorporated with state-level planning and consultations. An advisory panel was also established to advise the Minister on how to improve community participation.²⁸

26 Government of British Columbia, "Community Charter." At http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/free-side/03026_00.

27 Government of New South Wales, "Explanatory Notes," *Planning Bill 2013*, p. 1. At [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/d6079cf53295ca7dca256e66001e39d2/33e72ad6ea1238b5ca257c0c0014134d/\\$FILE/b2012-088-d31-House.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/d6079cf53295ca7dca256e66001e39d2/33e72ad6ea1238b5ca257c0c0014134d/$FILE/b2012-088-d31-House.pdf).

28 Government of New South Wales, "Part 2" and "Schedule 2," *Planning Bill 2013*. At [http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/d6079cf53295ca7dca256e66001e39d2/33e72ad6ea1238b5ca257c0c0014134d/\\$FILE/b2012-088-d31-House.pdf](http://www.parliament.nsw.gov.au/prod/parliament/nswbills.nsf/d6079cf53295ca7dca256e66001e39d2/33e72ad6ea1238b5ca257c0c0014134d/$FILE/b2012-088-d31-House.pdf); Government of New South Wales Planning and Environment, "Planning for our Future." At <http://www.planning.nsw.gov.au/newplanningsystem>.

While legislated terms of reference that apply to infrastructure planning on the provincial scale are unknown in Ontario, apart from what is required in the provincial environmental assessment legislation, some cities have set terms of reference for planning. The City of Burlington, for example, has just introduced a Community Engagement Charter, which it sees as a promise that the city will involve the public in municipal decision-making.²⁹

2.2.2 Public Engagement on Infrastructure Siting: Ontario Case Studies

While some form of community engagement is required under Ontario environmental assessment laws, this has been seen as insufficient for large projects, such as in energy and transportation. To this end, several jurisdictions, as well as infrastructure development agencies in Ontario, have best practices and procedures for public engagement in infrastructure siting, setting out expectations and standard. Our review looked at procedures governing public engagement for siting decisions in some areas outside energy infrastructure, but all the examples we discuss highlight best practices relevant to energy planning.

Outside the energy sector, two public development agencies, Metrolinx, the regional transportation planning agency for the Greater Toronto and Hamilton Area (GTHA), and Waterfront Toronto, have introduced terms of references or guidelines for public engagement. These two organizations promote early and on-going engagement and have generally become trusted by most participants. Both highlight that early engagement allows for more efficient use of resources as it reduces the number of problems later on in the infrastructure development.

It is important to note that politics in the end can derail infrastructure projects in Ontario. However, if a project has social licence, and the public has been engaged throughout the entire process, there is less likelihood that politics could intervene in a project development.

The question of where to site energy infrastructure has the potential to generate more intense resistance than any other energy policy issue.

An instructive example of comprehensive consultation and engagement guided by an explicit engagement framework in Ontario is Metrolinx. Metrolinx undertakes planning and construction on numerous major projects across the GTHA and engages communities on a whole range of issues, from noise levels near railway tracks to the construction and design of stations and bridges.

In order to guide its efforts, Metrolinx has prepared a Community and Stakeholder Relations Framework which explains the reasons for public engagement and articulates guiding principles.³⁰ This framework informs all of Metrolinx's public engagement plans. Metrolinx sees the results, though not without shortcomings, as generally positive.³¹ Metrolinx tries to offer the public as much information as possible on all aspects of its work: its website offers extensive information on the planning phases and timelines of construction projects as well as the kinds of machinery used in construction.

29 For the charter see City of Burlington, *Appendix A: Burlington Community Engagement Charter March 2013*. At <http://cms.burlington.ca/AssetFactory.aspx?did=24958>.

30 Metrolinx, *Community and Stakeholder Relations Framework*.

31 Interview with Metrolinx, August 8, 2013.

Equally important to informing the public about its work is the need for Metrolinx to understand and respond to the concerns and interests of affected communities. The organization has full-time community relations offices located near projects, which enable the public to meet with a Metrolinx representative in person to discuss concerns or obtain information. Furthermore, Metrolinx has sought to increase opportunities for communities to directly shape elements of design and construction. For example, Metrolinx consults with local communities on the look and design of footbridges, parks and sound barriers.

Waterfront Toronto has a less formalized system, and bases its public engagement around its own four guiding principles: that public consultation is a legitimate part of the process; it needs to happen early in the decision-making process; diversity is encouraged; and that it should be coordinated with other levels of government. According to Waterfront Toronto, its principles exceed the expectations under the legislation for environmental assessments. Waterfront Toronto has an extensive website, which provides information on all its plans and includes notices of all its upcoming public meetings.³²

Waterfront Toronto brings the public into the discussion in the early stages of a project, before any details are finalised, and engagement regularly continues for the duration of the project. The public can therefore be involved throughout the project, and not just at the initial planning stages. As a result, a high level of engagement with the public has simply become an implicit expectation in the work culture of the organization. The consultation plans themselves are project-specific and tailored to the individual needs of the community.

Yet all examples demonstrate a willingness to ensure that the public is formally included in the debate, however limited that may be in some cases.

According to Waterfront Toronto, its proactive public engagement strategy, while requiring more work in the early stages, pays off in the end with decidedly fewer complaints and legal appeals. This allows for smoother development of projects, even in the midst of inconvenient construction.³³

2.3 SUMMARY: COMPARISON WITH PRINCIPLES

No single case study reviewed here provides a perfect example of how to engage the public in energy policy and infrastructure siting debates. Yet all examples demonstrate a willingness to ensure that the public is formally included in the debate, however limited that may be in some cases. Table 2 summarizes how these case studies align with our principles for public engagement in energy planning.

³² Waterfront Toronto, “Public Consultation.” At http://www.waterfrontoronto.ca/get_involved/public_consultation.

³³ Interview with Waterfront Toronto, August 20, 2013.

TABLE 2
Best practices for meeting the principles

PRINCIPLE	BEST PRACTICE	EXAMPLE
Policy issues		
INFORMATIVE	PECA advocates for the consumer or intervenes in policy debates and consultations	Alberta, California, Ohio, and UK
	PECA conducts research to inform policy-makers and stakeholders	Alberta, California, and UK
	PECA conducts public education activities to promote energy literacy	California, Ohio, and UK (Alberta has plans to start)
	PECA provides a complaint line to assist consumers	Alberta
INCLUSIVE	PECA collaborates with stakeholders	California and UK
	PECA shares research publicly	California and UK
SUSTAINED	PECA works on long-term policy debates	California and UK
	PECA has a defined consultation framework	Alberta and California
TRANSPARENT	PECA is seen as Independent from government and industry	California, New Brunswick, Nova Scotia, Ohio, and UK
	PECA has a secure funding source	Alberta and UK
	PECA provides all information on advocacy publicly	California and UK
Regulatory issues		
INFORMATIVE	PECA has the ability to request any information from energy industry	California and UK
	Details on regulatory interventions are publicly available	Alberta, California, and UK
	PECA provides a complaint line to assist consumers	Alberta
INCLUSIVE	Third-party intervenors are encouraged and funded	California and UK
	Work is coordinated between different groups involved on the issues	Alberta, California, and UK
TRANSPARENT	PECA seen as independent from government and industry	California, New Brunswick, Nova Scotia, Ohio, and UK
	PECA has a secure funding source	Alberta and UK
EFFICIENT	PECA collaborates with stakeholders	California and UK
	Independent intervenors are means tested before funding is awarded	California and Nova Scotia
Local siting		
INFORMATIVE	Information is provided on new projects which explains their rationales	All examples
INCLUSIVE	Public forums are held for new infrastructure projects	All examples
SUSTAINED	Public consultation on infrastructure proposals takes place before final decisions are made	Metrolinx and Waterfront Toronto
	Defined consultation framework	Community charters of British Columbia, City of Burlington, and New South Wales
TRANSPARENT	Robust guidelines for public engagement	Community charters of British Columbia and New South Wales
	Foster good relationship between agencies and affected communities	Metrolinx and Waterfront Toronto
EFFICIENT	Formalized consultation system so participants know when to intervene	Community charters of British Columbia, City of Burlington, and New South Wales

Improved public engagement will help governments achieve social licence and make choices that balance public concerns and environmental, economic, and reliability considerations.

3

Public Engagement in Energy Decision-Making: How Does Ontario Stack Up?

Ontario's energy sector is undergoing profound changes, and the sector, policy-makers, and the public have to make choices about long-term policy needs. Improved public engagement will help governments achieve social licence and make choices that balance public concerns and environmental, economic, and reliability considerations. It is clear that informed public engagement must be better integrated throughout the decision-making process. This section compares the public engagement processes in Ontario with our five principles for effective public engagement on energy issues.

Public representation is not unheard of in the sector, and in general funded intervenors effectively represent consumers' financial interests at OEB regulatory hearings. But while there have been improvements in public engagement—namely the launch of the four public consultations in the summer of 2013 was a step in the right direction—the system is lacking overall, as the five principles of public engagement have not been deployed with sufficient consistency and clarity in Ontario. Improved energy literacy is also required to allow for the public to effectively engage on policy-making, regulatory decision-making, and local siting.

The adoption of the *Green Energy and Green Economy Act* in 2009 highlights the challenges in all three of these areas. On the policy side, there was little public debate and discussion regarding the trade-offs of promoting renewable power and the cost implications for consumers.³⁴ The Act also removed the right of local municipalities to veto renewable energy development, which affected local infrastructure siting decisions. Moreover, in the regulatory realm, the OEB had to adjust its regulatory regime to facilitate the increased costs of promoting green energy.

Regardless of one's views on the Act itself, the lack of public engagement on the policy choices made, including an informed discussion of the trade-offs involved in the promotion of renewable energy, has led to problems and protests during implementation, especially during regulatory hearings. It is possible that effective public engagement in the early stages of policy development would have secured social licence for the development of green energy, thereby easing implementation. Instead, due to a lack of public engagement, regulatory hearings provided the only venue for people to comment on the policy.

³⁴ Auditor General of Ontario, "Section 3.03: Electricity Sector—Renewable Energy Initiatives," *2011 Annual Report of the Office of the Auditor General of Ontario*. At http://www.auditor.on.ca/en/reports_en/en11/303en11.pdf.

3.1 COMPARISON OF ONTARIO'S EXPERIENCE AGAINST THE PRINCIPLES

3.1.1 Informative

Consumers are facing a new reality when it comes to energy consumption—energy costs are increasing and consumers are expected to make sophisticated decisions about their own energy use. Ontario's Auditor General argued two years ago that consumers need more information in order to understand how to manage their energy costs.³⁵

In a 2013 consultation by the Ontario Power Authority (OPA) and the Independent Electricity System Operator (IESO), a common theme that emerged was “the need for a major education effort about Ontario's electricity needs.”³⁶ These needs were also identified in the government's consultation on increasing energy conservation in the province.³⁷

A specific example of insufficient education on energy matters is consumers' understanding of smart meters. The use of smart meters and other demand reduction technology is vital for the future of energy policy. However, consumers continue to lack basic knowledge about the technology and how it can be used to benefit them. To trigger behavioural change, consumers must be effectively engaged and must trust and be confident about the information they are receiving.³⁸ It is not clear that this has been the case in Ontario.

