

Smart regulation in the energy sector

I would like to thank you for the invitation to participate in this workshop. It is always a pleasure for me to meet with the people who help develop Canada's energy resources and to deliver them in a safe, efficient and environmentally friendly manner to Canadians and to the large energy market in the United States. Your efforts contribute to the social and economic well being of Canadians.

Canada's conventional resources will not be sufficient to meet the growing demands for energy. Even as Canadians embrace more efficient energy technologies and improve energy conservation, it is important that the energy resources in frontier lands, in the oil sands and in off shore areas be developed and brought to market over the next several years. In particular, with gas we have heard about supply pressures.

The energy sector, particularly the oil and gas sector, is now largely governed by market forces. On behalf of citizens, governments seek their share of the benefits of Canada's resources through stable fiscal regimes, leaving prices and production decisions to a well functioning market. It is our intention that the development of the new energy sources be governed primarily by market conditions, rather than through subsidies and regulation.

Nevertheless, governments will need to continue to evolve the regulatory mechanisms to permit new development to take place, while ensuring public policy goals are accomplished.

These include other legitimate concerns for the environment and for the rights of communities, especially Aboriginal peoples. It is imperative that these regulatory mechanisms be “smart regulations” which I will talk more about in a minute.

Continuing improvement in our regulatory processes has long been a concern of ministers, federal and provincial. Many of you will have received a letter in the spring of 2002 from energy ministers in the context of the review of pipeline jurisdiction that had been commissioned by the Council of Energy Ministers in 1999. This review focused on a four point model for enhanced regulation, two of which were cooperation between regulator and convergence of regulatory approach between regulators.

The term “smart regulation” has become a buzzword in government circles these days and can be subject to many interpretations. In September 2002, it featured in the federal SFT. Quite frankly, I don't believe that there is in fact a commonly accepted definition of that term and it would be useful to obtain your views on the best way to define smart regulation and the best ways to implement the concept.

To me a smart regulation process will meet several criteria:

- 1) Regulation must be established with a view to meeting the objectives of policy. This means that there must be, in a context of appreciation of stakeholder interests, transparency of intent and process, consultations with stakeholders and a broad consensus developed.
 - The regulatory process should reflect where possible a consensus arrived at through structured consultations

- Minimize process burden - efficiency is also a valid policy objective - avoid duplication.
- 2) “We have traditionally relied on regulations to protect us from the worst. We should also be using regulations to help us enable the best” - Must facilitate innovation.
 - 3) The regulatory framework should be stable. Federal regulations will need to be consistent across regions, but provide for sufficient flexibility to meet the special requirements of particular regions.
 - A stable regulatory system must still provide for the ability to adapt to changing circumstances (Innovation)
 - To enhance stability the regulatory framework should utilize existing institutional structures to the greatest extent possible so as to benefit from their accumulated experience.
 - 4) Environmental concerns must be carefully and efficiently addressed through coordinated action of the various federal and provincial regulatory agencies.
 - Respect the “precautionary principle” on environmental issues.
 - Use a single window approach to address environmental concerns, whenever possible.

- Ensure that data requested from project proponents are provided on a consistent basis to regulators and, where possible, ensure that the data are complementary and avoid duplication. Because it is essential to protect the confidentiality of data it may not always be possible to share data amongst regulatory agencies, but whenever possible it would be helpful to do so.

5) Respect the rights of aboriginal peoples. - a particularly Canadian issue.

- The courts have decreed a duty to consult with aboriginal peoples whenever their rights may be affected by proposed developments
- This is an emerging area

Principles are easy. The trick is to implement them effectively. I would like, in a moment, to describe the work we are doing with Nova Scotia and Newfoundland to improve the regulatory framework for offshore petroleum development, but would like first to reflect on the concept of smart regulation with respect to the North, and specifically with respect to a Mackenzie Valley pipeline. This was the one example of energy regulation referred to in the SFT. It will also streamline environmental assessment processes including implementation a single window for projects such as the northern pipeline.

