

2021 Energy Regulatory Year in Review

We will have our regular quarterly update (Q4 2021), but we thought we would end the year with a special 2021 Year in Review edition of the Shepherd Rubenstein *Energy Regulatory Update*. A chance to explore some of the most important themes and regulatory developments in the Ontario energy sector over the past year. It has been a busy year to say the least. Stick around at the end for some thoughts on the year ahead from our editor.

1. Non-Wires and Non-Pipe Alternatives Begin To be Taken Seriously

The biggest story of the year might just be that, for the first time, it feels like Ontario might be beginning to take the idea of non-wire and non-pipe alternatives seriously. Over the past year, [the OEB launched the Framework for Energy Innovation](#), [established a working group](#), and set the initial workstreams looking at DER usage and integration.

The OEB also issued [the first-generation Integrated Resource Planning Framework](#) for Enbridge Gas, establishing specific requirements for when and how Enbridge must consider non-pipe alternatives to address system needs. [A technical working group](#) was established to support its implementation.

The [Regional Planning Process Advisory Group was reconstituted](#), and [issued a report recommending](#) a number of improvements to the regional planning process, including ways to allow greater consideration of non-wire alternatives. The OEB issued new [Conservation and Demand Management Guidelines for Electricity Distributors](#), which includes updated consideration and guidance of CDM in distribution system planning, including how the costs may be eligible for rate recovery.

The IESO launched the [DER Market Vision and Design Project](#), which is looking at creating different wholesale participation models for DERs to increase their ability to provide services. It also conducted its first [Energy Efficiency Auction pilot](#), and its second annual capacity auction for the [York Region Non Wires Alternatives Demonstration Project](#).

2. Innovation and Distributed Energy Resources

The year also saw a number of initiatives and regulatory changes aimed at promoting innovation within the energy sector.

The OEB [initiated a consultation](#) to review its existing [Innovation Sandbox](#) and design version 2.0. Together, the IESO and the OEB, through combined use of the Grid Innovation Fund and the Innovation Sandbox, [issued a targeted call for novel and innovative project proposals](#).

To help remove barriers of connection of customer DERs to the distribution system, the OEB [issued a Proposal to amend the Distribution System Code to facilitate connection of DERs](#), which included the creation of the [Distributed Energy Resources Connection Procedures](#). After considering stakeholder comments, the OEB issued a [Revised Notice](#) incorporating a number of suggested changes.

The IESO has begun work on [enabling Hybrid Resources](#) in the wholesale market. Through the Grid Innovation Fund, it has funded a number of pilot and demonstration projects, including [vehicle-to-grid](#), [smart grid](#), and [microgrid](#) projects. It is also working to complete a [DER Roadmap](#) and has begun the process of undertaking a [DER Potential Study](#).

The OEB [approved a rate application by PUC Distribution that included Incremental Capital Module for its Sault Smart Grid Project](#). This project, partly funded through the Federal Government, involves significant investments in voltage/VAR optimization, distribution automation, and advanced metering infrastructure integration.

The Government of Ontario issued amendments to [Ontario Regulation 679/21](#) providing a framework for Community Net Metering Program, and authorized [West Five development in London](#) to be the first demonstration project. It also issued [Ontario Regulation 633/21](#), requiring by November 1, 2023, that all Ontario electricity and natural gas utilities provide energy usage data to their customers in Green Button format. The OEB is involved in the Green Button [implementation](#).

3. More Clarity on Future Procurements

2021 saw greater clarity on the future of IESO procurement and the wholesale market.

The IESO moved forward to implement its high-level [Resource Adequacy Framework](#). This involved significant [Resource Adequacy](#) engagement, and in July it issued its first [Annual Acquisition Report](#). In the fall, the IESO released the draft [Medium Term RFP](#), aimed at procuring up to 750MW of capacity for a 3-year period beginning in 2026. The expectation is that the RFP will be undertaken in the Q1/Q2 2022. The IESO is also considering potential [bridging mechanisms](#) to align expiring contracts with the Medium Term RFP commitment period. The IESO has begun engaging on a [Long-Term RFQ](#), which will be followed by a [RFP](#) to be undertaken in 2023. It held its second [annual capacity auction](#) in December for summer 2022 and winter 2022-2023. In November, the Minister of Energy asked the IESO to report back on a number of [resource adequacy and procurement initiatives](#).

