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Submission to the Senate Committee on
Energy, the Environment and Natural
Resources
Bill C-69

03 APRIL 2019

PREPARED BY: CANADIAN ENERGY PIPELINE ASSOCIATION

CONTEXT

The Canadian Energy Pipeline Association (CEPA) represents Canada's major transmission pipeline companies that transport 97 percent of Canada's daily natural gas and onshore crude oil production.

CEPA wants to see a regulatory process that ensures Canadian energy is delivered in the safest possible way to domestic and international markets. We want to ensure projects are developed in a manner that protects the environment. And we want to see the social and economic benefits that come from responsible resource development flow to Canadians. However, the Canadian energy industry is in the midst of a crisis. We faced record-setting price differentials relative to U.S. barrels of oil at the end of 2018, our oil and natural gas resources are landlocked and because of that, foreign and domestic investors are either sitting idle or moving their money to more competitive jurisdictions. The Canadian economy is missing out on billions in revenue. One of the largest contributors to this unfortunate reality is the regulatory environment in which the pipeline industry operates.

The cumulative effect of increasing, inefficient and unnecessarily prescriptive regulations combined with steadily increasing regulatory timelines and competition with international jurisdictions is making it more and more difficult to develop new projects and attract investment. The current flood of new regulations that must be complied with (or that is currently in the planning/consultation phase) at the federal, provincial and other levels is overwhelming. There have been very limited opportunities to assess the full impact on industry and consumers, let alone understand comparisons of the regulatory burden of jurisdictions competing for the same capital investment Canada is trying to attract. This is why CEPA commissioned Ernst & Young to study the effect of increasing regulation and regulatory layering on the pipeline industry. What that study found was that over the past several years an increase in volume, complexity and duplication of regulations imposed upon the pipeline industry has had a negative effect on the competitiveness of the sector. CEPA has provided the Senate Energy, Environment and Natural Resources Committee with copies of this report and believe it, along with our corresponding recommendations, can help inform the important task the committee has in studying Bill C-69.

Canada's energy future represents a massive opportunity for Canada and the health of Canada's pipeline industry is integral to ensuring Canadians realize the full benefit of their energy resources. It is critical that regulatory reform initiatives do not add to the significant obstacles already facing our energy industry. Our country's ability to be competitive now, and in the future, depends on finding an appropriate balance between environmental and economic considerations while ensuring regulatory objectives are met.

BILL C-69

Over the past three years, CEPA made it a top priority to participate in government consultations that led to Bill C-69, providing over 200 pages of background and recommendations. CEPA's submissions were meant to provide thoughtful and practical recommendations for a balanced approach to project reviews that would address the government's three stated objectives - to build public confidence, introduce fair processes that provide predictability and certainty, and to enable resources to get to market. Our recommendations were premised on the underlying need to stem the erosion of Canada's competitive position and were guided by key principles that we believe would have set the framework for a balanced approach:

- i. A process that ensures broader public policy issues are addressed in more appropriate venues, outside of project reviews;

- ii. A science and fact-based process that is coordinated, efficient and provides clarity and certainty; and
- iii. The National Energy Board (“NEB”) as an independent, arms-length regulator with technical expertise and full life-cycle responsibility from the project review phase to construction, operations, maintenance and abandonment.

Bill C-69 does not achieve these objectives and would create a project review process that is fundamentally at odds with the vision and objectives that CEPA and its member companies outlined.

Bill C-69 does not address the pipeline sector’s most fundamental concern – that of the unacceptably high financial risks associated with lengthy, costly project reviews that trigger polarization within the process itself and political decisions at the very end. Bill C-69 sidelines the role of the NEB on major pipeline project reviews, setting aside 60 years of administrative and technical expertise. It moves technically sound project reviews from the NEB, an independent expert regulator, to the Impact Assessment Agency (“IA Agency”), a new untested agency that lacks the independence and expertise to conduct pipeline project reviews. It is seriously flawed legislation that will neither build public confidence nor create the regulatory conditions to attract investment.

Without significant amendments, Bill C-69 would be a substantial impediment to the development of Canada’s energy infrastructure and the overall competitiveness of Canada.

CEPA and its member companies are proposing a suite of amendments to Bill C-69 that, if accepted in full, as a complete package, would offer a more balanced approach and decrease the risks to project proponents and investors.

Our proposed amendments, attached in full as Schedule “A” to this submission, fall into five broad categories:

- i. Amendments to de-politicize the process and remove broader public policy issues from individual project reviews;
- ii. Amendments to draw upon the expertise of the NEB/CER as the best-placed regulator;
- iii. Amendments to limit discretion of the Minister of Environment and Climate Change;
- iv. Amendments to improve efficiency, certainty and predictability; and
- v. Amendments to de-risk projects from increased litigation and judicial review.

Taken together, as a complete package, these proposed amendments would improve Bill C-69, better align the legislation with government’s own stated objectives and close some of the gap between the legislation and CEPA recommendations. However, even if all of the amendments proposed are accepted, there still remains a fundamental difference between Bill C-69 and the vision and objectives that CEPA and its member companies hoped to achieve when the government commenced consultations on how to improve the review process and modernize the NEB. Those concerns are addressed in the following recommendations.

Amendments to de-politicize the process and remove broader public policy issues

CEPA consistently advocated for a de-politicization of the project review process and from the beginning has said that the review process was not the venue to debate broader public policy issues, including and especially, upstream and downstream climate change impacts.

CEPA proposed a two-part project review process as a means to address two fundamental dysfunctions of the existing process: (1) the significant financial risks caused by a lengthy process that concluded with a political decision in the end; and (2) the corruption of the review process itself with policy matters that cannot be properly dealt with in a quasi-judicial, science and fact-based proceeding.

The proposed two-part review would separate out the broader public policy issues from the technical and environmental review of a project. The first part of the review would address the broader policy issues and determine whether a project is in the public interest – the question of “if” a project could proceed. If no showstoppers were identified up front, the project would then proceed to a more technical assessment that would consider “how” that project could proceed.

Despite the pipeline industry’s very clear and compelling rationale for removing policy from project reviews, these issues are now, under Bill C-69, explicitly included in both the review process and the political decision at the end of a very lengthy and expensive process.

The government has suggested that the proposed early planning phase can address some of CEPA’s concerns. However, the legislation, as drafted, does not facilitate this. Although the early planning phase proposed in Bill C-69 may be able to identify policy issues and areas of political concern, those issues are not dealt with at that stage, but carry through to the assessment phase (s. 22) and the decision at the very end of the review (s. 63).

To help de-politicize the process, remove broader public policy from individual project reviews and diminish the potential of a Cabinet veto at the end of a review process, CEPA is proposing the following amendments:

Impact Assessment Act

- Amend s. 17 to provide the proponent an opportunity to request a Ministerial opinion, up front, regarding any potential inconsistency with government policy;
- Amend s. 18 to require the notice of commencement to clearly outline what factors are scoped in or out of the assessment;
- Amend s. 22 to:
 - replace the requirement to consider climate and environmental obligations with a requirement to consider whether the project is consistent with any completed strategic assessment regarding those issues;
 - reword the requirement to consider a project’s contribution to “sustainability” to include a requirement to consider the environmental, health, social and economic impacts of a project and whether the project is consistent with any relevant published sustainability policy;
 - remove the requirement to consider “alternatives to the designated project”; and
 - replace the requirement to consider the “intersection of sex and gender with other identity factors” with a requirement to consider whether the project is consistent with published policy regarding those issues.

- Amend s. 63 to:
 - replace the requirement to consider climate policy in the public interest determination, with a requirement to consider whether the project is consistent with any completed strategic assessment regarding those issues; and
 - reword the requirement to consider a project’s contribution to “sustainability” to include a requirement to consider the environmental, health, social and economic impacts of a project and whether the project is consistent with any relevant published sustainability policy.

