

*Opportunity or Threat?
The Canadian Energy Regulator:
What impact could this new body
have on Canada's gas & LNG
industry*

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History of EA process reform

- 2012 CEAA reforms
- 2015 election
- 2016 – Liberal reform process
 - 2 expert panels
 - 2 parliamentary committees
 - Discussion Paper
 - Exhaustive public consultation process
- 2018 - Bill C-69 tabled by Catherine McKenna in February

Objectives

1. Restore public confidence in the integrity, inclusiveness and thoroughness of the assessment process
2. Increase regulatory Certainty and speed the process of getting resources to market

Scope of review significantly broadened

- Scope will extend beyond 'environmental impacts' to a more holistic assessment including economic, social, health and gender impacts
- Codifies factors considered in current assessments and adds some significant additional factors

Significant additions to factors to be considered

- Sustainability
- Impacts on Indigenous groups, including culture; in addition to impacts on Indigenous title and rights
- Impacts on ability to meet international commitments (e.g. Paris Accord climate change commitments)
- Impacts on gender issues

New early planning phase

- 180 day early planning and engagement phase
- Replaces the current 45 day 'screening phase'
- Proponent files an Initial Project Description
- Agency invites Indigenous and other communities to comment; and offers to engage with other jurisdictions
- Provides opportunity to comment at the concept stage and to influence project design
- Helps proponents to better understand the information requirements

Impact Statement Guideline

At the end of the planning stage:

- Agency determines whether the Project is a 'Designated Project
- Agency issues a customized Impact Statement Guideline
- Consultation and Participation Plan
- Permit Issuance Plan

Impact Assessment Phase

- Project assessed against the codified criteria
- In addition, cumulative effects dealt with in a Regional Impact Assessment and policy issues such as Climate Change dealt with in a Strategic Impact Assessment

Other process issues

- CEAA replaced with the Canadian Impact Assessment Agency
- NEB replaced with the Canadian Energy Regulator
- Energy projects that are subject to 'life cycle' regulation by the Canadian Energy Regulator are reviewed by a Joint Review Panel
- Standing rules relaxed
- Concept of 'substitution' retained

Decision Statement

- Issued by the Minister in the case of an Agency review
- Issued by Cabinet in the case of a Joint Panel Review

- The current test of 'significant adverse environmental effect' replaced with a much broader public interest determination taking into account
 1. Environmental, social, economic, health and gender effects
 2. Contribution of the project to sustainability
 3. Mitigation measures
 4. Impacts on Aboriginal Groups
 5. Impact on ability of Canada to meet its climate change commitments

Significant increase in Indigenous involvement

- Indigenous v Aboriginal terminology
- Falls short of codifying the UNDRIP concept of 'free, prior informed consent' but significantly increased opportunity for FN participation
- Requirement to invite FN participation at the planning stage
- Requirement to incorporate traditional knowledge in decision making
- Outcomes must consider impacts on Aboriginals beyond impacts on Title and Rights including cultural issues
- Treaty bands and those with land settlement agreements can, by agreement, act as regulatory authorities
- Expert Committee to advise on native issues
- Indigenous membership on panels
- Funding programs

Net impact of the proposed changes on timeliness and predictability

- Federal proposals purport to reduce time frames
 - CIIA review reduced from 2 years to 300 days
 - Joint panel review reduced from 3 years to 600 days
- This ignores the time added with the new 180 early planning stage
- Minister or Cabinet can extend the timelines
- Stop the clock provisions

CEAA 2012 failed to achieve targets

- Harper reforms attempted to establish a 24 month turnaround between filing Project Description and a Regulatory Decision
- In practice reviews have taken 19 - 104 months and have averaged 56 months
- Northern Gateway – 104 months
- Pacific Northwest LNG – 42 months
- Site C – 42 months
- Trans Mountain – 35 months

BC EAO performance

- Average – Just under 24 months, compared to 56 months federally
- PRGT – 17 months
- Coastal GasLink – 22 months
- LNG Canada – 27 months
- Woodfibre – 28 months
- Provincial outcomes are challenged much less frequently than under Federal decisions where Judicial Reviews are much more frequent
- Process of substitution worked well

- Approval for inter-state pipelines take an average of 18.6 months with the longest taking 30 months

Conclusion

1. The factors considered in an assessment have been broadened significantly
2. Decision-making criteria broadened from 'significant adverse environmental impact' to 'public interest'
3. Broader engagement with First Nations and greater opportunities for public engagement
4. Political decision by Minister or Cabinet at the end of the Process
5. Hard to believe that this will result in faster decision-making or more predictability of outcomes but may increase public confidence in the process

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