

Bill C-69: Too Far, Too Fast? Or Nowhere At All?

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Summary & Purpose

Bill C-69 outlines new rules and guidelines for impact assessments of certain energy projects such as proposed pipelines, abandoned pipelines, power lines, and offshore renewable energy projects. The proposed assessment process is meant to foster sustainability and avoid certain negative outcomes through the thorough analysis of a project's environmental, health, social, gender, and economic effects.

As Justin Trudeau's Liberals ran for election in 2015, they were certain that Canada's regulatory system for major projects was broken. A major reform undertaken by the Harper government, combined with strong rhetoric from Harper ministers about getting projects built, left the impression that the federal Conservative government had its thumb on the scale in favor of major projects.

The Liberals called the system broken, said that Canadians had lost faith in federal regulators and promised to develop a new, more inclusive, more rigorous system guidelines.

At the time, it appeared Canada could afford a more rigorous environmental review process. In the decade preceding 2015 foreign investment poured into Canada's natural resource economy, especially the energy sector. Oil sands production was growing and there were pipelines proposed. The sector was on a hot streak and some Canadians, including many Liberals in central Canada and British Columbia, questioned whether the growth was sustainable.

Following the Liberal victory in 2015, government officials set about developing a regulatory reform that addressed many of the concerns the Prime Minister expressed during the campaign. The reform, put forward in Bill C-69, gave new authorities to the Minister of Environment and Climate Change, shifted the balance of power away from energy regulators like the National Energy Board in favor of a strengthened environmental assessment agency, and substantially broadened the definition of who could participate in regulatory processes. Yes, the bill included new regulatory timelines the Liberals said enhanced certainty, but these timelines were subject to delays at the discretion of elected Ministers.

While the government worked on the bill and shepherded it through the House of Commons, Canada's competitive context changed dramatically. A combination of low oil prices and pipeline constraints caused substantial reduction in foreign investment in Canada's energy sector. Meanwhile, a change in administration in the United States saw President Obama's efforts to expand federal regulation of U.S. energy development scrapped in favor of the de-regulatory agenda of President Trump.

In short, the core question regarding Canadian natural resource development went from are they going too far, too fast? To can they go anywhere at any pace?

It is clear that Bill C-69 is not a good answer when the question is whether Canada will be able to build anything at all. Industry and provincial governments have been clear that legislation adding uncertainty about what projects will be examined by federal regulators, how the government will balance economic considerations with environmental concerns, and expanding the range of those involved in the process will deter future investment.

As the Senate examines Bill C-69, the short-term stakes for Canada have rarely been higher. Energy and natural resources are core drivers of the Canadian economy and, in the midst of ongoing trade uncertainty, Canada needs strong performance from sectors that are not subject to tariffs (or tariff threats).

As Canadians look to the future, it appears that enhancing regulatory certainty could pay even greater dividends. Venezuelan conflict and U.S. sanctions open a new opportunity for Canada to capture new heavy crude market share in the United States. At present, producers are scrambling to try and take advantage of the opportunity, but if they are successful, long-term market access to the U.S. Gulf Coast will support the business case for increasing investment in Canada.

At the same time, the Green New Deal emerged as a potent political force among Democratic presidential contenders. While the policy implications of the Green New Deal remain open to a broad range of interpretations, it is difficult to see a scenario where a new Democratic president entering office in 2021 would not face significant pressure to place new regulations on U.S. natural resource development.

This leaves Canada facing two divergent competitive scenarios both pointing to the benefits of greater regulatory certainty: in the first, President Trump wins re-election and continues his efforts to streamline U.S. regulation. In this scenario, natural resource investors will continue to look to the United States first and Canada will have to have a very clear regulatory value proposition if it

hopes to hang on as a destination for investment. In the second, a Democratic president initiates regulatory reform creating greater uncertainty in the U.S. market. A Canadian market with its regulatory house in order will look far more attractive and Canada could regain its status as a magnet for global investment.

The story of Bill C-69 shows that the Canadian federal government needs to be better attuned to the competitive context facing Canadian industry. Unlike in 2015, Canada's economy currently faces sustained headwinds and there is no room to subordinate regulatory certainty to other political considerations. While certainty is a competitive imperative today if Canada hopes to hang on in a tough environment, there are emerging trends suggesting the right policy will yield substantial rewards.