Canadian Energy Regulator Act

- Amend s. 183 to:
 - replace the requirement to consider climate and environmental obligations with a requirement to consider whether the project is consistent with any completed strategic assessment regarding those issues;
 - reword the requirement to consider a project’s contribution to “sustainability” to include a requirement to consider the environmental, health, social and economic impacts of a project and whether the project is consistent with any relevant published sustainability policy; and
 - replace the requirement to consider the “intersection of sex and gender with other identity factors” with a requirement to consider whether the project is consistent with published policy regarding those issues.

Amendments to draw upon the expertise of the NEB/CER as best-placed regulator

Throughout the NEB modernization consultation process, CEPA emphasized that ALL pipeline project reviews must be conducted by the NEB as the best-placed regulator. We offered advice on what could be improved within the NEB framework to address a perceived loss of public confidence. We pointed out that the root cause for this growing criticism of the NEB was a direct result of the NEB, over the past decade, finding itself in the centre of an increasingly contentious debate about new energy infrastructure projects in the context of broader public policy issues such as climate change. At the same time, there were growing public expectations that policy issues would be dealt with in the NEB review process because policy wasn’t being dealt with, to their satisfaction, anywhere else. We emphasized that the NEB process, or any regulatory process for that matter, is not equipped to be a forum for public policy debate. CEPA made numerous recommendations on how to remove policy issues such as climate change from the process, modernize the NEB and build a strengthened, independent, quasi-judicial regulator. Most of those recommendations were ignored in Bill C-69.

Although some of the changes in the *Canadian Regulator Act*, such as the governance structure, are sound and will lead to a modernization of the regulator, CEPA is disappointed that the authority to review major pipeline projects has been carved out of the NEB/CER mandate and moved to the proposed new IA Agency. That new Agency will still be required to deal with the same broader public policy issues and problems that the NEB was challenged to deal with in the past decade. The issues that CEPA identified as problems within the NEB process have simply migrated to, and are magnified, in the new impact assessment process. Moving the fundamental problems within an existing review process from one regulator to another agency will not solve the underlying problems.

CEPA is of the view that the positive changes proposed under the *Canadian Energy Regulator Act* to strengthen the governance structure of the regulator, together with our proposals to depoliticize the review process, should negate any need for the IA Agency to be involved in any pipeline project reviews. We still strongly believe that project reviews should continue to be conducted by a modernized NEB/CER as the best placed regulator.

However, in the event that Bill C-69 and its regulations result in any pipeline projects being reviewed jointly by a review panel of the IA Agency and the NEB/CER, CEPA strongly recommends that the NEB/CER must be the lead agency, not the IA Agency. CEPA is proposing the following amendments to ensure that NEB/CER expertise, developed over 60 years, is properly utilized in a joint review panel and that technical expertise and experience is maintained within the CER:

Impact Assessment Act

- Amend s. 47 to require that a review panel must have a majority of members appointed from the CER roster and that the review panel chair must be from the CER; and
- Amend s. 196, the coming in force section, to delay the effective date of both the *Impact Assessment Act* and the *Canadian Energy Regulator Act* for one year, to enable the fulsome development of new processes, information requirements, guidance and the acquisition and transfer of knowledge from the NEB to the IA Agency.

Canadian Energy Regulator Act

- Amend s. 28 to remove the restriction that a Commissioner cannot be appointed for more than 10 years total; and
- Amend s. 12 and 13 transitional provisions to allow the Governor in Council to reappoint a Commissioner.

Amendments to limit discretion of the Minister of Environment and Climate Change

There are numerous areas in Bill C-69 that allow intervention by the Minister of Environment and Climate Change into the project review process. As drafted, Bill C-69 gives the Minister decision-making authority over key aspects of the review process, from beginning to end, including, but not limited to:

- the power to add projects to the designated project list (s. 9);
- ability to determine the scope of factors to assess (s. 22(1)(b));
- the final decision on whether a project is in the public interest (s. 63);
- the requirement to set project conditions (s. 64); and
- the ability to extend timelines in numerous process steps.

CEPA remains concerned with the increased potential for politicization of the process and the uncertainty associated with such a high level of political discretion. From the outset of the NEB Modernization review, CEPA highlighted the importance of having an independent, quasi-judicial process that is grounded in fairness and transparency and based on principles of administrative law, natural justice and procedural fairness. CEPA envisioned a review process that emphasized the independence of the regulator from the political agenda of governments – a process where independent tribunals such as the NEB take the policy environment created by the government into account, while observing strict independence and objectivity in the decisions they make. The degree of discretion given to the Minister of Environment and Climate Change, throughout the

review process proposed by Bill C-69, and especially a public interest decision by Cabinet at the very end, cannot be reconciled with our view of an independent, quasi-judicial, project review process.

CEPA is particularly concerned that the public interest decision of the Minister at the end of the process is based on a “report” of the IA Agency or review panel, rather than a “recommendation” or a “decision”. This allows decisions to be influenced by short-term political priorities rather than a well-defined, impartial, independent process. To compound matters, the wide discretion given to the Minister of Environment and Climate Change, to the exclusion of the Minister of Natural Resources and/or the Minister of Finance, reinforces the perception that there is not an appropriate balance in Bill C-69 between the focus on the environment and the economy.

While CEPA believes that the decision-making structure of Bill C-69 is irreconcilable with our vision of an independent, quasi-judicial review process, CEPA recommends the following amendments to improve the degree of independence of the assessment and review process:

Impact Assessment Act

- Amend s. 9 to include criteria that will guide and limit the Minister’s discretion to designate a project that is not already on the Designated Project List;
- Amend s. 17, s. 22 and s. 63 (noted above) to remove the broader public policy issues from the scope of review of the assessment;
- Amend s. 64(1) to tie the Minister’s discretion to establish conditions of approval to the recommendations made in the assessment report;
- Amend s. 51 to require the Agency or review panel to provide a “recommendation”, not a “report”;
- Amendments to prescribe maximum time limits, regardless of timeline extensions; and
- Amendments throughout the Bill to include involvement of the Ministers of Natural Resource and/or Finance in various aspects of decision-making.

Canadian Energy Regulator Act

- Amend s.8 (definitions) in the *Canadian Energy Regulator Act* to clarify that “Minister” means the Minister of Natural Resources.

Amendments to improve efficiency, certainty and predictability

When introducing Bill C-69, the Minister of Environment and Climate Change stated that proponents would have better rules, more certainty, clarity and predictable and timely project reviews. We believe that amendments to Bill C-69 are needed to increase the probability of this outcome.

Timelines

Bill C-69 provides greater potential for delays and increased opportunities for timeline extensions and suspensions. As currently drafted, the legislated timelines in Bill C-69 are unlikely to be met given the number of time-outs and extensions, the increased scope of factors to assess and the lack of a standing test for public participation. This is particularly acute for major pipeline projects

that can extend over hundreds or even thousands of kilometers and impact multiple interests from different stakeholders, Indigenous groups, municipalities and levels of government.

Although the legislation suggests that timelines will be more certain and shorter, this is not the case for pipeline projects. The maximum timeline for pipeline project reviews under existing legislation is 540 days from the time an application is deemed to be complete to a Cabinet decision at the end of the process. Bill C-69 extends that to 615–915 days, plus the time it takes a proponent to prepare an Impact Statement, which could be up to three years. This is a significant and material increase to a process that can already span many years. Bill C-69 fails to recognize the realities faced by project proponents in moving a major pipeline project from conception through to being ready for filing a project application. Proponents must enter commercial agreements that set the pipeline in-service date to connect upstream or downstream customers. These agreements are in jeopardy when there is a lack of certainty around the review process and timing.

Bill C-69 also references the potential for time extensions and suspensions at almost every step of the process, substantially reducing the probability than any project will meet the legislated timelines.

Faced with a pipeline review process that could extend beyond four or even five years, project proponents would assume extraordinary risks, including changes in market conditions, changes in other regulations or legislation, and changes in government that might affect the final decision.

CEPA recommends the following amendments to address timeline uncertainty:

Impact Assessment Act

- Amend various sections to require the Governor in Council to provide reasons why any timeline extension is granted (similar to the existing requirement for Ministerial extensions); and
- Insert a new s. 62.1 to prescribe a two year maximum timeline, inclusive of every step and every timeline extension in the process, with the only possible extension beyond two years to be an extension requested by the proponent.

