



STAFF REPORT

Title: Minister of Environment and Climate Change - Response

Meeting Date: March 19, 2019

Executive Summary:

The City of Cold Lake has received the attached response from the Honourable Catherine McKenna, Minister of Environment and Climate Change, following its letter dated November 28, 2019 (also attached).

The City's letter outlined concerns over the current downturn in Alberta's energy sector, the lack of investment in the oil patch, stalled and scaled-back energy projects, a perceived slump in confidence in the energy sector and the ongoing criticism that Bill C-69 could make matters worse for the sector.

The Minister's response maintains that the adoption of 135 amendments to the Bill in the House of Commons has provided clarity surrounding many of the timelines and the approval processes the legislation proposes to put into place. The Minister's provides a link containing additional information on the bill, which can also be used to follow Bill C-69's progress through the Senate, where it currently sits for review.

Background:

Bill C-69 is entitled An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

The Government of Canada introduced Bill C-69 into the House of Commons on February 8, 2018. The bill passed third reading in the house on May 11, 2018 and was subsequently introduced into the Senate where it passed its first reading the same day. The Government of Canada has stated that the goal of Bill C-69 is to introduce a higher degree of certainty and predictability in the environmental review process, however, this is being contradicted by a number of industry groups and the Government of Alberta.

Bill C-69 is being criticised by the Government of Alberta. The Honourable Rachel Notley has spoken out about the negative effects the proposed legislation could have, both at official forums in Ottawa and informally, calling on the Prime Minister to take action to ensure Alberta's Energy Sector would not be negatively impacted should the legislation come into force.



The bill introduces a new set of timelines for energy projects, replaces the National Energy Board with the Canadian Energy Regulator (CER), creates the Impact Assessment Agency of Canada, and widens the scope of impact assessments to include health, socio-economic factors, and impacts on "sustainability." The new legislation would double the number of impact assessment factors that must be considered from 10 to 20, and increase the number of interveners who can object to a project.

Among the criticisms of the legislation is that it is unknown how the impact assessment factors will be applied and whether these will result in an increase to the length and complexity of the approval process. Much of the uncertainty is centred on the lack of regulations that will guide the implementation of the bill, as well as the lack of a project list although, under the new legislation, a ministerial order would be able to bring any new project within the scope of the new assessment process.

While the bill puts in place maximum timelines for certain phases of the assessment (a maximum of 180 days for early planning, then either a maximum of 300 days for assessment by the agency or 600 days for assessment by a review panel), the minister will be able to "stop the clock" on these timelines based on criteria that will be outlined in the regulations. The fear from some quarters is that the regulations will essentially allow this process to be extended indefinitely.

According to the Government's website, key changes include:

- The minister of Environment and Climate Change could make companies aware if a project will likely have unacceptable negative impacts, allowing them to decide earlier in the process if they wanted to proceed or make changes to their plans.
- Provide for an early planning phase that will result in:
 - Tailored Impact Statement Guidelines that are scoped to reflect factors relevant to the specific project;
 - a Cooperation Plan;
 - an Indigenous Engagement and Partnership Plan;
 - a Public Participation Plan; and
 - a Permitting Plan (if warranted).
- The Canadian Environmental Assessment Agency would become the Impact Assessment Agency of Canada. It would work collaboratively with life-cycle regulators, such as the Canadian Energy Regulator, the Canadian Nuclear Safety Commission and offshore boards.
- The Agency would coordinate with provinces and territories to advance our commitment to one project, one review.
- Project reviews would consider not just impacts on our **environment**, but also on **social** and **health** aspects, Indigenous peoples, jobs and the economy over the long-term. We will also conduct gender-based analysis.



- Clarify that Indigenous knowledge would be considered and not limited to “traditional” knowledge, but include the evolving knowledge of Indigenous peoples.
- Require transparency about how Indigenous knowledge is used in impact assessments, as well as regional and strategic assessments. Assessment reports would need to describe how Indigenous knowledge was taken into account.
- Provide strong protection for the confidentiality of Indigenous knowledge.
- Strengthen the protection of Indigenous knowledge across all Acts:
 - Consultation would be required before Indigenous knowledge could be disclosed; and
 - Ministers would be able to place conditions on its disclosure in light of the consultation.
- Require that the decision to refer a project to a panel consider the impact on Indigenous rights.
- Clarify that Indigenous members on key committees under the proposed Impact Assessment Act and Canadian Energy Regulator Act would be distinction-based and include members who represent the interests of First Nations, Métis and Inuit peoples.
- Make it mandatory for the proposed Canadian Energy Regulator to establish an Indigenous Advisory Committee

According to the Canadian Energy Pipeline Association's March 2018 submission to government:

The Impact Assessment Act does not address the pipeline sector's most fundamental concern – that of the unacceptably high financial risks associated with lengthy, costly reviews that trigger polarization within the process itself and political decisions at the very end.

Bill C-69 does not adequately address the need to find an appropriate venue to debate and resolve broader public policy issues. The Bill is flavoured throughout with the government's commitment to meeting climate change objectives, gender-based analysis, Indigenous reconciliation, and subjective and inherently unpredictable sustainability tests. Despite CEPA's very strong recommendation to remove broader public policy from project specific reviews, these issues are now explicitly included in the review process as factors to consider.

The Impact Assessment Act will not achieve greater certainty, clarity, and predictability. Instead, it introduces a new regulatory agency and unique new processes and information requirements that have never been tested. The public participation standing tests have been removed. Science and fact-based assessments will now be obscured by the layering of other policy based assessments that are ill defined, fluid and open to



potential routes for obfuscation of the process. We cannot see that timelines will improve; we expect them to be longer.

The Canadian Association of Petroleum Producers also releases a set of recommendations attached to this report.

The report has been generated only as a briefing note to Council. No action is being recommended at this time.

Alternatives:

- Council may pass a motion authorizing further correspondence with the Government of Canada surrounding concerns it may have over Bill C-69.

Recommended Action:

No action is being recommend at this time.

Budget Implications (Yes or No):

No.

Submitted by:

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