

October 5, 2018

Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, Ontario K1A 0A4
enev@sen.parl.gc.ca

Dear Senators,

The Calgary Chamber of Commerce is a non-profit, non-partisan organization that has acted as our city's main connector of people, ideas, and business for 127 years. We bring together the brightest minds from Calgary and across the country, to solve business challenges and debate critical issues of public policy.

Today, we represent almost 400,000 employees, and our purpose remains unwavering – to build a business community that nourishes, powers, and inspires the world.

The business community is dismayed by Bill C-69; known as 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.*” We need the Senate to refer Bill C-69 back to the House of Commons for amendments to be made in consultation with the business community.

We have three recommendations to improve Bill C-69:

1. Emphasize science-based decision making
2. Implement a process to allow those most impacted by a project to be heard
3. Increase certainty around review timelines

Competitiveness remains a significant issue for Canadian businesses. In the last two years, we have seen new policies impacting our ability to compete globally, including; an Oil Tanker Moratorium (Bill C-48), federal regulations to reduce methane emissions in the oil and gas sector, clean fuel standards, climate change policy and a lack of clarity on implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Any one of these on their own could hurt Canadian business. Taken together, they are creating a crisis that has seen business investment move to other countries.

Canadian oil producers have been forced to accept a discounted price and operate in a regulatory environment that has made building major projects extremely difficult due to access to capital and timing of projects being market ready. This is highlighted by the fact that the government had to step in at the last minute to buy the Trans Mountain pipeline, because the private sector could not de-risk political risk the Canadian regulatory system had created. And now, Bill C-69 will significantly change the way major energy projects in Canada are regulated.



The current uncertainty around building major energy projects in Canada is resulting in a chill on foreign investment, international companies divesting from Canada, and ultimately a business environment that has become increasingly uncompetitive. The country needs a regulatory system that provides certainty, predictability, and is science-based. Bill C-69 does not accomplish any of these objectives and will make it more difficult to attract investment to Canada.

How we got here

In 2015, the Federal Minister of Environment and Climate Change was mandated to review the environmental assessment process. The aim of the review was to create a modern regulatory framework to oversee energy projects that would enhance public trust, protect our environment, and create new jobs and economic opportunities. The review specifically aimed to improve the environmental assessment process used by the Canadian Environmental Assessment Agency (CEAA) to evaluate the environmental impacts of proposed major projects and review the National Energy Board's (NEB) role in approving and overseeing the safety of pipelines that cross provincial borders.

During the consultation process, the Calgary Chamber worked with partners across the country, to provide recommendations to the federal government on how to reform and improve the effectiveness of the regulatory process, to encourage long-term investment and development. These recommendations included;

- ensuring regulators remain independent from political influence,
- expediting review timelines,
- minimizing regulatory duplication,
- limiting consultation to those directly impacted, and
- clarifying the process around Indigenous consultation.

Bill C-69 does not address these concerns. The Chamber has heard from many stakeholders that if Bill C-69 is implemented in its current form, it is unlikely that companies will make further investments in Canada.

Recommendations for Bill C-69

1. Science-based decision making:

The energy industry has asked for the regulatory process to be focused on a science-based decision-making process. Instead, Bill C-69 includes a blend of environmental and policy requirements that broadens the scope of the review, to encompass issues that should not be considered in a technical impact assessment. The Chamber contends that the impact assessment process should focus on the environmental impacts of a proposed project. However, it is not the appropriate forum to address public policy, or values on issues like climate change, gender, and other social issues. While the addition of these broader policy factors may be well-intentioned, they are difficult to assess on a scientific basis and open the process up to uncertainty and political decision-making.



Leaving the final decision with either the Minister of Environment and Climate Change, or the Federal Cabinet is worrying as it would require project proponents to consider factors that are beyond their control, such as election timelines or other political issues.

Recommendation: The Minister responsible or the Federal Cabinet should determine at the end of the 180-day early planning phase whether the project is in the public interest. This would allow the remainder of the review to be carried out based on scientific and technical matters. Having the government make their decision earlier on in the process would increase certainty for investors by removing the political risk that private proponents have little ability to mitigate early in the process.

2. Public Participation:

Bill C-69 removes the standing test that is used in the current regulatory process. The current test requires a person be directly affected or have relevant information and expertise. Bill C-69 instead references “meaningful public participation” and does not define the specifics of the term. With the removal of this language, in theory anyone that wants to comment on a project that is under review would need to be heard. This will make it more difficult for the regulator to understand the opinions of people that are directly impacted by the project, such as landowners and Indigenous groups. Furthermore, the process will have substantial administrative costs along with significant delays, in order to hear from thousands of people potentially not directly impacted but organized against a project.

Recommendation: Develop a process that balances the need for public involvement in the consultation process with the requirement to keep project reviews within legislated timelines. This should include language in Bill C-69 that ensures there is a process to triage public participation based on the relevance of their input into the process. A way to achieve this would be to build a system that allows for tiered levels of participation, with full participation being based on the current “directly affected” criteria while creating a separate tier to allow for more general public participation.

3. Certainty around review timelines:

Although the legislation lays out a process that indicates timelines will be more certain and shorter, this is not necessarily the case. The maximum timeline under existing legislation is 18 months from the time that an application is deemed to be complete, to a cabinet decision at the end of the process. Bill C-69 extends that to 29 months, not including the time required by a proponent to complete an impact assessment report, or the 180-day early planning phase. This is a significant increase to a process that can already span years. Bill C-69 also repeatedly references potential for time extensions, significantly reducing the likelihood that any project will meet legislated timelines.

With the expanded scope of factors to consider and the removal of the standing test, it is difficult to imagine that these timelines can be met. Faced with a review process that could extend 4 to 5 years or



longer, it is difficult to see private investment willing to take on the expense and risk of going through this new process.

Recommendation: Limit the maximum review timeline to 24 months, including the 180-day early planning phase. While this would be longer than the current review timelines, a certain and consistent process is preferable to one that allows opportunity for further delays.

Next Steps

In the Prime Minister's mandate letter to the Minister of Environment and Climate Change, the Minister was asked to review the environmental assessment process to achieve three objectives; restore public trust, introduce new and fair processes, and get resources to market. The Chamber does not believe that Bill C-69 will accomplish any of these objectives and furthermore, it would bring about review process that is so long, complicated, and fraught with political hurdles, that it is difficult to see any proponent come forward to build major energy projects in Canada.

Given the number and significance of the issues identified, the Chamber is urging the Senate to send Bill C-69 back to the House of Commons to be amended. It does not solve the issues with our current regulatory system and would serve only to further reduce Canada's global competitiveness.

Thank you for the work that you are doing, and for considering our recommendations to help improve the competitiveness of our energy sector. If you have any questions, please don't hesitate to contact me at slalli@calgarychamber.com.

Sincerely,



Dr. Sandip Lalli
President and CEO

CC: Honourable Catherine McKenna, Minister of Environment and Climate Change
Honourable Amarjeet Sohi, Minister of Natural Resources
Honourable Rachel Notley, Premier of Alberta
Honourable Marg McCuaig-Boyd, Minister of Energy
Honourable Shannon Phillips, Minister of Environment and Parks and the Minister Responsible for the Climate Change Office