Canadian Energy Regulator Act

- Amend s. 186 of the CER Act to prescribe a 600-day maximum timeline, inclusive of every step and every extension in the process, with the only possible extension beyond 600 days to be an extension requested by the proponent.

Public Participation and the Standing Test

Throughout the NEB modernization and environmental assessment consultation processes that led to Bill C-69, CEPA advocated for a project review process that offered public participation opportunities that are inclusive, but also recognized the need to maintain procedural fairness and use of science and fact-based evidence. A detailed recommendation for a flexible and scalable approach was provided that outlined how to accommodate the general public's desire to be heard with a process that allowed those who were directly affected to participate in a meaningful way. CEPA's position was, and remains, that the standing requirements are reasonable for more formal participation opportunities such as intervenor status.

Bill C-69 gives considerable discretion to the IA Agency or the CER to determine when and how the public can participate and how to consider their input. This might allow for the type of scalable and flexible participation that we recommended, but it could also be used to overwhelm the

hearing process in an attempt to delay projects to the point that they are abandoned by the proponent. CEPA is concerned that the definition of “meaningful participation” in Bill C-69 will also be open to interpretation and litigation.

CEPA recommends the following amendments to balance opportunities for meaningful public participation with the need for efficiency and to maintain natural justice and procedural fairness:

Impact Assessment Act

- Amend various sections to limit opportunities to challenge the IA Agency’s discretion to determine public participation rights by specifying that “meaningful participation” is as set out in the Act;
- Amend s. 27 and s. 51 to prescribe that the IA Agency or the review panel have the discretion to determine public participation rights, based on the degree to which a participant is directly affected and whether the participant has relevant information or expertise; and
- Amend s. 27 and s. 51 to prescribe that the discretion of the IA Agency or review panel to determine public participation rights and processes is final and conclusive.

Canadian Energy Regulator Act

- Amend s. 74 to prescribe that the Commission has discretion to determine public participation rights, based on the degree to which a participant is directly affected and whether the participant has relevant information or expertise; and
- Amend s. 74 to prescribe that the discretion of the Commission to determine public participation processes is final and conclusive.

Amendments to de-risk projects from increased litigation and judicial review

While there have been recent court decisions that suggest that the Federal Government’s final Indigenous consultation process is not always sufficiently robust, the fact remains that the NEB review process, including the role of the proponent, works and is legally defensible. Bill C-69 is new legislation that is untested and will be subject to interpretation by the courts. It will set aside decades of jurisprudence under the *National Energy Board Act* and the *Canadian Environmental Assessment Act*. There are numerous new and ill-defined definitions and tests in Bill C-69 that will all likely be challenged in future litigation. There are countless decision points which could lead to judicial review, allowing a court to substitute its opinion for that of the IA Agency, CER, Minister or Governor in Council. This would be an untenable situation for the Canadian energy sector.

At a time when the energy sector is reeling from delays and set-backs in building new pipeline infrastructure, most recently from the delays resulting from the Federal Court of Appeal decision that quashed the TransMountain certificate, CEPA believes that now is not the time to be adding additional litigation risk. Bill C-69 would replace the existing project review process, that has been tested and interpreted by the courts, with a new process that will add additional layers of risk and uncertainty.

To mitigate this risk, judicial review of decisions should be limited to questions of law or jurisdiction and should not create an opportunity to re-assess a matter of fact.

To help reduce litigation risk, CEPA is proposing the following amendments:

Impact Assessment Act

- Amend the Bill to include a privative clause to limit judicial challenges to decisions or orders on questions of law or jurisdiction, removing opportunities to re-assess a matter of fact.

Canadian Energy Regulator Act

- Amend s. 72 of the CER Act to revise the wording of the privative clause to parallel the new privative clause proposed for the IAA.

Conclusion

CEPA's submission is founded on the desire to have a regulatory system that supports a healthy natural resource sector providing maximum economic benefits for all Canadians. These economic benefits, in turn, fund the basic necessities for a prosperous and sustainable society including health, education and other social programs that support Canada's high quality of living. To that end, maintaining and enhancing the competitiveness of the natural resource sector is vital for Canada's future.

Throughout the NEB modernization and environmental assessment consultation processes, CEPA offered the views of member companies based on their direct experience in investing, building and safely operating the energy infrastructure that supports the Canadian economy and the everyday lives of Canadians. Project proponents and their investors will continue to evaluate the feasibility of developing resource projects in Canada against other investment options. In doing so, they need to understand the processes, the tests and criteria that must be met, the length of time to obtain approval, the overall cost and ultimately the risk that the project will be denied or not economically viable at the end of that process.

The investment climate for energy development in Canada has already been negatively affected by the regulatory delays of some major pipeline projects. Bill C-69 introduces even more risk and uncertainty. The net effect of the proposed legislation is an impractical and unworkable project review process that will create unmanageable uncertainty and a decision-making framework that will insert broader policy issues squarely into a process that is not equipped to resolve them.

It is CEPA's view that Bill C-69, as currently proposed, is irreconcilable with the vision and objectives that we have consistently articulated, and with the objectives the government outlined at the beginning of their consultation process. We have offered amendments that, if accepted as a complete package, would improve Bill C-69 from its current form, offer a more balanced approach and would help to decrease risk to investors and project proponents. CEPA remains concerned, however, that the government has not articulated its vision of how Bill C-69 fits into Canada's longer-term energy objectives. It does not reflect the importance that energy will continue to play in the global energy mix for the next several decades, and therefore, does nothing to help Canada achieve the full value of its resources in the world markets.

Schedule A: Proposed amendments to Bill C-69

Para	Current Wording	Proposed Amendment	Reason for Amendment
New	New Provision	<p><u>Decisions final</u> <u>Except as provided for in this Act, every decision or order of the Agency, Minister or Governor in Council is final and conclusive.</u></p> <p><u>Appeal to Federal Court of Appeal</u> <u>An appeal from a decision or order of the Agency, Minister or Governor in Council on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.</u></p> <p><u>Application for leave to appeal</u> <u>Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.</u></p> <p><u>Time limit for appeal</u> <u>An appeal must be brought within 60 days after the day on which leave to appeal is granted.</u></p> <p><u>Report not decision or order</u> <u>For greater certainty, a report submitted by the Agency under subsections 28(2) or 59(1) or by a review panel under 51(1)(e) is not a decision or order for the purposes of this section and neither is any part of the report.</u></p> <p><u>Notice of Appeal</u> <u>The filing of a notice of appeal under subsection (3) does not suspend the operation of a decision made under this Act.</u></p>	<p>To reduce litigation risk by adding a privative clause.</p> <p>The Federal Court of Appeal decision that quashed the TransMountain approval in <i>Tsleil Waututh Nation et al. v. Attorney General of Canada et al.</i>, highlights the unacceptable risk of litigation and judicial review. Bill C-69 exacerbates that risk.</p> <p>Bill C-69 is new legislation that is untested and will be subject to interpretation by the courts. It will set aside decades of jurisprudence under the NEB Act and CEAA (2012, 1992) and lead to more areas of judicial review.</p> <p>The Bill has numerous decision points which could lead to judicial review, allowing a court to substitute its opinion for that of the Agency, Minister or the Governor in Council. Judicial review should be limited to questions of law or jurisdiction, not create an opportunity to re-assess a matter of fact. A strong privative clause is needed in order to provide certainty.</p>
6	6 (1) The purposes of this Act are	<p>6 (1) The purposes of this Act are <u>(o) to improve investor confidence, strengthen the Canadian economy, encourage prosperity and improve the competitiveness of the Canadian energy and resource sectors;</u></p>	To add economic objectives to the purpose section.
9(1)	Minister's power to designate 9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical	Minister's power to designate 9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion either the carrying out of that physical	To limit Ministerial discretion and to provide certainty for project proponents.