From the land claims settlements in the Inuvialuit, Gwich'in, and Sahtu regions in the 1980s and 1990s flowed legislation (such as the *Mackenzie Valley Integrated Resource Management Act*) that created a number of northern boards that properly provide local people with a method to evaluate and regulate economic activity in their regions.

But the northern regulatory and EA institutions appear to have been created to deal with localized developments, and not with trans-boundary projects of the nature and scope of a Mackenzie Valley pipeline. The apparent result is in one sense the antithesis of “smart regulation”, where we have regulatory and EA mechanisms in the Inuvialuit region, the Mackenzie Valley, and southern Canada that are not only different, but do not lend themselves to easy integration.

The result is that the implicated boards and agencies from southern and northern Canada have had to work very hard to achieve a co-operation plan for a Mackenzie Valley pipeline project. And although the plan falls short of the ideal “one-project-one-assessment”, it at least co-ordinates a single environmental assessment process with a number of regulatory proceedings, and achieves what Minister Nault has referred to as a “made-in-the-north” solution.

The parties to the cooperation plan have drafted the agreements that will be necessary to make the cooperation plan work. These await the arrival of concrete project details – that is an application – before the final details can be worked out. A joint secretariat is also being established to provide logistical, communications, information management, and administrative support to the panels and boards conducting public hearings during the EA / regulatory review.

The cooperation plan lays out an EA and regulatory assessment process that cannot – at 30 months – be described as short, and this timing requires that there are no hold-ups on the part of the proponent, and that the plan unfolds as outlined.

In the United States, legislators appear poised to provide, as part of a comprehensive energy bill, a requirement for an accelerated and time-limited review of an Alaska Highway project (to say nothing of fiscal assistance to that project – but that is another matter). Specialized legislation is not typically the way in Canada. We rely on our established, independent institutions. And if we are to achieve an efficient and effective review of a Mackenzie Valley pipeline, it will be through the perseverance and cooperation of Canadian regulators.

The process will be very large, very public, and very new. I am hopeful, even optimistic, that by following the Cooperation Plan we will give the necessary order to what surely would otherwise have been of fragmented sequence of multiple regulatory and environmental assessment requirements in Northern and southern Canada.

I will leave my comments on the North there for now, and pick them up again during the panel discussion.

I ask your indulgence to spend a couple of minutes to describe the work that the federal government is doing with the governments of Nova Scotia and Newfoundland and other stakeholders to permit development of offshore oil and gas resources. Let me give you a brief overview of the steps we are taking to enhance the regulatory framework.

Federal and Provincial Ministers of Energy have established the Atlantic Energy Roundtable, consisting of federal and provincial officials as well as industry representatives to discuss the issues arising from future development. Subcommittees of the Round Table are examining questions related to environmental regulation, distribution of industrial

benefits and timing of project approvals. On the regulatory side, we are looking at lessons learned from projects to date, updating a roadmap of the regulatory process, and benchmarking against other offshore regimes including the North Sea and Gulf of Mexico. At the same time, as we are looking at improving operations within the existing system, we have to give thought to the longer term - do we have the right 'model' for offshore development into the future?

I will not pretend that these processes are easy. Even within the federal family there is diversity of views and of emphasis. These differences reflect different legislative intent and different regulatory approaches. Nevertheless, through these processes we are attempting to better approximate the "smart regulation" I outlined. We have a shared federal provincial policy goal which we are attempting to meet in a consensual manner while respecting the requirements of various federal and provincial legislation. We are attempting to do this while minimizing the effort required by the industry in meeting the legislative requirements.

We know that governments will always be called upon to regulate some activities of Canadian business. We are attempting to ensure that regulation is efficient and advances Canadian competitive interests as well as the well-being of all Canadians.

Within the OECD, Canada is considered to be a leader in regulation – in achieving that complex mix of objectives discussed previously. What we have not heard is that our regulation – while respecting our multiple social, environmental and economic objectives, is part of our competitive advantage. That is where the smart regulation process is intended to take us.