35 Ontario Auditor General, “Chapter 3.02: Electricity Sector—Regulatory Oversight,” *2011 Annual Report of the Office of the Auditor General of Ontario*, p. 80. At http://www.auditor.on.ca/en/reports_en/en11/302en11.pdf.

36 Ontario Power Authority and the Independent Electricity System Operator, *Engaging Local Communities in Ontario's Electricity Planning Continuum: Enhancing Regional Electricity Planning and Siting*, August 1, 2013, p. 7. At <http://www.powerauthority.on.ca/stakeholder-engagement/stakeholder-consultation/ontario-regional-energy-planning-review>.

37 Ontario Ministry of Energy, *Conservation First: A Renewed Vision for Energy Conservation in Ontario*, 2013. At <http://www.energy.gov.on.ca/en/conservation-first/>.

38 Flavia Gangale, Anna Mengolini and Ijeoma Onyeji, “Consumer Engagement: An Insight from Smart Grid Projects in Europe,” *Energy Policy*, Vol. 60, 2013, pp. 621-628.

At the moment there is good and valuable information available for electricity consumers. Unfortunately, there is no one place that consumers can go to find the comprehensive information they need. The provincial government in December 2013 launched its emPOWERme website, which has videos explaining complicated energy topics and issues on energy in Ontario and also provides links to other informational websites from the sector.³⁹ However, the website just provides a list of all videos and topics covered, without any organization, and it's not clear how the topics align with each other. It is also focused almost exclusively on electricity.

There are other websites that provide information to Ontario consumers. For example, the Ontario Power Authority has its saveONenergy website that lists energy efficiency and conservation incentive programs for electricity, but the website does not have information on bills or energy literacy.⁴⁰

The OEB provides extensive information on the energy retail market and energy bills, both electricity and natural gas, but there is no detailed information on how to reduce costs.

Local distribution companies (LDCs) could play an enhanced role in communication with the public, given that they regularly interact with their customers. However, while larger LDCs have good public information campaigns, smaller LDCs may not have the capacity to implement such programs. Gas distributors also provide information on conservation programs. Table 3 summarizes what is available on the websites of the main organizations involved in the Ontario energy sector.

39 The website is available at <http://www.energy.gov.on.ca/en/em-powerme>.

40 See the website at <https://saveonenergy.ca/>.

TABLE 3
Information available on energy websites in Ontario

Organization	Information available
EMPOWERME (MINISTRY OF ENERGY)	<ul style="list-style-type: none"> » Videos explaining electricity issues » Infographics describing the current electricity situation in Ontario » Links to saveONenergy and the OEB consumer website
SAVEONENERGY (ONTARIO POWER AUTHORITY)	<ul style="list-style-type: none"> » Detailed energy efficiency tips » Advice on how to select efficient appliances » Interactive website explaining general improvements residents and businesses can make to reduce electricity consumption » Links to local companies registered to do energy efficiency work
LOCAL DISTRIBUTION COMPANIES (LDCS)	<ul style="list-style-type: none"> » Links to saveONenergy website » Tips on saving energy, and on how to purchase energy-efficient products, the amount of which varies depending on the LDC
GAS DISTRIBUTORS	<ul style="list-style-type: none"> » Tips on how to reduce gas consumption. » Details on efficiency incentive programs. » Tips on how to purchase energy-efficient products.
ONTARIO ENERGY BOARD	<ul style="list-style-type: none"> » Online bill calculator for gas and electricity, detailing what makes up the charges consumers pay.
MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING	<ul style="list-style-type: none"> » Offers information on smart meters in rental accommodations.
INDEPENDENT ELECTRICITY SYSTEM OPERATOR	<ul style="list-style-type: none"> » Energy efficiency tips.
CANADA MORTGAGE AND HOUSING CORPORATION	<ul style="list-style-type: none"> » Suggestions on how to renovate different types of houses to reduce energy consumption.
ENVIRONMENTAL COMMISSIONER OF ONTARIO	<ul style="list-style-type: none"> » Electricity pricing information in Ontario. » General background on the energy industry in Ontario.


It is not just individual consumers who are affected by a lack of energy information and literacy. One major factor limiting consumer interest and greater participation of advocacy groups in energy policy and regulatory discussions is funding for research on consumer interests and behaviours.

There is some publicly available research. The OPA, for example, conducts research into consumers' actions on conservation and into energy efficiency programs for electricity, which are both within its mandate. Under the *Energy Consumer Protection Act 2010*, the OEB has responsibility for protecting consumers from unfair or misleading energy supply contracts. All companies who sell gas and electricity directly to consumers have to be licenced by the OEB, and the OEB enforces rules about energy supply contracts and can penalize energy retailers who engage in misleading business practices. The OEB informs consumers of their rights and

researches consumers' attitudes towards the energy market, evaluating the effectiveness of consumer protection.⁴¹

However, there is little integrated research, especially examining both electricity and natural gas use. In comparison, the Transportation Tomorrow Survey, an omnibus research survey for transportation in the Greater Toronto and Hamilton Area funded by the Ministry of Transportation and local municipalities and transit organizations, has been conducted every five years since 1986. It is used as the basis for the development of capital expenditure plans and operational and customer service changes for transportation in the region.

41 Ontario Energy Board, "Protecting Consumers in Retail Markets." At <http://www.ontarioenergyboard.ca/OEB/Consumers/Consumer+Protection/Protecting+Consumers+in+Retail+Markets>.



Alternatively, industrial and commercial organizations, such as large self-funding membership organizations, are able to commission new research and access previous research. Consumer groups simply do not have such access or resources to prepare their own research and analysis.

3.1.2 Inclusive

In the regulatory area, though not in the areas of policymaking and local siting, consumers in Ontario are represented by independent third-party organizations at OEB regulatory proceedings. These regulatory proceedings directly affect consumers as it is there that gas and electricity distribution and transmission rates as well as regulated consumer rates are decided.

These intervenors, which include consumer and industrial organizations, and even individuals, are able to apply for cost-recovery funding for their intervention in proceedings, such as payment for a legal team and expert consultants. This is done to ensure that groups affected by regulatory decisions have the opportunity to argue their case at the OEB, when without funding it would be difficult if not impossible for these views to be heard. In addition to representing different interests that may not be heard at the OEB, the intervenors also play an important role in scrutinizing the plans of regulated companies, an added layer of assessment that could benefit these regulated companies.

The OEB reviews applications for cost recovery from these intervenors after the proceedings are finished, and can, at its own discretion, reduce the amount awarded to the intervenor, or even, although this is unusual, deny any cost-recovery funding. Industry organizations also receive funding (see Appendix G). Costs for the intervenors are paid through charges on the regulated companies, a system administered by the OEB. As extra costs for regulated companies will in the end be passed on to consumers, in a sense all consumers pay for the intervenors.

A major problem with this system is the lack of long-term equitable funding levels between utilities and industry organizations and consumer organizations. Just as in the policy area, utilities or large industrial associations have more resources than consumer organizations, which leads to:

- » scarcity of research on consumers as no single organization is able to fund omnibus surveys or vigorous consultations;
- » consumer organizations finding it difficult to keep experts on staff, and instead relying upon consultants, which leads to a lack of institutional memory; and
- » intervenor funding not extended to appealing OEB decisions in the courts, while larger organizations or utilities may have the budget to dispute OEB decisions in court.

Inclusiveness is not only a concern in the provincial regulatory space.

In addition to the intervenors, the OEB has indicated that it is going to move towards a “consumer-centric” vision of regulation, and to try to include consumers in regulatory decisions more widely.⁴²

Inclusiveness is not only a concern in the provincial regulatory space. At the national level, the NEB is the regulator for any pipelines or electricity lines that cross provincial or international borders, as well as for oil and gas development in areas not under provincial control.⁴³

42 Rosemarie T. Leclair, Chair of the Ontario Energy Board, *Consumer-centric Regulation: From Vision to Reality*, Speech delivered at the Ontario Energy Network, Toronto, April 28, 2014. At http://www.ontarioenergyboard.ca/oeb/_Documents/Speeches/speech_leclair_OEN_20140428.pdf.

43 For more information on social licence for interprovincial pipelines in Canada, see Matthew Mendelsohn and Richard Carlson, *The Politics of Pipelines Ontario's Stake in Canada's Pipeline Debate* (Toronto: Mowat Centre, November 2013). At <http://mowatcentre.ca/the-politics-of-pipelines/>.

The NEB has recently introduced strict criteria on intervenors, who must now show that they will be directly affected by the project, have a specific interest in the proposed project, or demonstrate that they have recognized expertise that will benefit the NEB hearings.⁴⁴ The application to intervene is very complex, and environmental groups have criticized the new system, complaining that this complexity will mean that some people will not be heard.⁴⁵ New legislation also gives the federal cabinet final authority, which previously rested with NEB, over whether or not a project will be allowed to precede.⁴⁶

3.1.3 Sustained

Given limited public engagement and numerous policy shifts in the past, the Ontario public is not in a strong position to contribute to energy policy discussions or to understand the full range of energy policy issues. A long-term program of interaction, discussion, and education is required to re-establish a relationship of trust with the public.

In terms of siting of large energy infrastructure projects in Ontario in recent years, the record is mixed. There have been some successes. Since 2003, for example, 21 gas-fired power stations were contracted, with 19 completed and operational by the end of 2013. In many cases these were located in ‘willing host’ communities. Two other gas plants, scheduled to be built in new locations but cancelled due to community resistance, were eventually moved to locations near existing energy infrastructure.⁴⁷

44 National Energy Board, *National Energy Board Hearing Process Handbook*, October 2013. At <http://www.neb-one.gc.ca/clf-nsi/rthnb/pblcprtptn/pblchrng/pblchrngpmphlt-eng.html>.

45 John Spears, “Comment on Changes to Enbridge’s Toronto Pipeline Now Requires NEB permission,” *Toronto Star*, April 9, 2013. At http://www.thestar.com/business/2013/04/09/comment_on_changes_to_enbridges_toronto_pipeline_now_requires_neb_permission.html.

46 Government of Canada, *Canadian Environmental Assessment Act*, 2012, section 7. At <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5697420&File=74#15>

47 Auditor General of Ontario, *Oakville Power Plant Cancellation Costs*, October 2013. At http://www.auditor.on.ca/en/reports_en/oakville_en.pdf.