9	<p>activity may cause adverse effects within federal jurisdiction or adverse direct or incidental effects, or public concerns related to those effects warrant the designation.</p> <p>Factors to be taken into account (2) Before making the order, the Minister must take into account any adverse impact that a physical activity may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i> as well as any relevant assessment referred to in section 92, 93 or 95.</p> <p>Agency's power to require information (3) The Agency may require any person or entity to provide information with respect to any physical activity that can be designated under subsection (1).</p> <p>Minister's response — time limit (4) The Minister must respond, with reasons, to a request referred to in subsection (1) within 90 days after the day on which it is received. The Minister must ensure that his or her response is posted on the Internet site.</p> <p>Suspending time limit (5) The Minister may suspend the time limit for responding to the request until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site.</p> <p>Notice posted on Internet site (6) When the Minister is of the opinion that the prescribed activity is completed, he or she must ensure that a notice indicating that the activity is completed is posted on the Internet site.</p> <p>Limitation (7) The Minister must not make the designation referred to in subsection (1) if (a) the carrying out of the physical activity has substantially begun; or (b) a federal authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act that could permit the physical activity to be carried out, in whole or in part.</p>	<p>activity may cause <u>significant</u> adverse effects within federal jurisdiction or adverse direct or incidental effects or public concerns related to those effects warrant the designation and: (a) <u>the project effects within federal jurisdiction are complex and may require a complex set of mitigation measures; or</u> (b) <u>the project is novel and the severity of effects within federal jurisdiction, or mitigations are unknown.</u> </p> <p>Minister's response — time limit (4) The Minister must respond, with reasons, to a request referred to in subsection (1) within <u>30</u> 90 days after the day on which it is received. The Minister must ensure that his or her response is posted on the Internet site. </p> <p>Limitation (7) The Minister must not make the designation referred to in subsection (1) if (a) <u>more than 60 days have passed since the day on which the proponent filed an application with a federal or provincial regulatory agency to seek approval for a physical activity;</u> (b) the carrying out of the physical activity has substantially begun; or (c) a federal <u>or provincial</u> authority has exercised a power or performed a duty or function conferred on it under any Act of Parliament other than this Act <u>or under an Act of a Legislature</u> that could permit the physical activity to be carried out, in whole or in part. </p>	<p>The current draft of this section allows projects not on the list to be put on the list, under the total discretion of the Minister. Project proponents need certainty and predictability at the very outset.</p>
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11	<p>Public Participation 11. The Agency must ensure that the public is provided with an opportunity to participate meaningfully in the preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</p>	<p>Public Participation 11. The Agency must ensure that the public is provided with an opportunity to participate meaningfully, <u>as set out in the Act</u>, in the preparations for a possible impact assessment of a designated project, including by inviting the public to provide comments within the period that it specifies.</p>	<p>To reduce risk from litigation and judicial review. Challenges to the definition of “participate meaningfully” can be expected.</p>
16	<p>Decision 16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required. Factors (2) In making its decision, the Agency must take into account the following factors:</p>	<p>Decision 16 (1) After posting a copy of the notice on the Internet site under subsection 15(3), the Agency must decide whether an impact assessment of the designated project is required. Factors (2) In making its decision, the Agency must <u>may</u> take into account the following factors:</p>	<p>To reduce risk from litigation by allowing discretion for the Agency, Minister, review panel to make certain decisions or perform certain actions, as opposed to being “required” to do so</p>
17	<p>Minister’s obligation 17 (1) If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1), a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part, or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion. The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister’s opinion. (2) The Agency must post a copy of the notice on the Internet site.</p>	<p>Minister’s obligation 17 (1) If, before the Agency provides the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1) <u>The proponent of a designated project may request that the Ministers of Finance, Natural Resources Canada and Environment and Climate Change Canada provide a written notice if, in their opinions, the project is inconsistent with formal government policy or if a federal authority advises the Minister that it will not be exercising a power conferred on it under an Act of Parliament other than this Act that must be exercised for the project to be carried out in whole or in part. , or the Minister is of the opinion that it is clear that the designated project would cause unacceptable environmental effects within federal jurisdiction, the Minister must provide the proponent with a written notice that he or she has been so advised or is of that opinion.</u> The written notice must set out the reasons why the federal authority will not exercise its power or the basis for the Minister’s opinion <u>of the Ministers</u> Timeline for proponent’s request (2) <u>A proponent’s request under subsection 17(1) must be made at least 30 days before the date the Agency is required to provide the proponent of a designated project with a notice of the commencement of the impact assessment of the designated project under subsection 18(1).</u></p>	<p>To de-politicize the review process and remove broader public policy from the review process by allowing a proponent to request a Ministerial opinion whether the project is inconsistent with government policy. Section 17, as presently worded allows the Minister to advise the proponent that environmental effects are unacceptable, in his or her opinion. This provision would effectively provide notice that there is a “showstopper” at the beginning, but it doesn’t indicate whether the project is consistent with government policies and objectives (a “no” but not a “yes”) Section 17 should be amended to require the Minister to consider and advise the proponent if the project is consistent with government policies as well as whether it would cause unacceptable environmental effects.</p>

		<p>Timeline for Ministerial written notice</p> <p><u>(3) The Ministers written notice under subsection 17(1) must be provided to the proponent prior to the Agency providing a notice of commencement of the impact assessment of the designated project under subsection 18(1). For greater certainty, the provision of a written notice under subsection 17(1) does not automatically suspend or terminate the impact assessment of the designated project.</u></p> <p><u>(4) The Agency must post a copy of the notice on the Internet site.</u></p>	
18	<p>Notice of Commencement</p> <p>18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with</p> <p>(a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and</p> <p>(b) any documents that are prescribed by regulations made under paragraph 112(a), including tailored guidelines regarding the information or studies referred to in paragraph (a) and plans for cooperation with other jurisdictions, for engagement and partnership with the Indigenous peoples of Canada, for public participation and for the issuance of permits.</p> <p>Factors to consider — information or studies</p> <p>(1.1) The Agency must take into account the factors set out in subsection 22(1) in determining what information or which studies it considers necessary for it to conduct the impact assessment.</p> <p>Copy posted on Internet site</p> <p>(2) The Agency must post a copy of the notice of the commencement of the impact assessment on the Internet site.</p> <p>Extension of time limit by Minister</p>	<p>Notice of commencement</p> <p>18 (1) If the Agency decides that an impact assessment of a designated project is required — and the Minister does not approve the substitution of a process under section 31 in respect of the designated project — the Agency must, within 180 days after the day on which it posts a copy of the description of the designated project under subsection 10(2), provide the proponent of that project with</p> <p>(a) a notice of the commencement of the impact assessment of the project that sets out the information or studies that the Agency considers necessary for it to conduct the impact assessment; and</p> <p><u>(i) the scope of the designated project that the Agency has determined will be subject to the impact assessment;</u></p> <p><u>(ii) the factors under subsections 22(1) that will be considered in the impact assessment of the designated project and the scope of those factors, as may be modified by the Agency or the Minister pursuant to subsection 22(2);</u></p> <p><u>(ii) the information or studies that the Agency considers necessary for it to conduct the impact assessment; and</u></p> <p>Factors to consider — information or studies</p> <p>(1.1) The Agency must take into account the factors set out in subsection 22(1) in determining what information or which studies it considers necessary for it to conduct the impact assessment.</p>	<p>To remove broader public policy issues from individual project reviews and to provide certainty and predictability before the commencement of the IA.</p> <p>The Agency, Minister or review panel should have the discretion to determine what factors should be scoped down, or out, of the IA and dealt with in a more appropriate forum (such as in a strategic assessment). The list and scope of factors to be considered in the IA of a designated project should be clearly set out in the notice of commencement so that all parties are aware of the scope of the IA from the outset.</p> <p>To limit Ministerial discretion.</p>

