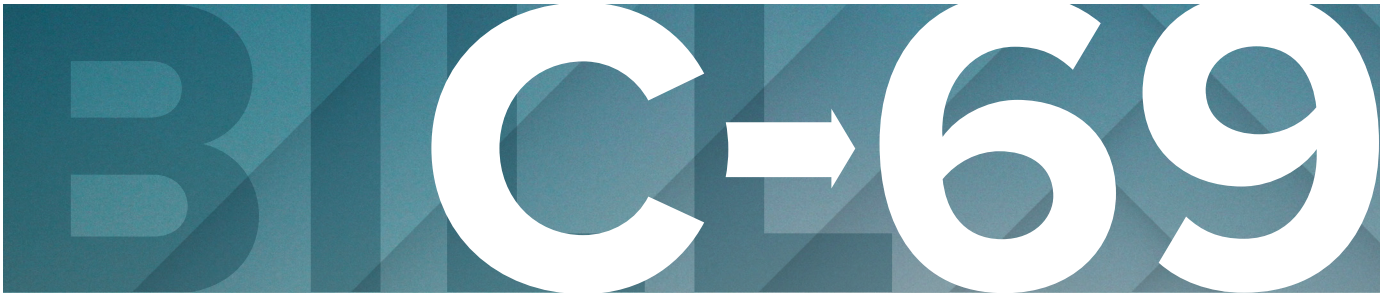

IMPROVE – BUT DON'T REPLACE

The National Energy Board

Over the past few months, the Canada West Foundation has undertaken a deep analysis of Bill C-69. We have published our list of recommended amendments, as well as an analysis of the jurisprudence that supports federal decision-making on project approvals, in our report *Bill C-69: We can get this right*.

One issue has emerged above all others as critically important to get right: ensuring that the new legislation does not undermine the jurisprudence that has been established around project approvals – which would lead to unnecessary additional court challenges, add years between regulatory approval and project commencement, cost millions of both public and private dollars, and create a climate of uncertainty, in which investors and industry cannot be confident that "yes" means "yes."

The solution is radical, but simple: keep the project approval function within an improved National Energy Board.

What's Proposed

Bill C-69 would, among other things, replace the National Energy Board (NEB) with a new Canadian Energy Regulator, and shift the project review and approval process for major pipeline and transmission lines to the new Impact Assessment Agency, under the processes laid out under the proposed new *Impact Assessment Act* (IA Act).

Although we support the intentions of Bill C-69, this aspect would be a huge mistake. Not only is this approach unnecessary (the required improvements to the NEB can be accomplished separately) – the unintended consequences would be disastrous.

The Problem

The biggest cause of delays in getting major energy projects built has not been regulatory timeframes, but court challenges. Yet we have finally achieved a significant level of jurisprudential certainty and approval. Throwing out the NEB now, along with its well-established, extensively court-reviewed process, will also throw out that hard-earned jurisprudential certainty. A new, untested process will take the whole system right back to square one in terms of court challenges. Opposition via the courts would start all over again, leading to *years* of additional and unnecessary delay for any major pipeline or any major electricity transmission line, and a whole new climate of uncertainty for investment.

Most damaging is that this change to the process used for project review and the loss of the associated jurisprudence would be irreversible – which is why this key change to Bill C-69 is so important.

Some environmental activists may cheer the lack of pipelines, but electricity from renewable sources such as wind and solar will require transmission, and large transmission lines are just as subject to NIMBYism and protests – in some cases more so because they are so large and visible. The NEB is the regulator for large transmission lines – and losing the court endorsement of the NEB process means that they will be challenged too – with the ironic, unintended effect of significantly setting back renewable energy production. No one wins if this happens.

The Solution

The NEB needs to be modernized and improved. But we must NOT replace the whole process that has been through years of court review, analysis and approval.

The changes needed to the NEB should instead be made by amending the *National Energy Board Act*. These amendments can incorporate the improvements regarding independence, governance and transparency that are currently found in Part 2 of Bill C-69. To accomplish this, the *CER Act* (Part 2) needs to be removed from Bill C-69, and some corresponding changes made to the rest of the bill.

The regulator's name can even be changed to the Canadian Energy Regulator if desired. And the changes can start right away, with a new bill introduced that fulfills the government's promise to modernize the National Energy Board.

Radical, but simple – and effective.

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