The situation is different for renewable energy projects as amendments to the *Planning Act* as a result of the *Green Energy Act* have meant that such projects are not required to follow official plans and zoning by-laws, in effect making it impossible for a municipality to veto development. Instead, developers submit an application to the Ministry of the Environment. However, although the legislation has not changed, the government has now said that preference will be given to developers that show that they have local support for their projects, and support will be given for communities to develop their own energy plans.⁴⁸

Yet all infrastructure project proponents are required to hold discussions with the local municipality and with people affected by any project and to ensure that all their concerns are met.⁴⁹ However, there are no standard procedures or timelines to be followed by proponents. Some proponents are known to practice effective public engagement at the early stages of the project before final decisions are made, and then regularly consulted throughout the entire process. Other proponents are known to consider the consultation process a burden and to do no more than the absolute minimum.

The government has recognized the need for change in public consultations involving energy infrastructure development in Ontario.

48 Ministry of Energy, "Ontario Working With Communities to Secure Clean Energy Future," May 30, 2013. At <http://news.ontario.ca/mei/en/2013/05/ontario-working-with-communities-to-secure-clean-energy-future.html>.

49 Environmental Assessment Act, Sections 5, 6 and 14; Ontario Ministry of Energy, *Renewable Energy Development: A Guide for Municipalities*. At <http://www.energy.gov.on.ca/en/renewable-energy-facilitation-office/resources-and-contacts-2/renewable-energy-development-a-guide-for-municipalities/>.

The government has recognized the need for change in public consultations involving energy infrastructure development in Ontario. In August 2013, the government asked the OPA and the IESO for guidance on better consultation. The OPA and IESO came back with a series of general recommendations relating to the transparency of projects and the implementation of proper public engagement methods, recommendations which were accepted by the government. The report calls for improved energy literacy, more transparency of decision-making, and working with communities.⁵⁰

3.1.4 Transparent

In a poll exploring public trust in the Ontario energy sector, people held generally negative views of the different provincial energy organizations, or, in some cases, were unaware of them altogether. But the public was more confident that their rights were protected after being informed that third-party intervenors were representing their interests at regulatory hearings.⁵¹

The funded intervenor system during OEB hearings does provide representation on consumers' financial interests in regulatory hearings, and could in fact be the one place in the energy sector where there is a formal mechanism for public representation. Yet there are concerns about the transparency of the current funded intervenor system. To put the intervenor funding system into context, between April 1, 2011 and March 31, 2012, \$5.7 million was paid to cover the costs of 40 intervenors that represented a variety of groups, from large industrial consumers, manufacturers and exporters, to environmental organizations and small consumers. These 40 organizations are frequent intervenors at OEB hearings.

50 Ontario Power Authority and the Independent Electricity System Operator, *Engaging Local Communities in Ontario's Electricity Planning Continuum: Enhancing Regional Electricity Planning and Siting*, August 1, 2013. At <http://www.powerauthority.on.ca/stakeholder-engagement/stakeholder-consultation/ontario-regional-energy-planning-review>.

51 Greg Lyle, Innovative Research Group, "How Getting Consultation Right Leads to Getting Things Done," Presentation at the IESO Stakeholder Conference, February 11, 2014. At http://ieso-public.sharepoint.com/Documents/consult/summit/Part%20II%20Keynote%20Speaker_GLyle_IESO%202014%20Summit.pdf.

Of the intervenors that received cost-recovery funding that year in Ontario, seven can be considered as solely representing small consumers,⁵² and they received \$3.5 million, or just under two-thirds of the total costs awarded.⁵³ Since there were 4.4 million residential electricity customers in December 2011,⁵⁴ each residential electricity customer would have paid approximately \$0.80 in 2011-12 for consumer representation at the OEB.

One concern is about settlement of regulatory cases without a full OEB hearing. In many cases, the regulated company and intervenors privately negotiate a settlement agreeable to all parties, and then present the settlement to the OEB for approval without a full oral hearing. While the OEB has the final authority, it may not be clear to what extent the public interest was represented in the settlement agreement.

Another concern is that intervenors are only accountable to their funders, boards or constituents, but not to the broader public on whose behalf they speak. This lack of accountability to the broader public leads to transparency issues because it can be difficult for the consumer to determine who is supposedly intervening on their behalf, and what information they base their interventions on. The OEB has introduced new rules that obligate frequent intervenors to post information on their organization, such as their mandate, objectives, and constituency they represent, on the OEB website. However, there is still no requirement that they represent a constituency, or that they research the constituency's opinion.⁵⁵

52 The seven intervenors were the School Energy Coalition, the Consumers Council of Canada, the Vulnerable Energy Consumers Coalition, Energy Probe, Pollution Probe, the 6 Nations Council, and the Council of Canadians. Other intervenors, such as the Green Energy Coalition, would also have looked at consumer issues, but would not have focussed on the issue.

53 Other intervenors, such as the Green Energy Coalition, would also have looked at consumer issues, but would not have focussed on the issue.

54 Ontario Energy Board, *Yearbook of Electricity Distributors and Yearbook of Natural Gas Distributors*, September 13, 2012. At <http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Reporting+and+Record+Keeping+Requirements/Yearbook+of+Distributors>.

55 Ontario Energy Board, *Review of the Framework Governing the Participation of Intervenors in Board Proceedings—Completion of First Phase Board File No. EB-2013-0301*, April 24, 2014. At http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2013-0301/ltr_Intervenor_Participation_First_Phase_20140424.pdf.

There are also no requirements that an intervenor communicate their positions and interventions to their constituency. While some groups, such as the Ontario Clean Air Alliance,⁵⁶ do provide plain language summaries of regulatory issues on which they are intervening and of their position, most consumer groups that intervene at the OEB do not.

3.1.5 Efficient

As mentioned above, at the policy level there has been little formal coordination among the actors who represent or engage with consumers. Moreover, there is no one organization that publishes trusted and comprehensive research on consumer attitudes and opinions that can be used to inform public discussion of energy in Ontario.

Efficiency in regulatory hearings is necessary. While it is important that all views are heard, and all points of view considered, all parties have a stake in the process being as efficient as possible, especially as any additional costs will in the end be paid by consumers.

There is anecdotal evidence suggesting that there needs to be better coordination between intervenors and OEB staff to avoid overlap and duplication. Although intervenors say they are getting better at coordinating among themselves, and there is evidence of this, there is no formal process to ensure this collaboration. This could pose a concern if the people involved change.

56 See, for example, Ontario Clean Air Alliance, *Doubling the Fixed Monthly Customer Charge: A Review of the Ontario Energy Board's Proposal to Guarantee the Residential and Small Business Distribution Revenues of Ontario's Electric Utilities*, May 2014. At <http://www.cleanairalliance.org/files/fixdcharge.pdf>.

Another concern is that any research conducted by an independent intervenor tends to stay within that organization and is not easily available to the average consumer. This can lead to duplicating research efforts and can make it difficult for prospective new intervenors to learn what has already been done. While the intervenors' funding can be challenged at the OEB, it is not clear if this is done in all questionable cases, a concern that has also been raised by the Auditor General.⁵⁷

Examining the OEB's funded intervenor system, it is difficult to evaluate its effectiveness. From a strictly short-term cost perspective, a quantitative analysis of how effective intervenors are at keeping energy rates low for consumers is difficult. It is not often clear how the actions of any one intervenor influence OEB decisions, as the burden of proof still lies with the applicants. OEB staff also analyze submissions from the regulated companies. As a result, it would be possible, for example, for the OEB to arrive at the same position without the involvement of the intervenors.

It is, however, reasonable to assume that intervenors have been responsible for rate reductions. According to research by the Public Interest Advocacy Centre, an organization that intervenes at the OEB on behalf of consumers, in 2011 final rates approved by the OEB were, on average, 3.8 per cent less than the rates requested by the local electricity distribution companies, an average annual savings of \$28 per customer.⁵⁸ This means that each consumer paid \$0.80 for representation that saved them \$28 in cost increases.

As a result, the current funded intervenor system is arguably cost effective for consumers given the savings consumers realize. However, the intervenor system in California seems to be providing more value for money in terms of savings for consumers. In 2013, the ORA claimed to have saved ratepayers US\$1.5 billion through its regulatory advocacy. The ORA's budget was US\$24.4 million in 2013, meaning that every dollar invested in the ORA was associated with US\$61 in annual savings for consumers.⁵⁹

While it is important that all views are heard, and all points of view considered, all parties have a stake in the process being as efficient as possible.

Yet a strict evaluation of the costs of the intervenor system and the effect intervenors have had on keeping short-term rates low is only part of the picture. Many opinion polls have shown that rates, while important, are only one of several issues of interest to the consumer, and that there are other criteria, such as sustainability, safety, reliability, accountability, and transparency, which are not reflected in the current system. The public interest is not always fully captured in short-term rate decisions, and long-term concerns also need to be considered. At the same time, there is no mechanism to ensure that intervenors learn about the concerns of the constituencies they represent, or even communicate with them.

57 Auditor General of Ontario, "Section 3.02: Electricity Sector—Regulatory Oversight," *2011 Annual Report of the Office of the Auditor General of Ontario*. At http://www.auditor.on.ca/en/reports_en/en11/302en11.pdf.

58 Michael Janigan, "Regulation Bogeyman Not Driving Up Electricity Costs," Public Interest Advocacy Centre, December 18, 2012. At http://www.piac.ca/energy/regulation_bogeyman_not_driving_up_electricity_costs.

59 California Office of Ratepayer Advocates, *2013 Annual Report*. At <http://www.ora.ca.gov/AR2013.aspx>.

3.2 SUMMARY OF THE SITUATION IN ONTARIO

Practices in Ontario’s energy policy, regulatory, and local siting decisions do not fully meet the five principles for effective public engagement (see Table 4). The results have been clear: inconsistent and short-term energy decisions that frequently lack social licence.

TABLE 4
Comparison of principles to situation in Ontario

Principle	Situation in Ontario
INFORMATIVE	<ul style="list-style-type: none"> » While good quality information exists, it is not easy or intuitive for the average consumer to find, and it is split between many different players in the sector. » There is a lack of research on consumers’ interests in Ontario.
INCLUSIVE	<ul style="list-style-type: none"> » There is generally no mechanism for public engagement at the policy level except by organized groups that may or may not represent all consumers. » Ability of other groups to influence or contribute to regulatory hearings is not clear. » For siting decisions, there are no criteria describing what public engagement should look like.
SUSTAINED	<ul style="list-style-type: none"> » There is very little organized representation for consumers at the policy level. » The only time when the public can engage is during consultations on new regulations, policies, and siting. In these instances, the public is expected to respond on highly technical issues.
TRANSPARENT	<ul style="list-style-type: none"> » It is uncertain whether consumers have a high degree of trust in the information they receive from various actors within the energy system. » At the regulatory level, there is no requirement that the public be informed about which intervenors are participating on their behalf, nor is it ensured that all voices are heard during proceedings.
EFFICIENT	<ul style="list-style-type: none"> » There is little sharing of information or coordination of the various actors involved in engaging and representing the public. » While rates are kept down, long-term public concerns on energy are not always considered.

If consumers are expected to have a greater say in their own energy use—for both gas and electricity—and to stop being passive users of energy, then they will also ask for a greater say in the energy sector as a whole. This will become an even larger issue as prices rise.