	<p>(3) The Minister may extend the time limit within which the Agency must provide the notice by any period up to a maximum of 90 days.</p> <p>Extension of time limit by Governor in Council</p> <p>(4) The Governor in Council may, on the recommendation of the Minister, extend the time limit extended under subsection (3) any number of times. Posting notice on Internet site</p> <p>(5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister’s reasons for granting that extension, and a notice of any extension granted under subsection (4). Suspending time limit</p> <p>(6) The Minister may suspend the time limit within which the Agency must provide the notice of the commencement of the impact assessment until any activity that is prescribed by regulations made under paragraph 112(c) is completed. If the Minister suspends the time limit, he or she must ensure that a notice that sets out his or her reasons for doing so is posted on the Internet site. Notice posted on Internet site</p> <p>(7) When the Minister is of the opinion that the prescribed activity is completed, he or she must ensure that a notice indicating that the activity is completed is posted on the Internet site.</p>	<p>....</p> <p>18 (5) The Agency must post on the Internet site a notice of any extension granted under subsection (3), including the Minister’s reasons for granting that extension, and a notice of any extension granted under subsection (4), <u>including the Governor in Council's reasons for granting that extension.</u></p> <p>Similar amendments are also required under subsections 28(8), 37(5), 95(7)</p>	
22	<p>Factors – impact assessment</p> <p>22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:</p> <ul style="list-style-type: none"> (a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including <ul style="list-style-type: none"> (i) the effects of malfunctions or accidents that may occur in connection with the designated project, (ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and (iii) the result of any interaction between those effects; (b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project; 	<p>Factors – impact assessment</p> <p>22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must, <u>subject to subsection (2), consider</u> take into account the following factors:</p> <ul style="list-style-type: none"> (a) the changes to the environment or to health, social or economic conditions and the positive and negative consequences of these changes that are likely to be caused by the carrying out of the designated project, including <ul style="list-style-type: none"> (i) the effects of malfunctions or accidents that may occur in connection with the designated project, (ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and (iii) the result of any interaction between those effects; (b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project; 	<p>To de-politicize the process and remove broader public policy issues from individual project reviews.</p> <p>CEPA consistently advocated for a de-politicization of the regulatory review process and from the beginning said that the regulatory review process was not the venue to debate broader public policy issues. Despite the pipeline industry’s very strong recommendations, these issues are now explicitly included in the process itself and the political decision at the end.</p> <p>CEPA recommended the two-part review to remove policy from the process and to make political decisions up front, allowing the</p>

22	<ul style="list-style-type: none"> (c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>; (d) the purpose of and need for the designated project; (e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means; (f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project; (g) Indigenous knowledge provided with respect to the designated project; (h) the extent to which the designated project contributes to sustainability; (i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; (j) any change to the designated project that may be caused by the environment; (k) the requirements of the follow-up program in respect of the designated project; (l) considerations related to Indigenous cultures raised with respect to the designated project; (m) community knowledge provided with respect to the designated project; (n) comments received from the public; (o) comments from a jurisdiction that are received in the course of consultations conducted under section 21; (p) any relevant assessment referred to in section 92, 93 or 95; (q) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project; (r) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project; (s) the intersection of sex and gender with other identity factors; and 	<ul style="list-style-type: none"> (c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>; (d) the purpose of and need for the designated project; (e) alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means; (f) any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project; (f) Indigenous knowledge provided with respect to the designated project; (g) the extent to which the designated project contributes to sustainability <u>the environmental, health, social and economic effects of the designated project and consistency with any relevant published policy on sustainability developed by the Agency under paragraph 155(h) and that is identified in the documents provided to the proponent under paragraph 18(1)(b);</u> (h) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change; consistency with any relevant assessment referred to in section 92, 93 or 95 regarding the Government of Canada’s environmental obligations and its commitments in respect of climate change as enacted in federal legislation applicable to the designated project, where such assessment has been completed prior to the notice of commencement for the designated project under subsection 18(1) (i) any change to the designated project that may be caused by the environment; (j) the requirements of the follow-up program in respect of the designated project; (k) considerations related to Indigenous cultures raised with respect to the designated project; (l) community knowledge provided with respect to the designated project; (m) comments received from the public <u>and any response from the proponent;</u> (n) comments from a jurisdiction that are received in the course of consultations conducted under section 21; 	<p>regulatory review to focus on the technical and environmental review.</p> <p>The government has suggested that the early planning phase of strategic assessment can accomplish this objective. However, the legislation as drafted does not facilitate this. Although the early planning phase should be able to identify policy issues and “show-stoppers”, under the legislation, those issues are not dealt with at that stage but carry through to the assessment phase (s. 22) and the decision at the end of the review (s.63).</p> <p>If broader public policy concerns are identified at the early planning stage, they should be “off -ramped” to a more appropriate venue, such as strategic or regional assessment.</p>
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22	<p>(t) any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.</p> <p>Scope of factors (2) The scope of the factors to be taken into account under paragraphs (1)(a) to (f), (h) to (l) and (s) and (t) is determined by (a) the Agency; or (b) the Minister, if the impact assessment is referred to a review panel.</p>	<p>(o) <u>consistency with any relevant assessment referred to in section 92, 93 or 95, other than one related to paragraph 22(1)(h), where such assessment has been completed prior to the notice of commencement for the designated project under subsection 18(1).</u></p> <p>(p) any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;</p> <p>(q) any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project; and</p> <p>(r) <u>consistency with any relevant published policy on the intersection of sex and gender with other identity factors developed by the Agency under paragraph 155(h), and that is identified in the documents provided to the proponent under paragraph 18(1)(b); and</u></p> <p>(s) any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to be taken into account.</p> <p>Scope of factors (2) The scope of the factors to be taken into account under paragraphs (1)(a) to (f), (h) to (l) and (s) and (t) is determined by (a) the Agency; or (b) the Minister, if the impact assessment is referred to a review panel.</p> <p>(2) <u>The Agency, or the Minister if the impact assessment is referred to a review panel, may determine:</u> (a) <u>that one or more of the factors listed in subsection (1), with the exception of paragraphs (1)(f) and (k) to (s), do not need to be considered in the impact assessment of a designated project; and</u> (b) <u>the scope of those factors that will be considered in the impact assessment of a designated project.</u></p> <p>(3) <u>For clarity, notwithstanding paragraph 22(1)(g), (h), (o) or (r) the Agency or review panel shall not adjourn or defer the impact assessment of a project because an assessment referred to in sections 92, 93 or 95 has not been</u></p>	
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		<p><u>completed at the time of the notice of commencement for the designated project.</u></p> <p><u>(4) In considering an assessment referred to in section 92, 93 or 95, the Agency or review panel shall, in its discretion, consider the weight to be given to such assessment, having regard to both the relevance of the assessment and the strength of evidence supporting the assessment’s conclusions.</u></p>	
25	<p>Agency’s obligations</p> <p>25 The Agency must ensure that</p> <p>(a) an impact assessment of the designated project is conducted;</p> <p>(b) a report is prepared with respect to that impact assessment;</p>	<p>Agency’s obligations</p> <p>25 The Agency must ensure that</p> <p>(a) an impact assessment of the designated project is conducted;</p> <p>(b) a report is prepared with respect to that impact assessment; and</p> <p>(c) <u>subject to s. 27.1, processes are established that the Agency considers appropriate to engage meaningfully with the public – and, in particular, the Indigenous peoples of Canada and Indigenous organizations – when conducting an impact assessment by the Agency.</u></p>	To clarify opportunities for participation.
27	<p>Public participation</p> <p>27 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, within the time period specified by the Agency, in the impact assessment of a designated project.</p>	<p>Public participation</p> <p>27 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, <u>as set out in the Act,</u> within the time period specified by the Agency, in the impact assessment of a designated project <u>and that the proponent has an opportunity to respond to public comments.</u></p> <p><u>27.1(1) The Agency has discretion to determine the manner in which a member of the public may participate in an impact assessment of a designated project conducted by the Agency, taking into account:</u></p> <p><u>(a) the degree to which the member of the public is directly affected by the designated project; or</u></p> <p><u>(b) whether, in the opinion of the Agency, the member of the public has relevant information or expertise regarding the matters to be decided.</u></p> <p><u>(2) A decision of the Agency under subsection (1) is final and conclusive.</u></p>	To clarify opportunities for participation.
29	<p>Delegation</p> <p>29 The Agency may delegate to any person, body or jurisdiction referred to in paragraphs (a) to (g) of the definition <i>jurisdiction</i> in section 2 the carrying out of any part of the impact assessment of the designated project and the preparation of the report with respect to the impact assessment of the designated project.</p>	<p>Delegation</p> <p>29 <u>(1) Subject to subsection (2), the Agency may delegate to any person, body or jurisdiction referred to in paragraphs (a) to (g) of the definition jurisdiction in section 2 the carrying out of any part of the impact assessment of the</u></p>	<p>To limit discretion of the Minister.</p> <p>Limiting the power to delegate to circumstances where the Minister has</p>

