Regulatory Change in Canada and Alberta: Improving Access to Markets and Infrastructure Development

Shawn Denstedt, Q.C.
Osler, Hoskin & Harcourt LLP

March 22, 2013
Overview

• Goals of Regulatory Reform
• Specific Legislative Changes
  • National Energy Board Act
  • Canadian Environmental Assessment Act, 2012
  • Bill 2: the Responsible Energy Development Act
• Conclusions
Goals of Regulatory Reform

• Key areas for reforming the federal and provincial regulatory process:
  • Making the review process for major projects more predictable and timely
  • Reducing duplication and regulatory burden
  • Providing clarity around Aboriginal consultation
  • Ensuring Canadian energy resources can access new markets

• Both governments have endorsed the goal of “one project, one review”
NEB Export Licence

• All exports of oil and gas from Canada require export authorizations from the NEB
• Bill C-38 amended the NEB Act requirements for long-term export licences
  • Previously required the NEB to consider a variety of broad public interest considerations (i.e., environmental impacts)
  • The test is now only whether proposed export volumes are “surplus” to needs of Canadians
• Removes overlap with EA process
NEB Export Licence

• The second key change for long-term export licences is that public hearings are no longer mandatory
  • Means that export licences can be granted much faster and with less regulatory uncertainty
• Example:
  • Kitimat LNG applied for an export licence under the old rules, the review process was rigorous, included two phases of public hearings and took roughly 1 year
  • Shell applied for an export licence under the new rules, the review process was very simple, no hearing, and the licence was granted in roughly 6 months
NEB Act – Decision-Making

• The NEB is now clearly a recommendation-making body, ultimate approval for major pipelines is made by federal Cabinet
  • Cabinet can approve a project that the NEB does not recommend go forward (i.e., if a pipeline is in the overall national interest)
  • NEB must also limit consideration to matters “directly related to the pipeline”
  • Policy matters are for government, not the NEB
Fixed Time Limits

• Mandatory timelines for all federal EAs:
  • Standard EAs: 12 months
  • NEB hearings: 18 months
  • Panel reviews: 24 months

• Should provide clarity to developers, add efficiency to the review process
CEAA – Single Assessment Process

• “One project, one review”
• New substitution powers in CEAA 2012
  • Recognition of provincial EAs as potential substitutes for federal EAs
  • Should consolidate EA responsibility with the province, reducing overlap between jurisdictions
Bill 2 - Single Regulator for Oil & Gas

- ESRD and the ERCB will be combined into a single regulator called the Alberta Energy Regulator (AER)
  - Will have authority over all approval processes for oil, gas and coal projects in Alberta
  - Will ensure a “one project, one review” approach by the Alberta Government, no more conflicts between government departments
  - Expected to be implemented in June 2013
Aboriginal Consultation Office

• Government of Alberta has proposed creating a new Aboriginal Consultation Office
  • Office would oversee other departments, set standards and best practices for the consultation process, and determine adequacy of consultation for industry led consultation
  • Should provide clarity and consistency to industry proponents
Conclusion

• The Federal and Provincial governments recognize the need to access new markets for Canada’s energy resources
• Regulatory reforms will make approvals more certain, more timely and more efficient
• Additional reforms are expected that will further these goals
Contact Information

Shawn H.T. Denstedt, Q.C.
Osler, Hoskin & Harcourt LLP
2500, 450 – 1st Street S.W.
Calgary, AB T2P 5H1
(403) 260-7088
sdenstedt@osler.com