Under-performance on public engagement is already creating challenges in securing social licence, which is negatively affecting policy development, meeting conservation targets, regulatory decision-making, and infrastructure siting decisions.

4

Policy Recommendations for Ontario

Energy policies as well as infrastructure investments and siting decisions have long-term effects on the way Ontarians live their lives. These policies and projects are more likely to succeed if the public has a chance to have its voice heard early and at times when it can have a meaningful impact on outcomes. The effects of the public's participation—if any—must be visible. Sustained public engagement can contribute to social licence, which can improve the success rate of energy initiatives.

Consumers are now being asked to make decisions about their own short- and long-term energy consumption, so the need for engagement is greater than ever before. Engagement is especially pressing in an era when energy prices are expected to rise. If consumers do not understand why this is happening, or how to reduce their own energy consumption, public support for some policy initiatives may weaken.

In light of the five principles of effective engagement, it is clear that Ontario's practices can be improved. Under-performance on public engagement is already creating challenges in securing social licence, which is negatively affecting policy development, meeting conservation targets, regulatory decision-making, and infrastructure siting decisions.

Our recommendations build on the principles of effective public engagement and the lessons from our case studies, and apply these with an appreciation of the current situation in Ontario. It is assumed that decision-makers in the public and private spheres will actually listen, and want to engage, a willingness demonstrated through the government's consultations in 2013.

RECOMMENDATION 1:

Establish a public energy consumer advocate to engage the public and advocate on its behalf in policy and regulatory areas

The current funded intervenor system, while it does represent consumers' short-term financial interests and provides good value for money in regulatory hearings, does not effectively engage the public on long-term policy and does not ensure adequate representation of all viewpoints. To integrate public representation and engagement in both the policy and regulatory areas, as well as to act as a centre for promoting energy literacy, we recommend establishing an Office of Energy Consumer Engagement (OECE).

A good model for this proposal would be the Office of Ratepayer Advocates in California, in that it represents the public in both policy discussions and at regulatory hearings. The main goal of the OECE would be to ensure that the public is understood, heard, and well represented in all areas of energy policy-

making. It would also act as a trusted provider of information, and have the capacity to undertake in-depth research and analysis for the use of both stakeholders and the public, and would promote energy literacy more generally.

It is also important that the OECE's mandate include consumers' long-term broader interests, including innovation, environment, health, and safety. This would ensure that the OECE would not be fixated solely on short-term cost issues.

The OECE would act as a centre of expertise on consumers in policy discussions. The OECE could use its continuous engagement with the public, and understanding of issues of interest to the public, to inform the government's energy policy-making and provide different perspectives. It would also be able to conduct independent evaluations of policy proposals in order to provide independent analysis of policies and the impact on consumers. These activities would benefit both decision-makers, who would have access to high quality information on the public's concerns, as well as to the public, who would be part of a discussion on energy, and have access to trusted analysis of proposals.

If energy policy decisions achieve social licence, something that would only be likely through open public engagement, it would result in smooth policy implementation. For one, it would help ensure that regulatory hearings remain focused on technical implementation issues and stop becoming forums for wider debates on energy policy.

In regulatory hearings, while the presence of the OECE would reduce the number of intervenors as it could represent the average consumer, the OECE would not replace all intervenors, especially those that represent a unique or particular community or interest. Independent intervenors have unique and valuable perspectives that could not be replaced. In jurisdictions that have a PECA, the work of independent intervenors is still seen as necessary and important to the process. However, the value of

having the OECE work with independent intervenors is seen in California where the ORA and funded intervenors reinforce the work that each are doing. In addition the OECE's research and analysis could be used to inform the positions of independent intervenors.

In addition to participating and representing the public in policy and regulatory discussions, the OECE would undertake the following activities:

- » Coordinating intervenors at the OEB and ensuring that information is shared.
- » Acting as a resource for other groups and the public by commissioning or conducting research/polls on general and vulnerable consumers.
- » Operating a consumers' complaint/information line, and referring complaints to the OEB for enforcement.
- » Assisting consumer groups in matters of appeals where consumer legal representation is needed but no funding is available through the cost award process.
- » Educating consumers to raise awareness of energy challenges and policy options.
- » Approving all negotiated settlements between regulated companies and intervenors before they are sent to the OEB to ensure that the public interest was met.

In fulfilling its mandate, trust and independence will be essential. Consumers and consumer organizations need to perceive the information provided by the OECE as independent and view it as acting in the interests of small consumers, not industry or the government. The OECE cannot be seen as following government directives, and has to be free to criticize government policy. An arms-length agency would be likely to achieve these goals. This could also be a funded not-for-profit NGO, such as the Citizens Advice Bureau in the UK.

Alternatively, an OECE could be created as an independent branch of the OEB, but this option has drawbacks. The OEB, as an independent quasi-judicial regulatory, stays out of policy discussions and is required to balance the interests of many stakeholders, something that would be very different from the work of the OECE. There is also potential for conflict of interest as the OECE could be advocating against an OEB decision.

The OECE has to have its independent role assured. The OECE should be financed through a regulatory charge on consumers' bills, not through the government budget. External funding, while not the only criteria of independence, will help ensure its independence from government. It will be held accountable to consumers because it will be funded by consumers.

RECOMMENDATION 2: Create a charter of citizens' rights for energy infrastructure siting

Problems arising from inadequate public engagement are most glaring when siting new energy infrastructure. It is here that the public is most directly involved and needs to be engaged.

A charter of citizens' rights for energy infrastructure siting would offer descriptive guidelines for engagement, providing overarching goals and a vision for any public consultation process. This would result in the project proponent—be that a public agency or a private developer—as well as for the community and the public knowing when and how each could contribute and what would be required. It would also require that a developer demonstrate how engagement has influenced the decision. In the end, the proponent would have to show that it had met the values laid out in the charter. The community charters in British Columbia and New South Wales, which apply to both public and private project proponents, are useful models to follow.

Problems arising from inadequate public engagement are most glaring when siting new energy infrastructure.

Under the current siting process in Ontario, there are two options for implementing such a charter. One possibility is that the charter be included as a requirement in all future environmental assessments for energy projects. This would make it a legislated requirement for all energy infrastructure projects.

Another possibility would be for the OPA, or any other party contracting a developer, require that any project proponent demonstrate plans for public engagement that meet the goals set out in the charter. If, however, the OPA were the only agency to use such a charter, it would only apply to the development under its authority, namely new generation or demand-side measures. It would not, for example, necessarily apply to the siting of new power lines or pipelines.

The charter is a response to the lack of social licence in some recent energy infrastructure developments. In these cases, the lack of social licence led to protests, delays and increased costs for all consumers. In effect, the charter would make it more difficult for opponents to protest after the decision has been made by setting out clearly where and how the public will be engaged, and ensuring that the public is heard and taken into consideration.



The provincial government has indicated that the siting system may be reformed. For recommendations on more wide-ranging reforms to the process of siting energy infrastructure, see Mowat Energy’s *Getting the Green Light: The Path to Public Support for Ontario’s Power Plans*.⁶⁰ However, the community charter would be required regardless of any planning reforms in order to help promote public engagement.

RECOMMENDATION 3: Formalize the roles of intervenors in the regulatory process

It is important to include a diversity of opinions in the regulatory process, and the funded intervenors provide perspectives that would be lost if they were not included. A funded intervenor model would be required even with the creation of the OECE, although with the OECE the number would probably be reduced, and they would be focused on particular groups or viewpoints that would not be represented through the OECE.

But some stakeholders have indicated that there are often too many intervenors in proceedings at the OEB, and that it is difficult to know what each intervenor is contributing to the regulatory hearing. There are concerns that if too many groups intervene, it can lead to longer and more costly regulatory hearings—and these costs will eventually be passed through to consumers.

But these two perspectives need not be at odds. There are ways to ensure a diverse representation of opinion and to ensure that the number of intervenors does not overwhelm the hearings. A good model is the intervenor rules used in California. We recommend a few instruments to strike this balance in Ontario:

60 Richard Carlson, Eric Martin, Pamela Nowina, and Mary Ellen Richardson, *Getting the Green Light: The Path to Public Support for Ontario’s Power Plans* (Toronto: Mowat Centre, 2013). At <http://mowatcentre.ca/getting-the-green-light/>.

- » Intervenors should be required to demonstrate that they regularly engage and communicate with their constituencies. They must demonstrate that concerns from their constituencies are reflected in their regulatory positions.
- » Intervenors should be required to publicly post all positions, submissions and related documents on their websites, including a plain language summary of their position.
- » Intervenors should be formally incentivised to collaborate. While they already collaborate informally, more formalized collaboration would ensure that there is no duplication or overlap and that adequate resources are available to all intervenors, small or large. Funding could be reduced if, for example, the OEB finds duplication.
- » The role of OEB staff in regulatory hearings, particularly with negotiated settlements, should also be clarified to avoid duplication of efforts between intervenors and staff.
- » Research should be shared among intervenors, and the OECE should collect and index all publicly available research.
- » The OEB should require that all intervenors submit a statement prior to any proceedings, not only detailing their interests in the case, as is required under current reforms, but also the expected budget. Only if the OEB approves the statement would the intervenor receive funding.

These recommendations would not significantly change the current funded system, but would use OEB resources more efficiently while at the same time would ensure that a diverse range of voices continue to be heard. This recommendation would build upon the creation of the OECE.

The OEB has recently made efforts to reform the role of intervenors at regulatory hearings, and more is expected.⁶¹ However, the OEB's actions are not sufficient to address concerns regarding communication with constituencies and ensuring collaboration when intervenors have similar, or the same, argument.

61. Ontario Energy Board, *Review of the Framework Governing the Participation of Intervenors in Board Proceedings—Completion of First Phase Board File No. EB-2013-0301*, April 24, 2014. At http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2013-0301/ltr_Intervenor_Participation_First_Phase_20140424.pdf.

The traditional approach to energy policy development, namely industry, policy-makers, and regulatory officials making decisions on policy without meaningful public input, faces increasing pressure.

5

Conclusion

Ontario's energy sector is undergoing transformative changes. Energy prices are expected to increase and small consumers are encouraged to be more proactive about their own energy consumption. At the same time, new investments in energy infrastructure—from new pipelines, electricity generation, and transmission power lines—are required to meet demand for energy services and to replace aging assets.

There has already been public backlash over the siting of some new energy infrastructure in Ontario. Indeed, public opposition to development could increase in the future as a result of greater community visibility of the planned infrastructure.

The traditional approach to energy policy development, namely industry, policy-makers, and regulatory officials making decisions on policy without meaningful public input, faces increasing pressure. The public now wants a meaningful say in how energy decisions are made. And as consumers are expected to better manage their own energy use, their involvement is now crucial. A precondition to increased public engagement is energy literacy, as a more informed public can effectively enter meaningfully discussions and decide on the trade-offs inherent in any policy decision.

