

04 January 2019

The Honourable Rosa Galvez, Senator
Chair of the Standing Committee on Energy, the Environment, and Natural Resources
Senate of Canada
Centre Block, Parliament Hill
Ottawa, ON K1A 0A4

RE: Bill C-69: *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*

Dear Senator Galvez,

On behalf of the Saskatchewan Chamber of Commerce (SCC) Environment Committee, I am contacting you about our concerns with Bill C-69 currently under review by your committee. In April 2018, the SCC provided comment on an earlier version of the Bill to the House of Commons Standing Committee on Environment and Sustainable Development. The purpose of this letter is to provide feedback on an amended version of Bill C-69.

The Saskatchewan Chamber of Commerce is a member-based research and advocacy organization that represents the interests of over 10,000 individual businesses, industry associations, and local chambers across the province through its Chamber Network. As the voice of business for the province, the Chamber has a responsibility to articulate to the Federal Government, the concerns of its members, many of whom will be directly impacted by the draft legislation and accompanying regulatory framework being proposed.

SCC Position

The SCC believes that robust environmental protections and a thriving investment climate can go hand in hand. We are seeking an impact assessment process for development projects that is predictable, timely, and promotes investor certainty – both domestic and foreign. Saskatchewan and Western Canada's long-term prosperity depends on getting our resources to market in a responsible and sustainable manner. This is particularly important in light of recent evidence suggesting that investment dollars – both at home and abroad - are going elsewhere.

Recent Amendments to Bill C-69

The SCC would like to acknowledge some of the recent amendments to the draft legislation that have been made since our last correspondence in April 2018. The SCC is encouraged by the Government of Canada's ongoing commitment to the concept of one project-one review. This is manifested in the specific amendment allowing integrated review panels that involve federal regulators to cooperate with other jurisdictions, thereby having one assessment per project that meets all requirements. However, the use and effectiveness of this cooperation remains to be seen.

The SCC also welcomes the inclusion of amendments that provide greater transparency around ministerial decision-making. This includes disseminating Ministerial and Governor-in-Council

public interest decisions online; promptly informing companies of the reasons why timelines for issuing a decision statement following an assessment need to be extended; and requiring the newly-proposed Impact Assessment Agency of Canada (IAAC) to publish all public comments online during the project review.

Scope of Draft Legislation

As you are aware, Bill C-69 seeks to significantly broaden the scope of the assessment process. This includes moving away from the question of whether “significant adverse environmental effects” will occur under *CEAA 2012* in favour of a “public interest” test that is both vague and subjective.¹ Further, the proposed assessment process under Bill C-69 seeks to broaden the scope to include elements well beyond environmental impact considerations, such as socio-economic and political issues, public health, Indigenous rights, gender-based analysis, etc.

The SCC maintains that broadening the scope of impact assessments in Canada is retrogressive and serves to dilute the importance of the environmental component. While our society should address timely and important socio-political challenges, project assessments are not the appropriate venue to resolve such contentious and often highly-divisive issues. Doing so can be expected to further politicize the process, which runs counter to the Government’s objective of re-establishing the public’s trust in our assessment process. The SCC recommends the scope of Canada’s future assessment regime be limited to significant adverse environmental effects within a factual, science-based process that is informed by accepted quantitative measures.

Integration of Permit-Granting Authority with Life-cycle Regulator

In our previous correspondence to the Federal Government on Bill C-69 in April 2018, the SCC expressed concerns over the proposed measure to bundle the decision-making authority (Impact Assessment Agency of Canada) and the life-cycle regulator (Canadian Energy Regulator) together in one process. The SCC agrees with the Canada West Foundation’s assertion that bundling together both energy regulation and impact assessment in one process means the Bill will attempt to take on too much and end up doing neither aspect particularly well. While both the decision-making authority and the lifecycle regulator require technical expertise, each entity’s focus will not necessarily overlap.² The SCC maintains that an assessment agency should not be involved in operational permitting and day-to-day project operations.

Ministerial Decision-Making

While the proposed amendments encouraging increased transparency are welcome, significant problems with the Bill still remain. The Canadian Chamber of Commerce (CCC) in its recent submission alluded to the fact that Bill C-69 assigns a very strong role for the Minister of Environment and Climate Change when determining a number of important factors, most notably if a proposed project is in the public interest.³ The SCC was initially alarmed by this aspect and expressed its concerns over the concentration of decision-making power with the Minister of Environment and Climate Change in its April 2018 correspondence. A manifestation of this

¹ Jeerakathil, R., “Proposed Changes to Canada’s Environmental Assessment Regime.” *MLT Aikins*. October 17, 2018.

