

PIPELINES POST TMX– MOVING FORWARD BY LOOKING BACK

The federal government claims Bill C-69 “...to enact the Impact Assessment Act and the Canadian Energy Regulatory Act” will “rebuild public trust, improve certainty and transparency to get good projects built and create new jobs and economic opportunities...” (Hon. J. Carr, Natural Resources in April 25, 2018 letter to the undersigned). I strongly beg to differ with Mr. Carr. The government has not made its case for this dramatic change.

Why are my views worthy of consideration?

Forty five years of high level pipeline experience in North and South America including four years full time in Alaska designing and building the Alaska pipeline.

In 2017, 30 professional pipeliners – having a total experience in excess of 1,000 years – critiqued the proposed “modernization” of the NEB (*attached*)

LEARN FROM HISTORY

Canada - Actions

In 1973 Justice Thomas Berger’s enquiry triggered a long term moratorium on northern pipelines. (The same Thomas Berger is currently advising the BC Government in their opposition to Trans Mountain).

In 2015 Justin Trudeau, took the first steps to ban tanker traffic along BC’s northern coast thus killing the proposed Northern Gateway Pipeline – this bill is presently before Parliament. The Energy East Pipeline was killed, if not wholly at least in part, due to the vastly increased scope of review imposed by the federal government.

In 2016 the federal government imposed a moratorium on drilling in the Canadian Arctic.

Canada – Impacts

With the media’s daily focus on the opposition of First Nations to oil and gas developments and pipelines, these federal actions no doubt are welcomed by the majority of First Nations, correct? The exact opposite is true as evidenced by:

- Indigenous backers of the \$16 Billion Eagle Spirit Pipeline to Kitimat have filed a civil claim in the Supreme Court of BC against the ban on tankers,
- with respect to the moratorium on arctic drilling, let’s hear the views of northern leaders:
 - ✦ Nellie Cournoyea, former Premier of NWT and longtime chair of the Inuvialuit Corporation stated “*people are still here, people want to work, people need jobs.*”
 - ✦ Bob Mcleod, Premier of NWT stated the moratorium is “*...undermining the ability of northern residents to make a living by ... rigid models designed by the green lobby” that result in “...hundreds of billions of dollars of oil and gas will be left in the ground.*”
 - ✦ Former Nunavut Premier Peter Taptuna has stated the drilling moratorium “*could cripple Nunavut’s future financial independence.*”

Current federal bans and moratoriums on tankers and drilling are a serious impediment to economic opportunities of First Nations and northern residents – not my opinion, but theirs.

Meanwhile tankers daily ply the St. Lawrence River to deliver oil to Quebec from overseas, a risk that would be avoided with Energy East.

Alaska – Actions

In 1971 the U.S. Federal Government passed the *Alaska Native Claims Settlement Act* which gave the natives the right to select 44 million acres plus nearly \$1 billion. This groundbreaking Act paved the way for the Trans Alaska Pipeline Authorization Act in 1973. The rest is history.

In 2012 the Obama Administration approved drilling in the Chukchi sea, about 120 off Alaska’s northwest coast.

In 2017, the Trump Administration opened a narrow zone in the Arctic National Wildlife Reserve to exploratory drilling.

The State of Alaska is presently spearheading a multi-year application process for a proposed natural gas line for LNG export.

Alaska – Impacts

What has been the economic and environmental impact of oil development in Alaska since the seventies:

- Alaska residents, as a result of oil revenues, pay no state taxes and in fact are paid to be residents,
- the Alaska Native Corporations have thrived. In 2016 their combined annual revenue of the corporations was \$11 billion, three times the combined revenue of all other Alaska-based businesses,
- the “Voice of the Arctic Inupiat,” a 21 member organization in northern Alaska unanimously supports ANWR drilling. They note that Prudhoe Bay, the largest oilfield in the Americas “...has demonstrated for four decades that resource development and ecological preservation can co-exist in the Arctic.” The Central Arctic Caribou herd several years ago had a population ten times greater than at the start-up of Prudhoe Bay.

For those concerned about the impact of developments, listen to Alaska’s northern residents “...resource development and ecological preservation can co-exist.”

A 10 STEP PLAN

A spoiler alert right up front – certainly not the methodology, processes and steps outlined in Bill C-69 – Substantial critique of easy to pick on “low hanging fruit” of this bill has been detailed by so many so I will focus on a sound go forward plan.

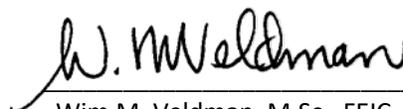
1. Canada to be energy independent by 2030.
2. Lift the federal ban and moratorium on tankers and arctic drilling.
3. Maintain the NEB. The Government’s Expert Panel (2017) stated “...the NEB is respected internationally” and that “benchmarking has placed Canada among the most stringent regulatory regimes.”

4. Minimize Political Influence. The Panel reported that in most cases the public did not object to the NEB’s decisions but to the opaque nature of “...decisions rendered by cabinet which are protected by cabinet confidence.”
5. List Directly Impacted Stakeholders. Criteria and list to be jointly established by the NEB the federal government. Agree to the timing, and type of each consultation step.
6. Limit Hearing Participation and Funding to Directly Impacted Stakeholders. All others may submit their views in writing at their own cost.
7. Majority Rules. It is not reasonable that the opinions of one or two First Nations can overrule the plus 40 groups that support Trans Mountain Expansion. The same held true for Northern Gateway.

Those opposed to oil development and pipelines now will not be swayed by a modified review approach.