The traditional processes, institutions, and structures in Ontario at the policy, regulatory, and the local siting areas do not meet the five principles for effective public engagement in energy planning. While there is public representation at regulatory hearings through the funded intervenor system, this is not coordinated with or extended to other areas in energy policy-making. At the same time, there are limited resources available to the public in order to understand the issues.

As a result, social licence for some decisions has not been secured in Ontario. This lack of social licence has already caused delays, short-term policy changes, and a politicization of the sector. As the sector continues to transform—requiring even more changes visible to the public—these trends may only be accentuated unless processes for engagement are introduced.

The public needs to understand how they can meaningfully participate in decision-making, be given the tools to do so, and be shown how they have influenced decisions. The recommendations made in this report—establishing public energy advocates; defining citizen's rights in energy planning; and formalizing roles of intervenors—highlight how the principles of good public engagement can be implemented in the Ontario energy sector. Ensuring that the public is effectively engaged in a democratic process, and given the tools to do so, will create better and more informed decision-making on short- and long-term energy policy, regulatory, and siting decisions. This will also help to ensure that social licence for energy policy and projects is secured, thereby allowing for a smooth implementation of the changes that are needed in Ontario's energy sector.

Appendix A:

Comparisons of Public Energy Consumer Advocates: Alberta, Utilities Consumer Advocate

OVERVIEW

1. Overview of energy market

In Alberta, the power market has been deregulated and is open and competitive at both the generation and retail. The Alberta Utilities Commission (AUC), the energy regulator, regulates transmission and distribution. Small consumers can choose between regulated rates or a commercial contract. The gas market has also been deregulated, with transportation and distribution remaining regulated. Consumers can again choose between a regulated rate option and a commercial contract.

2. Scope of activities

The Utilities Consumer Advocate (UCA) advocates for residential, farm, and small business electricity as well as natural gas consumers.

3. Agency functions

The UCA has three main roles in legislation:

- » Represent the interests of residential, farm, and small business consumers of electricity in Alberta and natural gas before the proceedings of the AUC, other regulatory bodies, and courts;
- » Disseminate independent and impartial information about the regulatory process; and
- » Inform and educate consumers about electricity and natural gas issues.

In addition, the UCA mediates disputes between consumers and their retailer service providers.

The UCA sees its role as representing consumers before regulatory bodies to include participating in policy discussions at the government level.

The UCA educates consumers about the energy market and their choices through its website, call centre, and public meetings. The UCA does not currently educate customers about energy efficiency, although this is an area that is being looked into for possible future programs.

4. Vision, mission, core values, goals, and objectives

The UCA exists to ensure that consumers have the information, representation and protection they need to help them make informed choices in Alberta's electricity and natural gas markets.

The UCA's goal is to strive for the lowest delivered price of energy commensurate with consumers' requirements for quality and reliability of service. The goal is to always take principles and evidence-based positions on issues.

GOVERNANCE STRUCTURE

1. Establishment

The Utilities Consumer Advocate was established in 2003 under the *Government Organization Act*, Schedule 13.1.⁶² The legislation is very broad and basically only establishes overall responsibilities. The UCA is a division of Service Alberta, one of the government ministries charged with consumer protection.

In 2002, the year before the UCA was established, approximately \$19 million was awarded to intervenors. This amount declined to about \$3.5 million by 2007. In 2008, the AUC established Rule 022 and stopped most payments to intervenors, unless they can show direct connection to the topics

⁶² Government of Alberta, *Government Organization Act 2000 (Current as of June 2013)*, Schedule 13.1. At http://www.qp.alberta.ca/1266.cfm?page=g10.cfm&leg_type=Acts&isbncln=9780779736188.

discussed. One of the few organizations to receive intervenor funding is the Consumers Coalition of Alberta.⁶³

2. Powers in legislation

The UCA only has powers of advocacy. The UCA does not have investigation and enforcement powers. Instead it refers cases to the Consumer Investigation division of Service Alberta for complaints regarding retailer conduct; the Market Surveillance Administrator, for cases on competition in the retail side; and the Customer Relations Group at the AUC for tariff and rate infractions.

When the UCA was created it was deliberately designed to ensure that advocacy and investigation and enforcement were kept separate. In addition, some consideration was given to whether an advocate or an ombudsman was required, however, the decision was made that advocacy was the appropriate role.

3. Appointments and advisory board

The Utilities Consumer Advocate is appointed by the Minister of Service Alberta following a competitive process. The Advisory Board may have up to ten members and is composed of members who are nominated by various consumer organizations and appointed by the Minister, and members-at-large appointed by the Minister following a competitive process. The Board is responsible to the Minister.

4. Independence issues

The UCA is a division of Service Alberta and is responsible to the Minister. There has been concern that the UCA is perceived as being biased as a result of it being a government department.

63 Information provided by Rob Spragins, Utilities Consumer Advocate. Alberta Utilities Commission, *Applicant and Intervenor Costs for All Hearing Categories*, May 2008. At http://www.auc.ab.ca/rule-development/intervenor-costs/Documents/May%2026%202008/Cost_Graphs.pdf; Alberta Utilities Commission, *Rule 022: Rules on Intervener Costs in Utility Rate Proceedings*, September 2008. At http://www.auc.ab.ca/rule-development/intervenor-costs/Documents/September%2030%202008/Rule_022_Sept_30_08.pdf.

In January 2013, the Retail Market Review Committee, an independent committee established by the Department of Energy, recommended that the UCA become an independent arm's length agency.⁶⁴ The Alberta Government accepted the recommendation, and is currently considering what the future role and structure of the UCA will be.

OPERATION

1. Budget and funding formula

Although part of the government, the UCA is funded 80% by electricity consumers through the Balancing Pool and 20% by natural gas consumers through distribution rates.

The annual budget is approximately \$9 million including administration, mediation services, consumer education and awareness, regulatory proceedings, and the UCA Advisory Board.

2. Employee breakdown

There are 19 full-time employees and four part-time employees, approximately half of whom work in mediating disputes between consumers and their retailer service provider. As it is part of the government, the UCA is unable to offer competitive benefits necessary to hire regulatory and policy analysts who have industry experience. As a result, it relies upon a network of external regulatory consultants who frequently change, thus limiting institutional memory.

3. Accountability

At the moment, information on the UCA's activities is not publicly available. However, the UCA is currently developing reporting and metrics to measure their actions and these are expected to be made public, and to post the results of its interventions in regulatory and other proceedings on its website.

64 Retail Market Review Committee, "Chapter 7: What Do Consumers Need?" *Power for the People: The Retail Market Review Committee Report*, January 28, 2013. At http://www.energy.alberta.ca/Electricity/pdfs/RMRC_Ch7_ConsumerNeeds.pdf.

4. Results

On average, the UCA responds to approximately 40,000 to 45,000 calls a year and participates in 100 to 120 regulatory hearings. In 2012, the UCA received close to 50,000 calls, the highest ever. The perception from the UCA is that it has been pretty successful and its operation has benefited consumers.

Appendix B:

Comparisons of Public Energy Consumer Advocates: California, Office of Ratepayer Advocates

OVERVIEW

1. Overview of energy market

Approximately 80 per cent of the Californian power and gas market is served by privately-owned utilities, referred to as investor-owned utilities (IOU), which have regional monopolies. The remainder are served by municipally owned utilities or cooperatives. The four largest IOUs—Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas)—dominate the market. The California Public Utilities Commission (CPUC or commission) regulates gas and electricity IOUs, including the consumer tariffs. (The CPUC also regulates communications, water, railroad, rail transit, and passenger transportation companies.)

The Office of Ratepayer Advocates (ORA),⁶⁵ an independent consumer advocate within the CPUC, represents consumer interests in CPUC regulatory hearings and in other forums throughout the state. ORA's statutory mandate, per *California Public Utilities Code Section 309.5*, is to obtain the lowest possible rate for utility service consistent with reliable and safe service levels. The ORA also advocates for customer and environmental protections in connection with utility services.

2. Scope of activities

The ORA primarily advocates for small consumers on energy, water, and communications regulations related to IOUs.

⁶⁵ Prior to September 2013, the ORA was known as the Division of Ratepayer Advocates (DRA). Where applicable that name is used for any documents predating that time.

3. Agency functions

The ORA participates as a party in regulatory proceedings before the CPUC and in policy discussions throughout the state. It focuses on issues affecting residential and small business customers. The ORA evaluates utilities' and other stakeholders' proposals, as well as legislative bills, for their effects on consumers.⁶⁶ The ORA does not separate policy and regulatory advocacy, and advocates in policy areas that will affect consumers. The ORA also has fulltime employees working on policy. The ORA does not see any substantive difference between policy and regulatory advocacy as both affect consumers. It was, for example, involved in discussions concerning the state's renewable energy systems from the very beginning.⁶⁷

At the CPUC there is another consumer-related division, the Consumer Service and Information Division (CSID). Within CSID, there is the Consumer Affairs Branch, which resolves complaints from individual utility customers and mediates disputes.⁶⁸ The Public Advisor's Officer is also in CSID and provides information to members of the public who want to participate in the CPUC's public hearings or formal proceedings.⁶⁹

4. Vision, mission, core values, goals, and objectives

ORA's statutory mission is to obtain the lowest possible rates for reliable and safe service.⁷⁰

The ORA has made the decision to support the state's renewable energy and energy efficiency goals as it falls under their mandate to ensure

that energy supply is safe and reliable. It is within that framework that the ORA tries to ensure that the environmental goals are met in the most cost-effective way possible.⁷¹

GOVERNANCE STRUCTURE

1. Establishment

Up the early 1980s, CPUC staff often functioned as advocates in formal proceedings and also in an advisory role in assisting the Commission in rendering its decisions. Over time, this dual role of staff as both advocates and advisors came under criticism from both utilities and consumer organizations. To address concerns regarding staff's potential conflict of roles, the CPUC created a separate "Public Staff Division" (PSD) in 1984 to perform the advocacy role, while the remainder of staff continued to serve in an advisory role. This separation of functions did not necessarily increase the overall size of the staff, but instead created a clear division of responsibility and clarity of roles. The role of the PSD was clarified in *Public Utilities Code Section 309.5*, which also renamed it the Division of Ratepayer Advocates (DRA). In 2013 the DRA was renamed the ORA and a lead attorney for the OPA was appointed. For the ORA, all other CPUC attorneys will work under the ORA's lead attorney.⁷²

2. Powers in legislation

The ORA has the power to participate as a party in hearings and proceedings of the CPUC, in related legal cases, and to advocate with decision-makers on energy policy issues. The ORA also advocates on behalf of utility customers in other venues such as before other state agencies on utility-related issues that are within the jurisdiction of the CPUC.

66 California Office of Ratepayer Advocates, *2013 Annual Report*. At <http://www.ora.ca.gov/AR2013.aspx>.

67 Interview with Linda Serizawa, Deputy Director for Energy, Office of Ratepayer Advocates, California Public Utilities Commission, July 23, 2013.