² Hall-Findlay, M., “What Now? Rebooting Bill C-69.” *Canada West Foundation Policy Brief* September 2018.

³ Canadian Chamber of Commerce. “Written Submission by the Canadian Chamber of Commerce on Bill C-69 to the Senate Standing Committee on Energy, the Environment, and Natural Resources.” September 28, 2018.

problem can be found under Section 9 (1) of the Bill whereby “the minister may, on request or on his or her initiative, by order, designate a physical activity that is not prescribed by regulations.”

It is these kinds of provisions in the Bill that allow for far too much room for political discretion where there should be none. In order to restore confidence in our regulatory process, it is imperative that the Federal Government’s role throughout the process be that of a fair and neutral arbiter making fact-based decisions. The SCC continues to maintain that such a large concentration of power in any one person or Crown entity ultimately undermines the Government’s stated objectives of enhancing transparency and making the process more open and accessible to Canadians. Simply put, the Bill as it is written creates too many avenues for political interference where none should exist.

The SCC endorses the CCC’s recommendation of adding the Minister of Natural Resources and a Crown Minister with an economic portfolio (Finance, Trade Diversification, etc.) to a joint decision-making panel with the Minister of Environment and Climate Change on such matters throughout the Act. We also recommend that the Ministers’ mandate require that economics benefits be factored in when evaluating the merits of a proposed project. Specific considerations around economic benefits include direct investment and jobs created, indirect economic spin-offs, an estimate of additional tax revenues projected for all levels of government, along with an estimation of the opportunity and reputation costs of not approving a proposed project.

Uncertainty over Timeframes

The recent amendments made to Bill C-69 do very little to address the business community’s deep-seated concerns around the lack of concrete timelines. Based on feedback from our members, the current version of Bill C-69 at best offers no improvement from CEAA 2012 and at worst, will lead to potential development projects being shelved.⁴ For example, in all phases of the proposed regulatory process, the Minister or the Governor-in-Council can extend timeframes by 90 days almost indefinitely. Virtually unlimited opportunities exist for delays to occur during the project initiation phase, as well as during the actual review process. Delay tactics become more likely in the event there is strong political opposition to a proposed development project, regardless of the project’s merits. It has been calculated that a project approval could take eight-to-nine years. This is unacceptable; these time-lines need to be under three years.

Compounding this problem even further is that under Bill C-69, there is almost unlimited opportunity for either the Minister or Cabinet to delay what should be a final decision. For project proponents and partnering Indigenous communities alike, it will be difficult to predict with any reasonable certainty, how long an impact assessment will take, in light of the opportunities for timeframe extensions and the number of stakeholder groups that may be involved. The lack of predictability in terms of concrete timeframes does nothing to encourage or inspire investor confidence in Canada’s regulatory process. The SCC recommends the Federal Government ensure greater predictability for project proponents by providing reasonable, concrete timeframes for decisions.

Public Participation

The SCC is supportive of mechanisms that encourage both project proponents and stakeholder groups impacted by a proposed development project to meet in-person, exchange relevant information, and address potential concerns throughout the assessment process. The SCC

⁴ Wittrup, M., “Federal Impact Assessment: Who’s in Charge of the Process?” *Clifton Associates*. October 2018.

believes that robust and meaningful public engagement is crucial in ensuring public confidence and fostering mutual trust between affected communities and project proponents.

In our previous correspondences to both the CEAA expert review panel and the House of Commons Standing Committee on the Environment and Sustainable Development in May 2017 and April 2018 respectively, we expressed our concerns over a proposal to eliminate the National Energy Board's Standing Test. The SCC opposed the elimination of the Standing Test because it is impossible to accommodate every potential participant that might wish to make their views heard on any particular matter. Eliminating the Standing Test also creates opportunities for stakeholder groups not participating in good faith and on the basis of direct involvement to derail the hearing process without consequence. This will have repercussions on the timeliness and efficiency of the assessment process. The SCC recommends that the Government carry over the Standing Test from the National Energy Board to a new assessment regime to be proposed. Proving a direct connection should be maintained.