		<p>designated project and the preparation of the report with respect to the impact assessment of the designated project.</p> <p>(2) The Agency may only make the delegation in subsection (1) if the Minister determines that:</p> <p>(a) the person, body or jurisdiction referred to in paragraphs (a) to (g) of the definition of jurisdiction has the expertise and an appropriate process to carry out the delegated responsibilities; and</p> <p>(b) that the Agency has an appropriate process to manage delegations made to multiple persons, bodies or jurisdictions referred to in paragraphs (a) to (g) of the definition of jurisdictions.</p>	<p>determined that there is appropriate expertise.</p>
42	<p>Provisions of agreement</p> <p>42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out in subsection 22(1) and is conducted in accordance with any additional requirements and procedures set out in it and provide that</p>	<p>Provisions of agreement</p> <p>42 When there is an agreement or arrangement to jointly establish a review panel under subsection 39(1) or (3), or when there is a document jointly establishing a review panel under subsection 40(2), the agreement, arrangement or document must provide that the impact assessment of the designated project includes a consideration of the factors set out <u>in the notice of commencement provided to a proponent pursuant to subsection 18(1) 22(1)</u> and is conducted in accordance with any additional requirements and procedures set out in it and provide that ...</p>	<p>To clarify that the list and scope of factors should be set out clearly in the notice of commencement</p>
47	<p>Terms of reference — Canadian Energy Regulator Act</p> <p>47 (1) When the Minister refers an impact assessment of a designated project that includes activities regulated under the Canadian Energy Regulator Act to a review panel, the Minister must — within 45 days after the day on which the notice referred to in subsection 19(4) with respect to the designated project is posted on the Internet site — establish the panel’s terms of reference and appoint the chairperson and at least two other members.</p> <p>Appointment of members</p> <p>(2) The persons appointed to the review panel under subsection (1) must be unbiased and free from any conflict of interest relative to the designated project and must have knowledge or experience relevant to the designated project’s anticipated effects or have knowledge of the interests and concerns of the Indigenous peoples of Canada that are relevant to the assessment.</p> <p>Appointment from roster</p>	<p>.....</p> <p>Not Majority</p> <p>(4) The chairperson must not be appointed from the roster persons appointed from the roster must not constitute a majority of the members of the panel.</p>	<p>To draw upon the expertise of the CER as the best-placed regulatory.</p> <p>As drafted, Bill C-69 sidelines the CER. CEPA consistently emphasized that the NEB (now CER) was the best placed regulator to oversee the full life-cycle of a pipeline from the planning and approval process to construction and operations.</p> <p>The government states that it supports the concept of one project one assessment. As currently drafted, the legislation does not achieve that outcome. It is unclear how a joint review panel housed in the IAA would fulfil the CER’s mandate around tolls,</p>

	<p>(3) At least one of the persons appointed under paragraph (1) must be appointed from a roster established under paragraph 50(c), on the recommendation of the Lead Commissioner of the Canadian Energy Regulator and in consultation with the member of the Queen’s Privy Council for Canada that is designated by the Governor in Council as the Minister for the purposes of the Canadian Energy Regulator Act.</p> <p>Not majority (4) The chairperson must not be appointed from the roster and the persons appointed from the roster must not constitute a majority of the members of the panel.</p>		<p>economic issues and pipeline safety. As drafted, the bill contemplates multiple unclear, and untested processes for a single project. To be meaningful the principle of one project one assessment requires a single, best-placed lifecycle regulator.</p> <p>The legislation can be amended to allow Agency input into the CER process. (ie pipeline project will be assessed by the CER, as lifecycle regulator with technical expertise, with input from the Agency, not the reverse)</p>
49	<p>Summary and information 49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14.</p>	<p>Summary and information 49 In establishing or approving a panel’s terms of reference, the Minister must consider, among other things, the summary of issues and the information or knowledge referred to in section 14 <u>and the content of the notice of commencement of the designated project provided to the proponent pursuant to subsection 18(1).</u></p>	<p>To align this section with proposed amendments to s. 18.</p>
51	<p>Review panel’s duties 51 (1) A review panel must, in accordance with its terms of reference, (a) conduct an impact assessment of the designated project; (b) ensure that the information that it uses when conducting the impact assessment is made available to the public; (c) hold hearings in a manner that offers the public an opportunity to participate meaningfully, within the time period specified by the review panel, in the impact assessment; (d) prepare a report with respect to the impact assessment that (i) sets out the effects that, in the opinion of the review panel, are likely to be caused by the carrying out of the designated project, (ii) indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction and which are adverse direct or incidental effects, and specifies the extent to which those effects are adverse, (ii. 1) subject to section 119, sets out how the review panel, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project,</p>	<p>Review panel’s duties 51 (1) A review panel must, in accordance with its terms of reference, (a) conduct an impact assessment of the designated project; (b) ensure that the information that it uses when conducting the impact assessment is made available to the public; (c) hold hearings in a manner that offers the public an opportunity to participate, <u>as set out in this Act</u>, in the impact assessment; (d) prepare a report with respect to the impact assessment that (i) sets out the effects that, in the opinion of the review panel, are likely to be caused by the carrying out of the designated project, (ii) indicates which of the effects referred to in subparagraph (i) are adverse effects within federal jurisdiction and which are adverse direct or incidental effects, and specifies the extent to which those effects are adverse, (ii.1) subject to section 119, sets out how the review panel, in determining the effects that are likely to be caused by the carrying out of the designated project, took into account and used any Indigenous knowledge provided with respect to the designated project,</p>	<p>To clarify public participation opportunities and align this section with proposed amendments to s. 11, 25 and 27.</p> <p>To de-politicize final decisions, recommendations for approval or denial, as well as the conditions of approval, should be developed by the independent, expert regulator after hearing and weighing evidence. It should not be set by Cabinet, which is inherently political.</p>

	(iii) sets out a summary of any comments received from the public, and (iv) sets out the review panel's rationale, conclusions and recommendations, including conclusions and recommendations with respect to any mitigation measures and follow-up program; (e) submit the report with respect to the impact assessment to the Minister; and (f) on the Minister's request, clarify any of the conclusions and recommendations set out in its report with respect to the impact assessment.	(iii) sets out a summary of any comments received from the public <u>and any response received from the proponent</u> (iv) sets out the review panel's rationale, conclusions and recommendations, including conclusions and recommendations <u>as to whether or not the designated project should be approved, together with recommendations regarding conditions in relation to the adverse effects within federal jurisdiction, including with respect to any mitigation measures and follow-up program, if deemed appropriate.</u>	
51(2)(3)	New Provision	(2) In conducting a public hearing under paragraph 51(1)(c), a review panel has <u>discretion to determine the manner in which a member of the public may engage in public hearings and must take into account:</u> (a) <u>the degree to which the member of the public is directly affected by project;</u> <u>or</u> (b) <u>whether, in the opinion of the review panel, the member of the public has relevant information or expertise regarding the matters to be decided.</u> (3) <u>The decision of the review panel under subsection (2) is final and conclusive.</u>	To clarify public participation opportunities and to reduce risk of litigation.
62.1	New provision	<u>62.1(1) Notwithstanding subsections 28(5), 28(6), 28(7), 28(9), 36(3), 37(3), 37(4), 37(6), 37.1(2), 37.1(4), 65(5) and 65(6), and subject to subsection (2), the decision pursuant to paragraph 60(1)(a) or the determination pursuant to section 62 must be made no later than 730 days after the date on which the notice referred to in subsection 19(4) is posted on the Internet site.</u> <u>62.1 (2) On the proponent's request, the Minister or Governor in Council may extend the time limit in subsection (1) by any period requested by the proponent. The Agency must post on the Internet site a notice of any extension granted under this subsection (2), including the reasons for granting that extension.</u>	To provide more certainty around timelines. This amendment proposes maximum timelines, regardless of any cumulative stop the clocks and time suspensions
63	Factors — public interest 63 The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:	Factors — public interest 63 The Minister's determination under paragraph 60(1) (a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:	To de-politicize the process and remove broader public policy issues from individual project reviews. (see comments for proposed amendments to s. 22 and s. 18)