68 See <http://www.cpuc.ca.gov/puc/aboutus/Divisions/CSID/Consumer+Affairs/>.

69 See <http://www.cpuc.ca.gov/PUC/aboutus/Divisions/CSID/Public+Advisor/>.

70 *Cal. Public Utilities Code § 309.5 (a)*; see also California Office of Ratepayer Advocates, "About ORA". Available at http://www.ora.ca.gov/About_ORA.aspx.

71 Interview with Linda Serizawa, Deputy Director for Energy, Division of Ratepayer Advocates, California Public Utilities Commission, July 23, 2013.

72 *California Senate Bill No. 96*, Chapter 356, Section 31, September 2013. At http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB96.

3. Appointments and advisory board

The director of the ORA is appointed by the governor and is then subject to confirmation by the state senate.⁷³ There is no advisory board.

4. Independence issues

The ORA is an independent organization within the CPUC and is accountable to the governor and to the state legislature. *Senate Bill 96* (SB 96), passed in September 2013, gave the ORA more autonomy in setting its budget and also gave additional powers to the ORA's lead attorney.⁷⁴

OPERATION

1. Budget and funding formula

The budget in 2013 was US\$27.4 million. According to ORA projections, the budget is to increase to US\$28 million in 2015.⁷⁵

Prior to bill SB 96 in September 2013, the budget was transferred from the CPUC's general budget (the CPUC is funded through a surcharge on regulated companies).

In January 2013, the California Department of Finance audit division identified problems with the CPUC's accounting for several special-purpose funds, including the then DRA's. The audit division found that the CPUC was only communicating the budget to the DRA and there was not enough transparency. While the CPUC insisted that the budgeting process was meeting statutory obligations, it said that it would improve communication with the DRA over budgeting and

transparency as a whole.⁷⁶ As noted above, SB 96 provided a clear separation between the CPUC's and ORA's budgets.

Independent intervenors in CPUC proceedings that represent small consumers can receive funding if the CPUC determines that their participation had an impact on the hearing. The intervenor needs to show that it represents utility consumers and that it has "significant financial hardship," and it has to demonstrate to the CPUC that it has made a substantial contribution to the proceedings, although the CPUC's decision could go against the intervenor. The intervenor also has to show how it coordinated its work with other intervenors, including the ORA.

The commission awarded US\$25.5 million from 2008 through 2012 for 337 interventions, with 84 per cent going to the 10 largest intervenors. On average, US\$3.4 million was awarded to intervenors every year in that period, except for 2009 when a particularly large hearing increased that figure to US\$7.8 million. In that same period, the commission denied six claims in full, and it awarded less than the amount claimed in 80% of cases, representing a \$4.9 million reduction of the total amount claimed. According to a report by the California State Auditor, the participation of intervenors can be of substantial benefit for ratepayers.⁷⁷

2. Employee breakdown

Currently, the ORA has 142 employees, including engineers, economists, scientists, and auditors; 82 of which work in the energy unit. The ORA's Chief Counsel coordinates with the CPUC's General Counsel to obtain attorneys to represent DRA in the CPUC's formal proceedings, and to conduct legal research and provide legal advice. The ORA's Chief Counsel oversees the work of these attorneys.

73 Government of California, *SB 608 (Chapter 440, Statutes of 2005)*. Available at http://leginfo.ca.gov/pub/05-06/bill/sen/sb_0601-0650/sb_608_bill_20050930_chaptered.html (codified at Cal. Pub. Utils. Code § 309.5(b)).

74 Government of California, *California Senate Bill No. 96, Chapter 356, Section 31*, September 2013. At http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB96.

75 California Office of Ratepayer Advocates, *2013 Annual Report*. At <http://www.ora.ca.gov/AR2013.aspx>.

76 California Department of Finance, Office of State Audits and Evaluations, *California Public Utilities Commission Budget Process Performance Audit*, January 11, 2013. Available at http://www.dof.ca.gov/osae/audit_reports/documents/FinalReport-CaliforniaPublicUtilities-CommissionPerformanceAuditWEB.pdf.

77 California State Auditor, *California Public Utilities Commission, Report 2012-08*, July 2013. At <http://www.bsa.ca.gov/pdfs/reports/2012-118.pdf>.

3. Accountability

The director of the ORA is appointed by the governor and has a statutory requirement to provide an annual report to the state legislature.

4. Results

In 2013, the ORA participated in 144 CPUC proceedings related to energy and submitted 442 formal pleadings to the CPUC on energy as follows:

» CPUC proceedings:

- »» 116 in the power sector
- »» 28 in the gas sector

» CPUC pleadings:

- »» 343 in the electricity sector
- »» 99 in the gas sector.

In 2013, the ORA reviewed utility requests for revenue increases and programs that totalled more than US\$38 billion. ORA claims that its advocacy efforts aided ratepayers by saving them approximately US\$1.5 billion.

Apart from its involvement in CPUC proceedings, the ORA participates in proceedings at the California Energy Commission, the California Independent System Operator, and the California Air Resources Board when consumers are affected. The ORA also provides consumer representation in other forums related to the CPUC's proceedings such as meetings to review utility procurement decisions, the Low-Income Oversight Board (LIOB), and the Pacific Forest and Watershed Stewardship Council.

The ORA also has a policy-lobbying group at the state capitol. The ORA supports California's climate change goals, and has worked to ensure that revenue from carbon trading would offset rate increases as a result of the program.⁷⁸

OTHER

One advantage of being part of the CPUC is that under law, all IOUs have to provide ORA with access to all information, including confidential information, that the ORA deems necessary to do its job.⁷⁹ ORA's access to this information is seen as critical to its ability to evaluate the utilities' and other stakeholder's proposals and to develop its own proposals.

The ORA also provides publicly available resource materials. For example, in 2012 they produced a report *The Renewable Jungle: A Guide to California's Renewable Policies and Programs* that details renewable energy incentives and programs that present opportunities to policy-makers and renewable energy developers.⁸⁰ The ORA also has information for policy-makers and the public on low-income energy issues, climate change, demand management (including smart meters and energy efficiency) and power procurement, among other issues. In addition to the ORA there are important Californian NGOs that work in this area and receive compensation for participating in regulatory proceedings at the CPUC. The largest is The Utility Reform Network (TURN), which has a budget of US\$4 million a year and employs six full-time energy lawyers, and intervenes in upwards of 100 proceedings a year at the CPUC. TURN advocates for low-income consumers and for ensuring that energy is affordable. Its motto is "lower bills and livable planet," and as such it supports increasing renewable energy generation and GHG reduction as long as the goals are met at a reasonable cost to consumers, especially low-income communities.⁸¹

78 California Office of Ratepayer Advocates, *2013 Annual Report*. At <http://www.ora.ca.gov/AR2013.aspx>.

79 See California Public Utilities Code Sections 309.5(e), 314(a), 583.
80 California Division of Ratepayer Advocates, *The Renewable Jungle: A Guide to California's Renewable Policies and Programs*, January 2012 (revised January 2013). Available at http://www.dra.ca.gov/uploaded-Files/Content/Energy/Renewable_JungleRevisedJan31FINAL.pdf.

81 Interview with Mark W. Toney, Executive Director, TURN—The Utility Reform Network, July 19, 2013.

The ORA and the other intervenors work together although they may offer different recommendations. In many ways, the ORA is seen as an information resource for many of the other intervenors.⁸²

Appendix C:

Comparisons of Public Energy Consumer Advocates: New Brunswick, Public Intervenor

OVERVIEW

1. Overview of the energy market

The majority of New Brunswick's electricity is generated by New Brunswick Power (NB Power). A decade ago, NB Power was a vertically-integrated monopoly utility, but legislation passed in 2002 split the company into four subsidiaries responsible for generation, transmission, distribution, and nuclear power.⁸³ The new structure retained Crown ownership but allowed for private investment in the companies. In 2013, a new *Electricity Act* had the subsidiaries merging back into a single vertically-integrated utility.

Electricity, gas, pipelines, and petroleum utilities are all regulated by the New Brunswick Energy and Utilities Board (NBEUB). Up until 2013, NB Power was permitted to increase its rates up to 3 per cent annually without an NBEUB review. Those rules changed with the introduction of the 2013 *Electricity Act* and all rate increases must now be heard by the NBEUB.⁸⁴ A government-appointed Public Intervenor represents consumers at NBEUB proceedings.

2. Scope of activities

The Public Intervenor represents residential consumers in hearings concerning electricity, natural gas, petroleum or pipelines at the NBEUB. The 2013 legislation also allows it to intervene in other NBEUB hearings it deems relevant, and it is required to intervene in any hearing at the request of the government.

⁸³ Government of New Brunswick, "NB Power to Remain Publicly-owned Crown Utility," 30 May 2002. At <http://www.gnb.ca/cnb/news/nr/2002e0564nr.htm>.

⁸⁴ Canadian Press, "New Brunswick government to reintegrate NB Power in bid to save money," *Times-Colonist*, 7 May 2013. At <http://www.timescolonist.com/cmlink/gmg/canadian-press/business/new-brunswick-government-to-reintegrate-nb-power-in-bid-to-save-money-1.147494/>.

⁸² Interview with Linda Serizawa, Deputy Director for Energy, Division of Ratepayer Advocates, California Public Utilities Commission, July 23, 2013.

3. Agency functions

The Public Intervenor's sole function is to intervene in NBEUB hearings. It does not receive consumer complaints nor educate consumers, though it may explain the reasons or principles behind its position on a given case.

4. Vision, mission, core values, goals, and objectives

The 2011 *New Brunswick Energy Blueprint* explains that the Public Intervenor's primary role is to challenge rate increases, and second to focus on consumer protection issues. According to the blueprint, the two main objectives served by the public advocate are "low and stable energy prices" and "effective regulation."⁸⁵

GOVERNANCE STRUCTURE

1. Establishment

The role of the Public Intervenor has existed since the mid-1990s and the roles and responsibilities of the position have not changed significantly since its inception. Legislation in 2013 updated and clarified the Intervenor's role.

2. Powers in legislation

The 2013 Act Respecting a Public Intervenor for the Energy Sector stipulates that the Public Intervenor shall intervene in any case before the NBEUB that the Intervenor considers to be in the public interest. It is unclear whether the Intervenor has the power to agree to settlements with utilities. This has been attempted in the past, albeit unsuccessfully.⁸⁶

All settlements, whether arranged by the Public Intervenor or not, are subject to review by the NBEUB and if it disagrees with a settlement made

by the Intervenor, then a full public hearing must still be held.

3. Appointments and advisory board

The appointment is made by the Attorney General. Previously, the appointments were made on an ad hoc basis, but the new legislation stipulates a permanent Public Intervenor.

4. Independence Issues

As stated above, the appointment is made by the Attorney General; however, it is unclear how much political influence there has been in past appointments, and the appointments have tended to change with changes in government.⁸⁷

OPERATION

1. Budget and funding formula

The Public Intervenor is required to submit an operating budget to the Attorney General, who will approve it and forward a copy to the NBEUB.⁸⁸ Operating expenses for the Intervenor are then assessed against the utilities. Between 2005 and 2010, the annual expenses billed by the Intervenor averaged roughly \$700,000.

