



CAMPUT CONFERENCE

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Environmental Issues

The interface between
environmental approvals
and regulatory approvals



Index

- Introduction
- Good understanding of process
- Role of process participants
- Duration of process
- Interface between environmental and regulatory approvals
- Conclusion



Introduction

- What can be done by policy makers, regulators and industry to support public debate on environmental issues without stifling the development of needed projects?
- Difficult question to answer because both sides of the equation are equally important.
- Meaningful public consultation and participation throughout the approval process is a key factor to the success of any major project.



Introduction

- This principle is fully recognized in the legislation and by regulatory practices:
 - Section 4 of the *Canadian Environment Assessment Act (CEAA)*
 - Section 31.1 and following of the *Quebec Environment Quality Act (QEA)*
 - Chapter 3 of the NEB filing manual

- Public consultation and participation must not however become an impediment or a barrier to development of needed projects

- These issues are addressed within the context of a Quebec project subject to section IV.I of QEA and to a comprehensive study under CEAA

- A lot can be done to improve the process without necessarily changing existing framework or legislation



Good understanding of Process

- In order to identify what improvements can be made, it is essential to have a good understanding of how the environmental and regulatory processes currently function
- The implementation of a major energy project in Quebec will typically involve:
 - at the provincial level:
 - ✓ need to obtain Government approval under section IV.I of QEA
 - ✓ BAPE hearings
 - ✓ delivery of a certificate of authorisation by the Minister of Environment under section 22 of QEA
 - ✓ approval of the Régie de l'Énergie where the project is submitted by an entity falling under its jurisdiction



Good understanding of Process

- ✓ public hearing by the Régie where applicable
- ✓ approval of the CPTA where a project is implemented within protected agricultural zone
- ✓ CPTA public hearing where applicable

- at the federal level:
 - ✓ need to conduct a comprehensive study
 - ✓ determination of environmental acceptability of project by Minister of Environment under CEAA
 - ✓ likelihood of public hearing by a joint review panel
 - ✓ approval of one or more federal departments within their respective area of expertise:
 - DFO re: fish habitat
 - DOT re: navigable waters



Good understanding of Process

- ✓ approval by the NEB if project is part of or integrated into an interprovincial or international pipeline
- ✓ hearings before NEB
- Process is highly complex and confusing to the general public
- Recommendation:
 - ✓ regulators and department officials involved in the process should conduct public information meetings to explain the process at a very early stage
 - ✓ These sessions should preferably be held within the same timeframe as the consultation sessions organized by the promoters
 - ✓ Particular emphasize should be placed on the following issues
 - Ultimate decision rests with the government
 - Projects are reviewed by independent experts of government
 - Projects are a work in progress which will change in response to public concerns



Role of process participants

- Project participants have a key role to play to ensure an effective regulatory and environmental approval process. Each role must be plaid out to the fullest extent while being mindful of the particular constraints or duties associated therewith. Participants that are involved in the decision making process must be impartial and should refrain from making comments while the process is underway.

- Policy makers
 - ✓ Policy makers should publicly and actively defend the policies they adopt
 - ✓ They should however refrain from commenting on individual projects submitted in furtherance of such policy while the process is underway



Role of process participants

- Government departments and agencies
 - ✓ Government departments and agencies involved in the decision making process must at all times remain impartial and act accordingly in all aspects of their function
 - ✓ Government departments and agencies that act as experts in the process should limit their interventions to their area of expertise
- Industry
 - ✓ Project sponsors must be ready to invest the required time, energy and money to effectively implement a public consultation program throughout the process
 - ✓ Need to emphasize that the project is a work in progress that evolves as consultation program unfolds



Role of process participants

- Regulators

- ✓ Quasi judicial function of regulators already requires them to act impartially
- ✓ Their rules of practice and procedures already adequately protect the rights of all parties
- ✓ Very little more can be done.



Duration of process

- Time required to obtain regulatory and environmental approvals has a direct impact on the cost of a project and the risks associated therewith.
- Projects sponsors require a reasonable level of certainty with regard to the timing of regulatory and environmental approvals so that they may be factored into their planning and risk assessment activities



Duration of process

- The experience in Quebec as demonstrated is that it is possible to conduct the environmental assessment of a project within predetermined maximum delays without in any way affecting the quality of the assessment or the public participation therein
 - ✓ Section 16.1 of the *Regulation respecting environmental impact assessment and review* provides that the Minister must submit a project to government approval within 15 months of the notice of project
 - ✓ Section 16 of the same regulation requires that the BAPE conduct public hearings and file its reports within 4 months of its mandate.



Duration of process

- Every effort should be made to bring about a similar result at the federal level which is open ended in this regard.

- Examples
 - ✓ creation of standard directives
 - ✓ issuance of preliminary directives shortly after project notice



Interface between environmental and regulatory approvals

- The Interface between environmental and regulatory approvals is not problematical under Quebec legislation
- This is primarily due to the fact that the environmental assessment process is centralized under the authority of the Minister of the Environment
- Régie is not engaged in environmental assessment of the projects it is required to approve



Interface between environmental and regulatory approvals

- The NEB has historically considered environmental matters under section 52 of its governing legislation long before adoption of CEA
- Certain amount of duplication in role of NEB under NEB Act and its role under CEA
- Difficult to reconcile rules of practice of the NEB with less formal rules of an environmental review
- Solution is essentially a matter of policy
- One possible solution could lie in centralization of environmental review process under CEA



Conclusion

- It is possible to improve the process without changing existing framework and legislation
- Process must be better explained to the general public
- Process participants must fully carry–out their respective roles in the process and be mindful of the constraints associated therewith
- Federal process should ideally be conducted within predetermined delays