	<p>(a) the extent to which the designated project contributes to sustainability;</p> <p>(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are adverse;</p> <p>(c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;</p> <p>(d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>; and</p> <p>(e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change.</p>	<p><u>(a) the environmental, health, social and economic effects of the designated project and consistency with any relevant published policy on sustainability developed by the Agency under paragraph 155(h), and that is identified in the documents provided to the proponent under paragraph 18(1)(b); the extent to which the designated project contributes to sustainability;</u></p> <p>(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are adverse;</p> <p>(c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;</p> <p>(d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i>; and</p> <p><u>(e) consistency with any relevant assessment referred to in section 93, 94 or 95 regarding the Government of Canada's environmental obligations and its commitments in respect of climate change as enacted in federal legislation applicable to the designated project, where such assessment has been completed prior to the notice of commencement for the designated project under subsection 18(1), the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change. its environmental obligations and its commitments in respect of climate change.</u></p> <p>63(2) <u>For clarity, notwithstanding paragraph 63(a) and (e), the Minister or Governor in Council shall not adjourn or defer a determination because an assessment referred to in sections 92, 93 or 95 or a policy being developed under paragraph 155(h) has not been completed at the time of the notice of commencement for the designated project under subsection 18(1).</u></p>	
64	<p>Conditions — effects within federal jurisdiction</p> <p>64 (1) If the Minister determines under paragraph 60(1)(a), or the Governor in Council determines under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must establish any condition that he or she considers appropriate in relation to the adverse effects within federal jurisdiction with which the proponent of the designated project must comply.</p>	<p>Conditions — effects within federal jurisdiction</p> <p>64 (1) If the Minister determines under paragraph 60(1)(a), or the Governor in Council determines under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must, <u>taking into consideration the recommendations made in the report with respect to the impact assessment,</u> establish any condition that he or she considers appropriate in relation to the adverse effects within federal jurisdiction with which the proponent of the</p>	<p>To tie the Minister's discretion to establish conditions of approval to the recommendations made in the assessment report.</p> <p>See comments above regarding s. 51 and the need to leave conditions with the independent regulator, based on science, fact and evidence raised in a regulatory process. (this</p>

	<p>Conditions — direct or incidental effects (2) If the Minister determines under paragraph 60(1)(a), or the Governor in Council determines under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must establish any condition that he or she considers appropriate — that is directly linked or necessarily incidental to the exercise of a power or performance of a duty or function by a federal authority that would permit a designated project to be carried out, in whole or in part, or to the provision of financial assistance by a federal authority to a person for the purpose of enabling the carrying out, in whole or in part, of that designated project — in relation to the adverse direct or incidental effects with which the proponent of the designated project must comply. Conditions subject to exercise of power or performance of duty or function (3) The conditions referred to in subsection (2) take effect only if the federal authority exercises the power or performs the duty or function or provides the financial assistance.</p> <p>Mitigation measures and follow-up program (4) The conditions referred to in subsections (1) and (2) must include (a) the implementation of the mitigation measures that the Minister takes into account in making a determination under paragraph 60(1)(a), or that the Governor in Council takes into account in making a determination under section 62, other than those the implementation of which the Minister is satisfied will be ensured by another person or by a jurisdiction; and (b) the implementation of a follow-up program.</p>	<p>designated project must comply.</p> <p>Conditions — direct or incidental effects (2) If the Minister determines under paragraph 60(1)(a), or the Governor in Council determines under section 62, that the effects that are indicated in the report that the Minister or the Governor in Council, as the case may be, takes into account are in the public interest, the Minister must, <u>taking into consideration the recommendations made in the report with respect to the impact assessment</u>, establish any condition that he or she considers appropriate — that is directly linked or necessarily incidental to the exercise of a power or performance of a duty or function by a federal authority that would permit a designated project to be carried out, in whole or in part, or to the provision of financial assistance by a federal authority to a person for the purpose of enabling the carrying out, in whole or in part, of that designated project — in relation to the adverse direct or incidental effects with which the proponent of the designated project must comply. (3) The conditions referred to in subsection (2) take effect only if the federal authority exercises the power or performs the duty or function or provides the financial assistance.</p> <p>Mitigation measures and follow-up program(4) The conditions referred to in subsections (1) and (2) may <u>must</u> include </p>	<p>amendment must be understood with reference to proposed amendment to s. 51)</p>
68	<p>Minister’s power — decision statement 68 (1) The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it.</p>	<p>Minister’s power — decision statement 68 (1) The Minister may amend a decision statement, including to add or remove a condition, to amend any condition or to modify the designated project’s description. However, the Minister is not permitted to amend the decision statement to change the decision included in it <u>and is not permitted to remove, add or amend conditions of a decision statement referred to in subsections 67(1), (2) or (3).</u></p>	<p>To limit the discretion of the Minister to add or amend conditions.</p>
137	<p>Rules 137 The Agency may make rules (a) governing the practice and procedure for the review of orders;</p>	<p>Rules 137 The Agency may make rules (a) <u>governing the sittings of the Agency and joint review panels;</u></p>	<p>To improve certainty and predictability.</p>

	<p>(b) generally, respecting the work of review officers; and (c) for preventing trade secrets and information described in section 20 of the Access to Information Act from being disclosed or made public as a result of their being used as evidence before a review officer.</p>	<p><u>(b) governing the procedure for making applications, representations and complaints to the Agency and joint review panels and the conduct of hearings before the Agency and joint review panels</u> <u>(c) governing the practice and procedure for the review of orders;</u> <u>(d) generally, respecting the work of review officers; and</u> <u>(e) for preventing trade secrets and information described in section 20 of the Access to Information Act from being disclosed or made public as a result of their being used as evidence before a review officer</u></p>	<p>CEPA has expressed concerns that the proponent will not know until the end of the planning phase what studies are needed for the IA statement.</p> <p>Developing guidance at the end of the planning stage is not helpful. Proponents need to know the processes and timelines up front in order to make an investment decision. The lack of certainty regarding information and processes creates unacceptable risk. To address this, the Agency should have authority to development guidance documents (Filing manual, standard terms of reference) for different types of projects. The would enable the proponent to undertake required studies in advance of receiving tailored guidelines at the end of the planning stage</p>
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Canadian Energy Regulator Act

	Current Wording	Proposed Amendment	Reason
Def.	Minister means the member of the Queen’s Privy Council for Canada designated under section 8.	Minister means the <u>Minister of Natural Resources</u> member of the Queen’s Privy Council for Canada designated under section 8.	To align with the Impact Assessment Act, which defines the Minister responsible. The NEB currently falls under NRCan responsibilities, where the expertise sits. To move the CER to another department would be counter to this
8	Order designating Minister 8 The Governor in Council may, by order, designate any member of the Queen’s Privy Council for Canada to be the Minister for the purposes this Act.	Delete section 8	See comment above
28	Appointment 28 (1) The commissioners are to be appointed by the Governor in Council to hold office during good behaviour for a term not exceeding six years. Reappointment (2) A commissioner may be reappointed for one or more terms of up to six years each. However, a commissioner is to serve no more than 10 years in office in total.	Appointment 28 (1) The commissioners are to be appointed by the Governor in Council to hold office during good behaviour for a term not exceeding six years. Reappointment (2) A commissioner may be reappointed for one or more terms of up to six years each. However, a commissioner is to serve no more than 10 years in office in total.	To draw upon the expertise of the CER as the best-placed regulator. Amendments are needed to preserve the expertise of commissioners. Having term maximums leads to loss of expertise, which is necessary for a regulatory body.
72	Appeal to Federal Court of Appeal 72 (1) An appeal from a decision or order of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court. Application for leave to appeal (2) Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances. Time limit for appeal (3) An appeal must be brought within 60 days after the day on which leave to appeal is granted. Argument by Regulator	Decisions Final 72 (1) <u>Except as provided for in this Act, every decision or order of the Commission, a review panel, the Minister or the Governor in Council made under this Act is final and conclusive.</u> Appeal to Federal Court of Appeal <u>(2) An appeal from a decision of the Commission, a review panel, the Minister or the Governor in Council under this Act on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.</u>	To reduce litigation risk by adding a privative clause. This aligns with proposed privative clause in the Impact Assessment Act.