The IESO continued the implementation of [Market Renewal](#) in preparing for its scheduled 2023 go-live date. This included consultation on the [Market Power Mitigation market rules and manuals](#).

4. Transmission

There was significant regulatory activity regarding new transmission projects.

The OEB issued initial revenue requirement decisions for two major northern Ontario transmission projects, [NextBridge's East-West Tie Line](#) and the [Wataynikaneyap Power line](#). [The Minister of Energy asked the IESO to undertake contract negotiations](#) with ITC regarding the Lake Erie Connector project, which would connect Ontario to the PJM. The [IESO requested Hydro One to construct a new transmission line](#) in southwest Ontario between the Lambton TS and the Chatham SS. The OEB [approved an application by Hydro One to create a deferral account](#) to record and track costs for any new transmission line projects that are requested to be constructed either by the IESO or Minister of Energy through Order in Council, and that are expected to be owned by new partnerships.

The OEB also [commenced a generic hearing to review a number of issues regarding the Uniform Transmission Rates](#), starting with the Export Transmission Service rate.

5. Net-Zero

The question of how Canada will achieve its 2050 net zero greenhouse gas emission target began to enter the forefront in Ontario in 2021. Utilities all across the province are putting forward various climate change and net zero plans, campaigns, and commitments (For example, [Hydro Ottawa](#), [OPG & Bruce Power](#), [Hydro One](#), and [Toronto Hydro](#)). The [Ontario Energy Association released a report](#) on the topic, and so did [Strategic Policy Economics on behalf of the Power Workers Union](#).

At the IESO, in early October it [released an assessment of the impacts of phasing out natural gas generation by 2030](#). While it did not recommend doing so, the [Minister of Energy followed up by asking the IESO](#) to undertake a further analysis, due by fall 2022, regarding a moratorium on procurement of new natural gas generation and a pathway to phase-out natural gas and achieve zero emissions in the electricity sector. Although, earlier in the year, the [Government of Ontario announced funding for a further 28 natural gas expansion projects](#).

6. OEB Modernization

The OEB's modernization agenda hit its stride during the year. In addition to a number of the initiatives already discussed, the OEB issued its new [5-Year Strategic Plan](#), completed Phase 1 of its [Top Quartile Regulator project](#), [hired two senior leadership executives](#) to support the CEO, and held its [first Policy Day](#). As part of its [Stakeholder Engagement Plan](#), the OEB formed the [Energy \[X\] Change](#) and the [Adjudicative Modernization Committee](#). A new [MOU was signed with the Minister of Energy](#), and in late November, the Minister issued a [new Mandate Letter](#).

With respect to its adjudicative work, a [number of new commissioners](#) were appointed, and the [Chief Commissioner issued her first initiatives plan](#). Changes were also made to both the [Rules of Practice and Procedure related to Motions to Review](#) and the [Practice Direction on Confidential Filings](#). The OEB also formed a [working group to review the cost-of-service filing requirements for small electricity distributors](#). In December, the [OEB issued a revised filing requirement](#) based on the working group's work.

The Ministry of Energy also posted two proposals, aimed at reducing when applications for leave to construct are required under the *Ontario Energy Board Act*. Proposals were issued to [increase the threshold for when leave to construct is required for pipelines](#), and [exempt certain transmission projects that are not expected to impact existing ratepayers](#). Final regulations have not yet been issued.

7. Ontario Power Generation

Two important developments occurred in 2021 regarding Ontario Power Generation ("OPG"). First, the [OEB issued its decision on OPG's 2022 to 2026 payment amount application](#). The OEB approved a substantial settlement proposal reached between OPG and 13 intervenors on most aspects of the application. The [settlement proposal](#) included a number of unique aspects, including the use of the OPG's long-term debt rate, as opposed to the higher return on equity rate until 2036 on a portion of capital spending over the 2017 to 2021 period in excess of what was previously approved by the OEB. On the unsettled issues, most notably the OEB made a permanent disallowance for imprudence of \$94M and certain carrying costs incurred for the construction of OPG's Heavy Water Storage and Drum Handling Facility. Final payment amounts will be finalized in the early new year.

Second, in November, [OPG announced](#) that it had chosen GE Hitachi as the technology partner to construct its planned [Small Modular Reactor \(SMR\) at Darlington](#). This would be the first new nuclear facility built in Canada in decades and could be completed as early as 2028. On a related note, earlier in the fall [the Ontario Government proposed amendments to Ontario Regulation 53/05](#), that would include a Darlington SMR as a prescribed facility to allow OPG to recover the project's prudently incurred costs as determined by the OEB.

