

April 26, 2018

Thomas Bigelow
Clerk of the Standing Committee on Environment
and Sustainable Development
6th Floor, 131 Queen Street
Ottawa ON K1A 0A6

The Honourable Catherine McKenna, P.C., M.P.
Minister of Environment and Climate Change
200, Sacré-Cœur Boulevard, 2nd Floor
Gatineau, QC K1A 0H3

The Honourable Dominic Leblanc, P.C., M.P.
Minister of Fisheries and Oceans
200 Kent Street
Ottawa, ON K1A 0E6

The Honourable James G. Carr, P.C., M.P.
Minister of Natural Resources
580 Booth Street, 21st Floor
Ottawa, ON K1A 0E4

The Honourable Marc Garneau, P.C., M.P.
Minister of Transport
330 Sparks Street
Ottawa, ON K1A 0N5

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 Mr. Bigelow and Honourable Ministers:

On behalf of the Saskatchewan Chamber of Commerce, we wish to provide further comment on Bill C-69 currently before the House of Commons. The Chamber, through its Environment Committee, has actively participated in the stakeholder consultations surrounding the recent review of the Canadian Environmental Assessment Agency (CEAA) and the National Energy Board (NEB), and we will continue to be a part of this process moving forward.

Our analysis of the *Environmental and Regulatory Reviews* discussion paper that was circulated by the Government of Canada in June 2017 acknowledged the improvements that were made upon the initial CEAA Expert Panel Review recommendations, and noted concerns that our members (particularly those involved in energy and resource-related development) had with the recommendations as they were written at the time.

The Chamber's main concerns at the time centered on the following:

- Broadening the scope of the assessment process to include socio-political elements
- Lack of clarity around the phrase 'national interest', making it open to interpretation
- Recommendation to establish a single government agency
- Elimination of the *Standing Test*

The Chamber is encouraged by the Government of Canada's commitment to the principle of *one project, one assessment*. The Chamber is reassured by the Government of Canada's commitment that projects will not be required to go back to the starting line and that the new legislation will not be applied to current federally approved projects, like TransMountain, the Keystone XL pipeline, Enbridge Line 3, or other pending LNG export projects that have already received approval. The decision to address the cumulative impacts of a project, rather than just on a project-by-project basis as is currently being done, is a prudent move and the Chamber welcomes its inclusion going forward.

Inclusion of Shortened, Legislated Timelines

The Chamber acknowledges the explicit reference to shortened, legislated timelines in the draft legislation, for example requiring that a final recommendation from the soon-to-be created Impact Assessment Agency of Canada (IAAC) be delivered in 300 days (currently 365 days), and 600 days (currently 720 days) for more complex projects involving a joint panel. Project proponents require clear deadlines and predictable processes when assessing the economic viability of a major development project. The language around shortened timelines will hopefully enhance investor confidence and serve as a first positive step toward addressing the regulatory uncertainty that has become a barrier to investment in Canada's resource and energy sectors.

While the Chamber welcomes the language around shortened legislated timelines, we have concerns that the proposed legislation still allows for lengthening or delaying timelines to final decision. For example, the process for consultation between the IAAC and key stakeholders after the initial submission has no firm deadline attached to it. The lack of fixed deadlines, and the fact that there is no clear distinction about what constitutes a major or minor project, could create unintended consequences and serve to undermine the Government's stated objective of removing uncertainty.

Broadening the Scope of the Assessment Process

Per our earlier letter, the Chamber remains concerned about the recommendation to broaden the scope of a future assessment process to include elements above and beyond the bio-physical environment, such as socio-political issues, public health, economic, gender, indigenous rights, etc. The Chamber maintains that broadening the scope of the IAAC is retrogressive and serves to dilute the importance of the environmental component.

While our society should address timely and important socio-political challenges, individual project reviews are not the appropriate venue to resolve such contentious and often highly-divisive issues. Doing so can be expected to politicize the assessment process, which runs counter to the Government's stated goal of re-establishing the public's trust in our permitting and assessment regimes. Furthermore, broadening the scope of the assessment process adds subjectivity to an assessment process that should be science-based. For example, attempting to address measures around a gender-based analysis component is almost impossible to quantify and implement in practice.

The Chamber believes the shift from a factual, science-based process reliant on quantitative measures to a mix of both quantitative and qualitative factors, along with the inherent subjectivity of the latter make such an assessment process difficult to implement under real-world conditions.

Definition of *Public Interest* and Final Decision-Making Powers

While the draft legislation provides more concrete details around the phrase *national interest*, definitional issues remain. For example, under the 'project's contribution to sustainability' clause featured in the *public interest test*, the word "sustainability" is too vague and open to interpretation. The *public interest test* would benefit from a more concrete definition of the 'sustainability clause.'

Furthermore, the Chamber is alarmed by the legislation's provision for the significant concentration of decision-making power under the Governor-in-Council or the Minister of Environment and Climate Change, to determine what should or should not be included in an assessment, the authority to amend decision statements, and the ability to set unrealistic parameters for mitigating adverse environmental impacts resulting from a project. This would mean that the Government of Canada now has the ability to decide which projects are proposed, leading to loss of ownership of the process by the project proponent to the Government.

While the rationale for this provision given by the Government of Canada was to allow for 'flexible' and 'adaptive' management, if unchecked, this provision would allow Government to effectively change the rules of the game midway through the process. Such a concentration of power in one entity would undermine the stated objectives of enhancing transparency and making the process more open and accessible to Canadians.

Relationship between Permit-Granting Authority and Life-Cycle Regulator

It also remains unclear how the IAAC and the Canadian Energy Regulator (CER) - the new life-cycle regulator replacing the National Energy Board - will work together on assessments for major development projects that require a joint panel review. The language contained in the proposed legislation around the breakdown of responsibilities between the permit-granting authority and the lifecycle regulator is vague. The Chamber believes that more details need to be provided in this regard to mitigate against any potential for misunderstanding between the two entities. We continue to believe that an assessment agency should not be involved in operational permitting and project operation.

Elimination of the Standing Test

In our previous letter on the June 2017 *Environmental and Regulatory Reviews* discussion paper, we opposed the recommendation of eliminating the National Energy Board's *Standing Test* because it is impossible to accommodate every single participant that might wish to make their views heard on the matter, particularly in light of newly legislated timeframes. Eliminating the standing test creates opportunities for those stakeholder groups not acting in good faith to derail the hearing process without consequence. This is likely to undermine the Government's stated goal of making timely decisions in a cost-effective manner. The Chamber continues to maintain that the standing test process should be carried over to the CER and those who are directly affected by a proposed project or possess special expertise deemed useful by the CER, be eligible to participate.

Conclusion

Thank you for the opportunity to provide comment on the legislation. The Chamber would be pleased to discuss with you any of the comments or suggestions made herein. We look forward to your response.

Sincerely,



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

Cc:

Saskatchewan Chamber of Commerce Environmental Committee
Canadian Chamber of Commerce Environment and Natural Resources Committee
The Honourable Dustin Duncan, Minister of Environment, Government of Saskatchewan
Lin Gallagher, Deputy Minister of Environment, Government of Saskatchewan
the Honourable Ralph Goodale, Minister of Public Safety and Emergency Preparedness