8. Establish an Independent Review Board for the NEB process. A check and balance on NEB’s review steps. Their report would be included in the NEB decision.
9. Enhance transparency of the NEB’s and government’s decisions. Include layman summaries.
- 10 Publish a follow up on NEB’s Approval Conditions every six months until operations commence.

Let me be blunt. How does replacing an internationally respected and stringent NEB review with an untested, multi-headed process result in better projects and “...create new jobs and economic opportunities.” Improve it, don’t destroy it.



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NATIONAL ENERGY BOARD MODERNIZATION EXPERT PANEL REVIEW OF MAY 15, 2017 REPORT

Thirty (30) independent pipeline professionals representing 1,055 years of experience in the design, approval, construction and operation of pipelines in Canada, U.S. and internationally provide our comments to the Expert Panel's Report to modernize the National Energy Board (NEB).

REVIEW

We believe that rather than fulfilling your mandate "... to position the NEB as a modern, efficient and effective regulator and regain public trust", your recommendations will have the exact opposite effect. Our reasons for this harsh assessment are:

- as you indicated "...the NEB is respected internationally..." and you "...heard that benchmarking has placed Canada among the most stringent of regulatory regimes." (Page 16),
- the NEB has exclusive responsibility for regulating pipelines under federal jurisdiction. Compare that to the U.S. where three separate agencies namely FERC, the EPA and PHMSA have roles in various stages of a pipeline's life.
- the NEB is already "modernizing" – compare the number of and details of conditions for the Mackenzie Gas Project (2004), Northern Gateway (2013) and TransMountain Expansion (TMX) (2016). A federal audit of the NEB in 2015 indicated the need for it to improve post approval tracking of its conditions – following which the NEB's conditions for TMX stipulated a robust tracking system. You acknowledge that the NEB has adapted in many areas (Page 16).
- efficiency and effectiveness will dramatically decrease if part of the NEB is relocated to Ottawa, remote from most of the subject matter experts, pipelines, and operators subject to its oversight.
- a one year upfront review to "determine alignment with national interest by the Governor in Council before detailed review..." will certainly not improve efficiency. Reviews could be halted, delayed or altered pre- and post elections.
- increased political decisions up front will diminish, not regain, public trust. "Participants told us that in many cases they did not object to the outcome of a decision, so much as the opaque process by which it was achieved. This is especially the case for the decisions rendered by Cabinet where decisions are protected by Cabinet confidence..." (Page 13).

- if a project is approved up front in the “national interest”, logic would conclude that public trust in the detailed review would diminish – stakeholders would rightfully believe that the comprehensive review will have a foregone conclusion and a project proponent may also feel less need to offer its utmost for public acceptance.
- “real and substantive participation of Indigenous peoples, on their own terms...” is recommended. The method of Nation-to-Nation consultation with Indigenous People is presently unknown as it is being developed by a Working Group of Ministers under the leadership of the Minister of Justice.
- consultation is a two-way street. The NEB’s decision report for TMX outlines the refusal of certain Indigenous groups, as well as several mayors to participate in the hearing process – they have stated they will oppose TMX regardless.
- upon establishment of clear and consistent criteria for Nation-to-Nation consultation, will the Indigenous Peoples have the power to veto? If the vast majority of Indigenous groups approve a project – Northern Gateway and TMX for example – will an individual Indigenous group, in the Vancouver area for example, have the power to override the majority opinion?
- you propose radically increasing the scale and scope of stakeholder engagement to “build trust and drive better outcomes for all Canadians.” Stakeholders that could be directly impacted already have every opportunity to participate and in many cases, to receive funding. Other than perhaps nuclear power plants, pipelines already undergo greater public scrutiny and stakeholder input than any other proposed major project.

RECOMMENDATIONS

The NEB should not be dismantled as you propose but fine-tuned to further enhance its excellent performance. Our recommendations are:

- the Government clearly and publicly enunciates core National Energy Policies such as:
 - our “...prime responsibility...is to ensure international market access for our resource products” (Prime Minister’s statement on various occasions).
 - the review is “...up to a process that shouldn’t be about politics and should be about what’s right for Canadians, what’s right for our future.” (Prime Minister, September 13, 2016 news conference with the IMF).
 - Canada to become energy independent, coast to coast to coast, by 2025,
- an Expert Review Board, comprised of three recognized senior independent specialists, to review, pre the NEB decision report, major issues such as tanker traffic and adequacy of a spill response plan. Their report would be appended to the NEB decision report.
- Indigenous and Northern Affairs Canada (INAC) develops a comprehensive list of all Indigenous Peoples that could be affected and/or have a claim to the lands crossed by the pipeline. INAC would track, not consult, to ensure that all groups had been fully engaged by the proponent and/or the NEB – five to ten distinct consultation phases could be involved. The consultation matrix thus developed would be appended to the NEB decision report.

- review, establish and update clear rules for the scope and funding for directly affected stakeholders. Establishing a “right of standing” and time limits for presentations and cross-examination at hearings is common. All others, not directly impacted, can submit their views in writing.

CLOSURE

If your recommendations are adopted, and result in a dismantling of a highly respected, effective, sound and transparent regulator, it is questionable whether any future pipeline proposals would ever see the “light-of-day”. Moreover, this may set a precedent for other energy-related projects and have unintended consequences by damaging the reputation of Canada’s energy industry and reducing investment interest. The NEB process can be improved via fine tuning.

The undersigned would be pleased to meet with you at any time to discuss this further especially the recommendations.



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INDEPENDENT SUPPORTERS

The following support the positions outlined herein and have provided valuable input. Wim M. Veldman however assumes full responsibility for the final submission.

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