2. Employee breakdown

The Public Intervenor is currently a single person except for times when a newly appointed Intervenor has begun work on new cases while the previous person continues to participate in current hearings until their resolution. The new legislation refers to a single Public Intervenor, so this likely that this will continue. The Intervenor has the power to commission work from external consultants and may also be aided by administrative staff.

85 New Brunswick Department of Energy, *The New Brunswick Energy Blueprint*, 2011. At <http://www2.gnb.ca/content/dam/gnb/Departments/en/pdf/Publications/201110NBEnergyBlueprint.pdf>.

86 Robert Jones, "Basque faced heavy workload before confidential gas deal," CBC News, December 10, 2012. At <http://www.cbc.ca/news/canada/new-brunswick/story/2012/12/10/nb-petroleum-price-eub.html>; CBC News, "Backroom fuel deal should be public, opponent says," March 8, 2013. At <http://www.cbc.ca/news/canada/new-brunswick/story/2013/03/07/nb-opposition-irving-intervenor-petroleum-deal.html>.

87 CBC News, "Ex-Tory advisor appointed public intervenor," December 8, 2010. At <http://www.cbc.ca/news/canada/new-brunswick/story/2010/12/08/nb-chourki-public-intervenor-110.html>.

88 New Brunswick Attorney General, *An Act Respecting a Public Intervenor for the Energy Sector (S.N.B. 2013, c. 28)*. At <http://laws.gnb.ca/en/showdoc/cs/2013-c.28>.

3. Accountability

The Public Intervenor must submit an annual report to the Attorney General describing its activities and including any information that the Attorney General requires. In turn, the Attorney General is required by law to present the report to the legislative assembly when it is sitting. Furthermore, the government may make regulations that confer or impose duties on the public intervenor. It may also prescribe that the advocate intervene in specific proceedings of the NBEUB.⁸⁹

4. Results

To date, there are no publicly available reports attempting to quantify the performance of the Public Intervenor.

OTHER

The current Public Intervenor has come under recent criticism for attempting to privately settle a rate agreement with Irving Oil. The NBEUB rejected the settlement and proceeded with a public hearing. The final rate decision by the board was lower than the settlement that the intervenor had earlier agreed to with Irving.⁹⁰

⁸⁹ New Brunswick Attorney General, *An Act Respecting a Public Intervener for the Energy Sector* (S.N.B. 2013, c. 28). At <http://laws.gnb.ca/en/showdoc/cs/2013-c.28>.

⁹⁰ Robert Jones, "EUB discloses rejected Irving-Basque gas price deal," CBC News, March 14, 2013. At <http://www.cbc.ca/news/canada/new-brunswick/story/2013/03/14/nb-irving-basque-deal-released-832.html>.

Appendix D:

Comparisons of Public Energy Consumer Advocates: Nova Scotia, Consumer Advocate

OVERVIEW

1. Overview of energy market

Nova Scotia Power (NSP) is a vertically-integrated utility that provides 95 per cent of the province's generation, transmission, and distribution services⁹¹ while six municipal utilities provide the remainder. NSP and the municipal utilities are all regulated by the Nova Scotia Utility and Review Board (NSUARB, which also regulates natural gas, water, and several other areas). The province's energy Consumer Advocate position was introduced through legislation in 2005. The first Advocate was selected in 2005 by the NSUARB and reports to them when necessary.

2. Scope of activities

The Consumer Advocate intervenes in NSUARB hearings on electricity, natural gas, and water issues.

3. Agency functions

The Consumer Advocate represents the interests of residential consumers at any NSUARB hearing. The role of the Consumer Advocate does not include consumer education or complaints, though the advocate is free to relate to the public in a manner it sees fit.

4. Vision, mission, core values, goals, and objectives

Section 91 of the *Nova Scotia Public Utilities Act* (amended in 2005) sets out the objects of the Consumer Advocate. The legislation defines the Advocate's role in broad terms, leaving a large amount of discretion to the Advocate, or to the Board if they choose, to determine the parameters of their work.⁹²

⁹¹ Nova Scotia Power, "Who We Are." At <http://www.nspower.ca/en/home/aboutnspower/whoweare/default.aspx>.

⁹² Government of Nova Scotia, *Public Utilities Act, Section 91*. At <http://nslegislature.ca/legc/statutes/public%20utilities.pdf>.

GOVERNANCE STRUCTURE

1. Establishment

Section 91 was added to the *Nova Scotia Public Utilities Act* in 2005. Under the legislation, the NSUARB is free to establish further rules governing the procedure, scope, and cost of work done by the Consumer Advocate as well as the selection process for the advocate.

2. Powers in legislation

Section 91 of the *Public Utilities Act* defines the powers of the Advocate very broadly, leaving a large degree of latitude for discretion on the part of the advocate. The Advocate may choose to solicit feedback from the Board on the direction and intent of its efforts to represent residential consumers, though it is not required to do so. The Advocate's work focuses almost entirely on representing residential consumers' interests in NSUARB hearings, though the legislation does not preclude the Advocate from representing consumers' interests in other ways, such as offering input on legislation or communicating with the media.

3. Appointments and advisory board

The first Consumer Advocate was appointed by the NSUARB, as stipulated in Section 91; however, the Lieutenant Governor also has the power to appoint the Advocate. The legislation does not speak to the supervisory powers of the NSUARB or the government other than to say that the NSUARB may create further rules to guide the Advocate's activity if they so choose.

4. Independence issues

The Consumer Advocate is provided by an independent legal counsel with no formal association with either the NSUARB or the government.

OPERATION

1. Budget and funding formula

Funding for the Consumer Advocate is billed to the utilities, which is ultimately recouped from utility ratepayers. The NSUARB has the ability to fix the fees and expenses that the Advocate proposes to bill.

2. Employee breakdown

There are currently two private legal counsels at one firm providing services as the Consumer Advocate. The Consumer Advocate responsibilities do not demand the full time of both counsels, but are estimated to be equivalent to more than one full-time position.

3. Accountability

The Consumer Advocate is ultimately responsible to the NSUARB; however, the legislation governing the Consumer Advocate does not stipulate any formal reporting or accountability requirements for the role. For example, there is no annual report that the advocate must submit to the NSUARB.

4. Results

Standardized data reporting is not required of the Consumer Advocate.

OTHER

Other consumer intervenors can present at regulatory hearings and receive cost recovery funding. However, they must prove financial need to receive funding.

Appendix E:

Comparisons of Public Energy Consumer Advocates: Ohio, Office of the Ohio Consumers' Counsel

OVERVIEW

1. Overview of energy market

Ohio began pursuing electricity deregulation in 1999, when the first legislation was passed. Since then, additional legislation has been passed to limit rate increases. The Public Utilities Commission of Ohio (PUCO), the regulator, is responsible for administering the rate changes and regulating utilities. Four large investor-owned utilities own most of the transmission and distribution assets. They had previously had monopolies in their jurisdictions, but are now in direct competition. In addition, a large number of retail energy providers operate on the residential customer-facing side. The Office of the Ohio Consumers' Counsel (OCC) advocates for consumers in state and federal proceedings.

2. Scope of activities

The OCC advocates for residential consumers in proceedings related to electricity, natural gas, telecommunications, and water, primarily at the state level, but also at the federal level.

3. Agency functions

The OCC intervenes in PUCO hearings if it believes that the average residential consumer's interest may not be sufficiently represented. It also intervenes in federal utility regulation cases and may participate in cases before the Ohio Supreme Court.⁹³ The OCC also lobbies the legislature regarding policy that it believes is in the best interest of residential consumers.

⁹³ Office of the Ohio Consumers' Counsel, "Overview of the OCC." At http://www.naruc.org/international/Documents/OCC%20Overview_Fri_eng1.pdf.

Though it had run the consumer complaints service, the OCC's statutory mandate and budget was altered in 2011 and it no longer receives consumer complaints. The OCC does have an education strategy, making use of its website, brochures, newsletters, and media announcements.

4. Vision, mission, core values, goals and objectives

The mission of the OCC is to advocate for the interests of residential consumers in all relevant forums and to educate consumers about their options in pursuit of its goal.⁹⁴

GOVERNANCE STRUCTURE

1. Establishment

The OCC was created in 1976, and was one of the founding members of the US's National Association of State Utility Consumer Advocates.

2. Powers in legislation

In legislation, the OCC has the power to:

- » Cross-examine witnesses and evidence at the PUCO, and other regulators (such as FERC);
- » Respond to consumer complaints regarding quality of service, service charges, and the operation of the public utilities commission;
- » Take any action in state and federal courts on behalf of residential consumers, including appealing PUCO decisions;
- » Conduct long-range studies on residential consumers; and
- » Support retail natural gas competition.⁹⁵

⁹⁴ Office of the Ohio Consumers' Counsel, "Making a Difference for Ohio's Residential Utility Consumers." At <http://www.occ.ohio.gov/message.shtml>.

⁹⁵ Government of Ohio, *Ohio Revised Code, Chapter 4911*. At <http://codes.ohio.gov/orc/4911>.

3. Appointments and advisory board

The Counsel is selected by the OCC's Governing Board, which is bipartisan and consists of nine members (no more than five from a single party) representing three distinct groups: residential consumers, organized labour, and "family farmers."⁹⁶ The Board members are appointed by the Ohio Attorney General and confirmed by the Ohio Senate. Members serve for three years. The Board selects a Counsel based on experience and relevant expertise.

4. Independence issues

Despite the fact that the OCC is not funded by tax revenue, the general assembly sets the Counsel's budget. In 2011, Ohio Governor John Kasich got legislation passed that reduced the OCC's budget by more than half, from \$8.5 million in 2011 to \$4.1 million in 2013. The result was a reduction in staff of almost 50 per cent and the closing of the OCC's complaints call centre. It also triggered the resignation of Janine Migden-Ostrander, who had served as Counsel for over seven years.⁹⁷

OPERATION

1. Budget and funding formula

Funding for the OCC comes entirely from an annual assessment against utilities; however, the budget is set by the Ohio state legislature. The assessment is split among roughly 800 utilities proportional to the amount of revenue each utility generates in Ohio.

In 2013, the budget for the OCC (in total) was US\$5.6 million. The vast majority of its work is directed at energy issues before the regulator, FERC, and Ohio courts.⁹⁸

⁹⁶ Office of the Ohio Consumers' Counsel, "OCC Governing Board." At <http://www.occ.ohio.gov/about/govboard.shtml>.

⁹⁷ Allison Grant, "Ohio Consumers' Counsel Janine Migden-Ostrander resigns," *The Plain Dealer*, September 21, 2011. At http://www.cleveland.com/business/index.ssf/2011/09/ohio_consumers_counsel_janine.html.