The SCC is in agreement with the CCC that it is especially important that project proponents engage meaningfully with those directly affected by the development of a project. The SCC asks that those who are most directly impacted by a proposed development project be given priority during the public hearing phase. The SCC also recommends that a subsequent version of Bill C-69 more clearly define the nature and scope of public participation during the assessment process.

Clarifying Project Criteria and Stakeholder Responsibilities

Another criticism of the Bill that we have heard from our member businesses and one that has been articulated by the CCC in their submission, is the lack of clarity in relation to the impact factors outlined in Section 22 of the Act. If the scope of the assessment process being proposed is to be broadened to include socio-political considerations, additional clarity is needed to reassure project proponents and partnering Indigenous communities that they can comply with the new criteria being introduced. Of course, the best option would be not to mix the socio-political considerations with the environmental assessment process.

For example, the inclusion of impact factors such as the "intersection of sex and gender with other identity factors" as well as the concept of Gender-Based Analysis Plus (GBA+) are new additions to the formal assessment process and are by nature extremely subjective. The SCC joins the CCC and other business groups in recommending Bill C-69 be revised to more clearly define the impact factors outlined in Section 22. Perhaps the best way to accomplish this would be to put the socio-political issues and detail under guidelines separate from the environmental assessment.

The Crown and its Duty to Consult

The SCC is extremely supportive of the Federal Government's efforts around improving relations with Indigenous peoples. We also recognize that reconciliation with Indigenous peoples is an ever-evolving societal responsibility, and not just the responsibility of the Crown.

As the Federal Court of Appeals decision in *Tsleil-Waututh Nation v. Canada (Attorney General)* regarding the Trans Mountain Pipeline Expansion Project demonstrated, when the Federal Government fails to successfully execute its Duty to Consult, it can have major repercussions for project proponents and affected communities. Repercussions include costly delays, cancellations, increased investor uncertainty and, lost opportunities in terms of job creation for many Indigenous communities that have established partnership agreements with project proponents.

This is a classic example of *moral hazard* and it is fundamentally unfair when project proponents and partnering Indigenous communities are being penalized as a result of errors made by the Federal Government when exercising its Duty to Consult. It is imperative that when project proponents adhere to the conditions and stipulations of Canada's regulatory process and follow the rules, they need to know they will not be unfairly penalized as a result of errors attributed to another entity.

The SCC recommends an amendment to the Act championed by the CCC, seeking to compensate proponents that adhere to and fully comply with Canada's regulatory process but find their project cannot proceed because of errors and omissions made by the Government during the consultation and assessment process. Such compensation should cover lost opportunities in terms of foregone direct investment and job creation.

Conclusion

Thank you for the opportunity to provide comment on the draft legislation. The SCC is supportive of the Federal Government's main objective of ensuring that Canada has an assessment regime for development projects that is transparent, timely, fair, predicable, furthers reconciliation with Indigenous peoples, and promotes investor certainty. However, the Bill as it is written contains a significant number of deficiencies and offers no improvement upon CEAA 2012. An amended version of Bill C-69 needs to bring the principles of fairness and reasonableness back into the process. The Federal Government also needs to accept that achieving political consensus on high-profile development projects is highly unlikely and that consensus cannot be a replacement for good decision-making.

We understand that changes may be made to the Bill, and we look forward to further discussion with you on the comments and recommendations made herein. We look forward to your response.

Sincerely,



R.J. (Bob) Schutzman, P.Eng.
SCC Environment Committee Chair

Cc:

Saskatchewan Chamber of Commerce Board of Directors
Saskatchewan Chamber of Commerce Environment Committee
Hon. Dustin Duncan, Saskatchewan Minister of Environment
Lin Gallagher, Saskatchewan Deputy Minister of Environment
Hon. Bronwyn Eyre, Saskatchewan Minister of Energy and Resources
Hon. Amarjeet Sohi, Federal Minister of Natural Resources
Hon. Ralph Goodale, Federal Minister of Public Safety and Emergency Preparedness
Hon. Catherine McKenna, Federal Minister of Environment and Climate Change
Hon. Perrin Beatty, President and CEO, Canadian Chamber of Commerce
Hon. Raynell A. Andreychuk, Senator
Hon. Denise Batters, Senator
Hon. Lillian Eva Dyck, Senator
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Hon. Pamela Wallin, Senator