8. COVID-19

While it may have been, and continues to be, the dominant story in our day-to-day lives, COVID-19 was much less so this year in energy regulation. With that said, the OEB did [release it's report on](#)

[the Regulatory Treatment of Impacts Arising from the COVID-19 Emergency](#), which establishes guidelines for the COVID-19 deferral account. The [Report](#) creates a framework for which Covid-related costs, if any, are recoverable by regulated utilities from ratepayers. In June, [a directive was issued to the IESO](#) extending the deadlines for certain Conservation First Framework funded projects. In November, the [Minister of Energy wrote the IESO](#) to ask that it work with them to explore options for the remaining projects that have not yet been completed.

9. LDC Mergers Are Back

After a few years of quiet, 2021 saw renewed movement towards consolidation of the Ontario electricity distribution sector. In southwest Ontario, the [relevant shareholder city councils approved a merger between Energy+ Inc. and Brantford Power Inc.](#) The application for OEB approval was filed in late fall. This was followed [by an announcement of a proposed merger between Kitchener Hydro Inc. and Waterloo North Hydro Inc.](#)

The pressure on consolidation seems to be increasing. In the [Minister of Energy's recent Mandate Letter to the OEB](#), it asked that the filing requirements of distributors with fewer than 30,000 customers be amended to require them to file information within their cost-of-service applications on the extent they have investigated consolidation.

10. Broadband

The push to expand broadband access in the province looks like it may have a significant impact on the electricity distributor sector, based on legislative and regulatory changes in 2021. The Government of Ontario introduced and passed the [Building Broadband Faster Act, 2021](#), which included a number of [amendments to the Ontario Energy Board Act](#), creating a number of new authorities and regulation-making powers regarding access to electricity infrastructure. Since deployment of broadband generally requires access to electricity poles and use of rights of way, the intent is to create new rules for access and cost recovery. In late fall, the [Government issued a guideline](#) that includes specific processes and timelines for the interaction between electricity distributors and telecommunication companies deploying broadband. It has also begun [consultation on a regulation](#) to enforce the [guideline](#) for [provincially funded projects](#).

In early December, under its new authority, the Government issued [Ontario Regulation 842/21 which among other things, set a new methodology for pole attachment charges](#). For 2022, it [will result in a charge lower than what is currently in place](#).

Thoughts For 2022

It is an exciting time in the energy sector. You can feel it. There are new innovative technologies and companies that are changing the relationship between customers and their utility. There is an increased focus on enabling DERs to help solve problems through the electricity system.

For the first time, it also feels like the discussion about meeting our climate change targets may be becoming serious, through enabling the inevitable increased electrification, and reducing our reliance on natural gas. This is all being supported by important new technical pilots and regulatory flexibility. The energy system is in transition.

At the same time, with all this change and excitement, it is hard not to think back to a somewhat similar feeling that took hold of much of the energy sector just over a decade ago with the changes made by the *Green Energy Act*. What followed was a period of significant public and consumer backlash that resulted from a lack of scrutiny and independent oversight of decision-making. This led



to inevitable and understandable political interventions which just compounded the problems and further eroded trust.

The lesson to be learned is we need more, not less, independent oversight and stakeholder scrutiny, to ensure that the challenging questions of the appropriate trade-offs between cost, reliability, environmental impact, innovation, customer preference, competition, and indigenous reconsolidation, are properly considered. Without that, the sector may once again lose the confidence of customers and the public at a time where we cannot afford to decelerate the energy transition. The added wrinkle is that many of the decisions that need to be made will determine the competitive dynamics for the future of the energy sector, as the old monopoly utility model is being challenged by not just new players, but also its own customers.

Hopefully, when the Ministry of Energy releases its [revised long-term energy planning framework](#), it will create a durable process that incorporates these needed features. Until then, and potentially despite it, we must all work together to ensure that all perspectives are at the table, and decisions are made in a rigorous fashion. The decisions that will have to be made in 2022 will have a long-lasting impact. Let's make sure we get them right. -MR

As always, if you have any questions, or think we can be of assistance to you or your organization, please do not hesitate to reach out to any of the [Shepherd Rubenstein lawyers](#).