⁹⁸ Office of the Ohio Consumers' Counsel, *Annual Report: 2013*. At http://www.occ.ohio.gov/annualreports/2013/pdfs/OCC_Annual_Report_2013_PRINT.pdf.

2. Employee breakdown

The OCC has approximately 40 employees serving in four distinct departments: analytical, legal operations, and public affairs. The analytical team includes accountants and economists who evaluate hearing submissions. The legal department employs seven lawyers.

3. Accountability

The OCC reports to the Governing Board, which includes representatives from farmers, residential consumers, and organized labour, and it publishes a publicly available annual report. The Governing Board meets every two months and its meetings are open to the public.

4. Results

The OCC's annual report highlights its successes and all of the cases (over 140 individual cases in 2012) in which it participates.⁹⁹ The OCC does not provide any metrics.

OTHER

Any interested party is free to make a submission or intervenor in a PUCO hearing; however, the PUCO does not offer any funding for individuals or groups to do so. Any expenses incurred must be borne by the participating parties.

⁹⁹ Office of the Ohio Consumers' Counsel, *Annual Report: 2012*. At http://www.occ.ohio.gov/annualreports/2012/pdfs/OCC_Annual_Report_2012_PRINT.pdf.

Appendix F:

Comparisons of Public Energy Consumer Advocates: United Kingdom

OVERVIEW

1. Overview of energy market

The UK's energy market was fully deregulated between 1990 and 1998. Under the current power market structure, most generation is sold through bilateral contracts between private generators and private suppliers. It is an open market for retailers, and consumers can choose their own retailer and switch between companies. The retail of gas is also an open market. All network operators are regulated through the Office of Gas and Electricity Markets (OFGEM).

There are a number of organizations in the UK that look after consumer interests, and there has been considerable change in the past few years. At the moment, consumers are represented by Citizens Advice Bureau (and Citizens Advice Scotland), both not-for-profit organizations that also operate the information and complaint lines for consumers. Prior to April 2014, consumers were represented by Consumer Futures, which was established by the UK government to represent consumers' interests in the economic regulation of designated industries. Consumer Futures is now part of Citizens Advice Bureau. In addition, there is an industry-funded Ombudsman Services that arbitrates disputes between consumers and energy companies. And OFGEM has a Consumer Challenge Group, comprised of energy and consumer experts, that generally provides input into the price control settlement cases, and a Consumer First initiative that researches consumer interests.

As until April 2014, Consumer Futures was the primary organization responsible for consumer representation, this section will frequently refer to the roles and plans of Consumer Futures. The activities and personnel of Consumer Futures was integrated into the Citizens Advice Bureau.¹⁰⁰

2. Scope of activities

The Citizens Advice Bureau currently represents the interests of consumers, on both the regulatory and policy side. Until April 2014 this was conducted by Consumer Futures, but now Consumer Futures is part of Citizens Advice. The Citizens Advice Bureau provides information to consumers and helps them deal with complaints. The Ombudsman Services, a not-for-profit organization that is funded by industry, provides dispute resolution for the communications, energy, property, and copyright licensing industries. OFGEM's Consumer Challenge Group provides inputs into price control settlement cases.

3. Agency functions

The Citizens Advice Bureau represents consumers both in regulatory and policy areas. It also provides information on energy bills and energy efficiency.

Based on the goals of Consumer Futures, its goal is to ensure that regulated markets work and that the vulnerable and disadvantaged are protected. They also want to ensure that costs for new investments for low-carbon energy sources are distributed equitably.

Consumer Futures produced public reports on consumer behaviours, proposed government policies and on long-term issues that will affect consumers.¹⁰¹ All its research is publicly available for other consumer organizations, and it regularly worked with other organizations, the Ministry, and the regulator on consumer issues.

¹⁰⁰ Consumer Futures, "About Us," March 28, 2014. At <http://www.consumerfutures.org.uk/about-us>.

¹⁰¹ Consumer Futures, *Consumer Futures Annual Plan 2014/15*. At <http://www.consumerfutures.org.uk/files/2012/11/Consumer-Futures-Work-Plan-2014-15.pdf>.

Complaints about energy companies can be made the Ombudsman Services: Energy. The Ombudsman Services only deals with addressing consumer complaints and arbitrating between consumers and industry.¹⁰²

4. Vision, mission, core values, goals, and objectives

The Citizens Advice Bureau represents the interests of consumers. It uses compelling evidence, expert analysis and strong argument to put consumer interests at the heart of policy-making and market behaviour.¹⁰³

GOVERNANCE STRUCTURE

1. Establishment

The energy advocacy section of Citizens Advice was, until April 2014, part of Consumer Futures. The energy advocacy section of Consumer Futures was started by the government as Energywatch in 2000. In 2008, Energywatch was disbanded and merged with other consumer groups to form the National Consumers Council, which was known as Consumer Focus.¹⁰⁴ Consumer Focus was rebranded Consumer Futures in 2013. There were separate divisions of Consumer Futures for Wales and Scotland. Northern Ireland has its own consumer organization.

The Citizens Advice Bureau, which is partially funded by the government, has operated the information and complaint lines for energy issues and interacted with consumers since 2008.

Ombudsman Services: Energy was established by the energy companies to provide independent arbitration before any complaint went to a legal challenge. The Ombudsman has the power to award settlements to consumers, and the company is obligated to pay.¹⁰⁵

102 UK Ombudsman Services, *Annual Report 2012/13*. At <http://www.ombudsman-services.org/downloads/OS%20Annual%20Report%202013.pdf>.

103 Citizens Advice, "About Us," At <http://www.citizensadvice.org.uk/index/aboutus.htm>.

104 UK Government, *Consumers, Estate Agents and Redress Act 2007*. At <http://www.legislation.gov.uk/ukpga/2007/17/contents>.

105 See the Ombudsman Services website at <http://www.ombudsman-services.org/>.

2. Powers in legislation

Consumer Futures had the power to refer an issue to OFGEM, the regulator, and to investigate concerns on energy supply to vulnerable consumers. All companies in the regulated industries had to provide all information requested by Consumer Futures without exception. This was carried over to Citizens Advice Bureau.

3. Appointments and advisory board

Citizens Advice Bureau has its own advisory board.

4. Independence issues

Citizens Advice Bureau is a non-profit organization, and has a long and established history.

OPERATION

1. Budget and funding formula

As the Citizens Advice Bureau has only had the energy consumer representation arm since April 2014, the only figures available are for Consumer Futures. Consumer Futures' budget for 2013/14 and 2014/15 was £9.4 million, with £5.8 million set for energy-related work. All funding for energy-related work was to be secured through levies on companies in the industry. The budget and funding was handed over to Citizens Advice.¹⁰⁶

The Citizens Advice Bureau is a charity that receives donations and some funding from the government. The Ombudsman Service receives funding from participating companies, and companies have to cover the costs of arbitration.

2. Employee breakdown

Information was not available.

106 Consumer Futures, *Consumer Futures Annual Plan 2014/15*. At <http://www.consumerfutures.org.uk/files/2012/11/Consumer-Futures-Work-Plan-2014-15.pdf>.

3. Accountability

Consumer Futures reported to the government (national and Welsh and Scottish executives), and the government submitted an annual report to Parliament. It is not clear yet how the system will work with the Citizens Advice Bureau.

4. Results

Information was not available.

OTHER

The Citizens Advice Bureau also provides information on reducing energy bills, smart meters, energy efficiency improvements, and on special program for low income or other disadvantaged groups.¹⁰⁷

OFGEM, in addition to its Consumer Challenge Group, also has its Consumer First program, which conducts research into consumers' attitudes to issues to assist in regulatory decision-making.¹⁰⁸

Appendix G:

Independent Intervenor Funding at the Ontario Energy Board, 2011-2012

ORGANIZATION	AMOUNT (IN \$THOUSANDS)
School Energy Coalition	979
Consumers Council of Canada	860
Vulnerable Energy Consumers Coalition	715
Energy Probe	665
Canadian Manufacturers and Exporters	582
Association of Major Power Consumers	433
Green Energy Coalition	232
Pollution Probe	201
Canadian Energy Efficiency Alliance	112
Low Income Energy Network	110
Building Owners and Managers Association	80
London Property Management Association	73
Federation of Rental Housing	64
Industrial Gas Users Association	62
Ontario Sustainable Energy Association	59
Canadian Solar Industries	41
Association of Power Producers in Ontario	35
6 Nations Council	34
Council of Canadians	32
Other	281
Total	5,650

Source: Ontario Energy Board, "Cost Awards by Intervenor, April 1, 2011 - March 31, 2012." At http://www.ontarioenergyboard.ca/html/costawards/costawards_intervenor.cfm.

Note: The 'Other' category includes those who received under \$30,000 or who were individual intervenors (21 in total).

107 Citizens Advice Bureau, "Saving Money on Energy Bill." At http://www.adviceguide.org.uk/england/consumer_e/consumer_energy_and_water_supply_e/consumer_energy_supply_e/consumer_saving_money_on_energy_bills_e.htm.

108 OFGEM, "On Consumer Issues." At <https://www.ofgem.gov.uk/about-us/how-we-engage/consumer-issues>.

Appendix H:

List of Mowat Interviewees

We are indebted to our interviewees for generously sharing their time and insights. All opinions expressed in this report are those of the authors, and do not represent the opinions of the interviewees.

Edward Chalupka
Director, Government Relations
Waterfront Toronto

Emay Cowx
Principal
C2C Strategies

Aleck Dadson
Executive Advisor
Ontario Energy Board

David Dilks
President
Lura Consulting

Jeff Evenson
Principal
Canadian Urban Institute

Julie Girvan
Independent Consultant
Advisor, Consumers Council of
Canada

Dina Graser
Direct of Stakeholder and
Community Relations
Metrolinx

Ted Gruetzner
Vice President, Corporate
Relations and Communications
Ontario Power Generation

Dave Hardy
President
Hardy Stevenson and Associates

Alex Heath
Senior Associate
Swerhun Consulting

Leslie Hetherington
Communications Director
Hardy Stevenson and Associates

Peter Hyslop
Counsel (Public Intervenor)
New Brunswick

Michael Janigan
Special Counsel, Regulatory and
Consumer Affairs
Public Interest Advocacy Centre

Bill Mahody
Counsel (Consumer Advocate)
Nova Scotia

John Merrick
Counsel (Consumer Advocate)
Nova Scotia

David Poch
Counsel
Green Energy Coalition

Linda Serizawa
Deputy Director for Energy
Office of Ratepayer Advocates,
California Public Utilities
Commission

Jay Shepherd
Principal
Energy Chambers

Paul B. Sommerville
Vice President, Regulatory Affairs
and General Counsel
Toronto Hydro

Robert Spragins
Utilities Consumer Advocate
Service Alberta

Nicole Swerhun
Principal
Swerhun Consulting

Mark W. Toney
Executive Director
TURN-The Utility Reform Network

Robert Warren
Partner
Weirfoulds

Shalin Yeboah
Development Manager
Waterfront Toronto

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