

How does the Canadian Energy Regulator measure up?

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Pembina Institute vision

Our vision for a modernized National Energy Board

- Modern regulators should reflect the values of the society in which they operate.
- Modern regulators should support Canada's commitment to the Paris Agreement on climate change.
- Modern regulators should conduct their work in the spirit of reconciliation with Indigenous peoples.
- Modern regulators should be accessible to the public, make evidence-based decisions, and be free from bias.
- Modern regulators should aspire to be world-leading and to deploy predictable, rigorous and inclusive practices for natural resource and infrastructure management.

Bill C-69: Canadian Energy Regulator Act

NEB replaced by Canadian Energy Regulator (CER)

Mandate

- (a)** making transparent decisions, orders and recommendations with respect to pipelines, power lines, offshore renewable energy projects and abandoned pipelines;
- (b)** overseeing the construction, operation and abandonment of pipelines, interprovincial power lines and international power lines and overseeing work and activities authorized under Part 5 as well as abandoned pipelines and abandoned offshore facilities
- (c)** making orders with respect to traffic, tolls and tariffs and overseeing matters relating to traffic, tolls and tariffs;
- (d)** making decisions and orders and giving directions under Part 8 with respect to oil and gas interests, production and conservation;
- (e)** advising and reporting on energy matters;
- (f)** providing alternative dispute resolution processes; and
- (g)** exercising powers and performing duties and functions that are conferred on the Regulator under any other Act of Parliament.

Bill C-69: Impact Assessment Act

- CER will not be responsible for IA; will have at least one member on the panel
- Same treatment for offshore petroleum boards (increased authority)
- Consider climate impacts
- Consider social and health effects
- Increased transparency via decision statement

Bill C-69: CER Governance

- Separation of Board of Directors and Hearing Commissioners
 - Board and CEO responsible for the governance of the CER; must not be involved in decisions of the Commission
 - Commission reviews projects not subject to IAA Act; makes recommendations to GiC or makes the decision (offshore)

Bill C-69: CER Governance cont.

- Conflict of interest provisions for Board members and Commissioners
- Indigenous representation: one member of the Board and one Commissioner
- New Board and Commissioners: Existing members of the Board will be terminated when the Act takes effect

Indigenous Relationships

- Provisions for integrating Indigenous knowledge
- Requirement to consider the rights of Indigenous peoples and any adverse affects on those rights (Section 56)
- Ability to create committees or programs to enhance the involvement of Indigenous peoples (Section 57)

Issuing a Certificate of Public Convenience and Necessity

Factors to Consider (Sections 183(2), 262(2), 298(3))

In deciding whether to issue a certificate, the Commission **must** take into account — **in light of, among other things, any traditional knowledge of the Indigenous peoples of Canada that has been provided to the Commission and scientific information and data** — all considerations that appear to it to be relevant and directly related to the pipeline including

Factors to consider (cont.)

- (a) the environmental effects, including any cumulative environmental effects;
- (b) the safety and security of persons and the protection of property and the environment;
- (c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;
- (d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;
- (e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- (f) the availability of oil, gas or any other commodity to the pipeline;
- (g) the existence of actual or potential markets;
- (h) the economic feasibility of the pipeline;
- (i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;
- (j) environmental agreements entered into by the Government of Canada;
- (k) any relevant assessment referred to in section 92, 93 or 95 of the *Impact Assessment Act*, and
- (l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

What's missing

- Climate change
- Transparency and detailed reasons for decisions
- Support for public participation
- Independent energy data agency
- Energy supply and demand forecasts that take into account increasing climate action
- Outcomes of regional and strategic impact assessments do not need to be considered in individual project assessments



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A one-stop shop for energy data and forecasting in Canada

- Energy data scattered in Canada
- Need for independent forecasts aligned with realities of climate change
- Solution: independent agency with sole mandate on energy information and education
- Precedent: U.S. EIA

Strategic environmental assessment (SEA) on climate change

- SEA can explain the application of environmental frameworks to activities subject to federal oversight and regulation
- Tool already exists but is not used
- Frame around Canada's mid-century greenhouse gas targets (Paris Agreement)
- [Existing cabinet directive](#)

Table 1. Global primary energy mix by fuel in the 66% 2°C Scenario

| Fuel | Million tonnes of oil equivalent | | | | | Difference in 2050 ^a |
|-------------------------------------|----------------------------------|---------------|---------------|---------------|---------------|---------------------------------|
| | 2014 | 2020 | 2030 | 2040 | 2050 | |
| Coal | 3,926 | 3,421 | 2,032 | 1,475 | 1,318 | -68% |
| Oil | 4,266 | 4,260 | 3,474 | 2,534 | 1,760 | -63% |
| Gas | 2,892 | 3,255 | 3,325 | 2,789 | 2,426 | -50% |
| Nuclear | 662 | 816 | 1,272 | 1,807 | 2,021 | 56% |
| Hydro | 335 | 381 | 516 | 639 | 733 | 25% |
| Bioenergy ^b | 1,421 | 1,574 | 2,038 | 2,543 | 2,928 | 48% |
| Other renewables | 181 | 395 | 1,228 | 2,277 | 3,018 | 120% |
| Total | 13,683 | 14,102 | 13,885 | 14,064 | 14,204 | -26% |
| <i>Fossil fuel share</i> | <i>81%</i> | <i>78%</i> | <i>64%</i> | <i>48%</i> | <i>39%</i> | <i>-47%</i> |
| <i>Renewables share</i> | <i>14%</i> | <i>17%</i> | <i>27%</i> | <i>39%</i> | <i>47%</i> | <i>128%</i> |
| <i>Low-carbon share^c</i> | <i>19%</i> | <i>23%</i> | <i>39%</i> | <i>59%</i> | <i>70%</i> | <i>153%</i> |

²⁷ International Energy Agency and International Renewable Energy Agency. *Perspectives for the Energy Transition: Investment Needs for a Low-Carbon Energy System* (2017), 122.

https://www.energiwende2017.com/wp-content/uploads/2017/03/Perspectives-for-the-Energy-Transition_WEB.pdf

Table 2. *Energy Futures* reference case projections

| | 2015 (thousand m ³ /d) | Reference case projection (2040) (thousand m ³ /d) | Projected change 2015-2040 |
|--|---|---|----------------------------------|
| Crude oil production (including oilsands) | 639 | 900 | +41% |
| Oilsands production (mined+in situ) | 402 | 691 | +72% |
| Natural gas production | 424,000 | 502,000 | +18% |

Source: National Energy Board²⁹, adapted by authors

The reference case projects a declining trend in natural gas production from 2016 to 2021, with LNG exports from the B.C. coast working to reverse this trend to 2040.