<p>(4) The Regulator is entitled to be heard on an application for leave to appeal and at any stage of an appeal.</p> <p>Costs</p> <p>(5) In any appeal under this section, costs may not be awarded against any of the commissioners.</p> <p>Report not decision or order</p> <p>(6) For greater certainty, a report submitted by the Commission under section 183 or 184 — or under subsection 51(1) the Impact Assessment Act — is not a decision or order of the Commission for the purposes of this section and neither is any part of the report.</p>	<p>Application for leave to appeal</p> <p><u>(3) Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.</u></p> <p>Time limit for appeal</p> <p><u>(4) An appeal must be brought within 60 days after the day on which leave to appeal is granted.</u></p> <p>Report not decision or order</p> <p><u>(5) For greater certainty, a report submitted by the Commission under subsections 183 or 184 – or under subsection 51(1) of the <i>Impact Assessment Act</i> – is a decision or order for the purposes of this section and neither is any part of the report.</u></p> <p>Notice of Appeal</p> <p><u>(6) The filing of a notice of appeal under section [Y (1)] does not suspend the operation of a decision made under this Act.</u></p> <p><u>(1) An appeal from a decision or order of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.</u></p> <p>Application for leave to appeal</p> <p>(2) Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.</p> <p>Time limit for appeal</p> <p>(3) An appeal must be brought within 60 days after the day on which leave to appeal is granted.</p> <p>Argument by Regulator</p> <p>(4) The Regulator is entitled to be heard on an application for leave to appeal and at any stage of an appeal.</p> <p>Costs</p> <p>(5) In any appeal under this section, costs may not be awarded against any of the commissioners.</p> <p>(6) For greater certainty, a report submitted by the Commission under section 183 or 184 — or under subsection 51(1) the Impact Assessment Act — is not a decision or order of the Commission for the purposes of this section and neither is any part of the report.</p>	
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74	<p>Public engagement</p> <p>74 The Regulator must establish processes that the Regulator considers appropriate to engage meaningfully with the public — and, in particular, the Indigenous peoples of Canada and Indigenous organizations — when public hearings are held under section 52 or subsection 241(3).</p>	<p>Public engagement</p> <p>74 (1) <u>Subject to subsection (2), the Regulator must <u>may</u> establish processes that the Regulator considers appropriate to engage meaningfully with the public — and, in particular, the Indigenous peoples of Canada and Indigenous organizations — <u>on matters within the Regulator’s mandate, including when public hearings are held under section 52 or subsection 241(3).</u></u></p> <p>(2) <u>In conducting a public hearing under section 52 or subsection 241(3), the Commission has discretion to determine the manner and time period within which a member of the public may engage in public hearings and must take into consideration:</u></p> <ul style="list-style-type: none"> (a) <u>the degree to which the member of the public is directly affected by the application; or</u> (b) <u>whether, in the opinion of the Commission, the member of the public has relevant information or expertise regarding the matters to be decided.</u> <p>(3) <u>The decision of the Commission under subsection (2) is final and conclusive.</u></p>	To provide clarity on public participation and engagement.
183	<p>Report</p> <p>183 (1) If the Commission considers that an application for a certificate in respect of a pipeline is complete, it must prepare and submit to the Minister, and make public, a report setting out</p> <ul style="list-style-type: none"> (a) its recommendation as to whether or not the certificate should be issued for all or any part of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that recommendation; and (b) regardless of the recommendation that the Commission makes, all the conditions that it considers necessary or in the public interest to which the certificate would be subject if the Governor in Council were to direct that the certificate be issued. <p>Factors to Consider</p> <p>(2) The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge 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</p> <ul style="list-style-type: none"> (a) the environmental effects, including any cumulative environmental effects; 	<p>Report</p> <p>183 (1) If the Regulator Commission considers that an application for a certificate in respect of a pipeline is complete, it <u>the Commission</u> must prepare and submit to the Minister, and make public, a report setting out</p> <ul style="list-style-type: none"> (a) its recommendation as to whether or not the certificate should be issued for all or any part of the pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that recommendation; and (b) regardless of the recommendation that the Commission makes, all the conditions that it considers necessary or in the public interest to which the certificate would be subject if the Governor in Council were to direct that the certificate be issued. <p>Factors to Consider</p> <p>(2) The Commission must make its recommendation taking into account — in light of, among other things, any Indigenous knowledge 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, <u>which may include including</u></p>	<p>To provide clarity.</p> <p>Allowing the Regulator (rather than the Commission) to determine whether an application is complete is more efficient</p> <p>See comments related to s. 22 of the Impact Assessment Act, above</p>

<p>(b) the safety and security of persons and the protection of property and the environment;</p> <p>(c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;</p> <p>(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;</p> <p>(e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;</p> <p>(f) the availability of oil, gas or any other commodity to the pipeline;</p> <p>(g) the existence of actual or potential markets;</p> <p>(h) the economic feasibility of the pipeline;</p> <p>(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;</p> <p>(j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;</p> <p>(k) any relevant assessment referred to in section 92,93 or 95 of the Impact Assessment Act; and</p> <p>(l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.</p> <p>Representations by the public</p> <p>(3) Any member of the public may, in a manner specified by the Commission, make representations with respect to an application for a certificate.</p> <p>Time limit</p> <p>(4) The report must be submitted to the Minister within the time limit specified by the Lead Commissioner. The specified time limit must be no longer than 450 days after the day on which the applicant has, in the Commission’s opinion, provided a complete application.</p>	<p>(a) the environmental effects, including any cumulative environmental effects;</p> <p>(b) the safety and security of persons and the protection of property and the environment;</p> <p>(c) the health, social and economic effects, <u>including consistency</u> with any order made under section 13 providing the Regulator directions on policy matters regarding the , including with respect to the intersection of sex and gender with other identity factors;</p> <p>(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;</p> <p>(d) the effects <u>of the project</u> on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 <u>and their current use of lands and resources for traditional purposes;</u></p> <p>(e) the availability of oil, gas or any other commodity to the pipeline;</p> <p>(f) the existence of actual or potential markets;</p> <p>(g) the economic feasibility of the pipeline;</p> <p>(h) 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;</p> <p>(i) consistency with any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act regarding the Government of Canada’s environmental obligations and commitments in respect of climate change as enacted in applicable federal legislation, where the assessment has been completed prior to the date on which the application for a certificate was filed; <u>the extent to which the effects of the pipeline hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change;</u></p> <p>(j) <u>consistency with</u> any relevant assessment referred to in section 92, 93 or 95 of the Impact Assessment Act <u>other than one related to paragraph 183(2)(i), provided that assessment has been completed prior to the date on which the application for a certificate was filed; and</u></p> <p>(k) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.</p> <p><u>(2.1) For clarity, notwithstanding paragraph 183(2)(c),(j) and (k), the commission shall not adjourn, defer, deny, refuse or reject an application because an assessment referred to in sections 92, 93 or 95 of the Impact Assessment Act or</u></p>	
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186	New	<p><u>186(7) Notwithstanding subsections 183(5), 183(6), 186(3), and 189(2) and subject to subsection (8), an order made under subsection (1) must be made no later than 600 days after the day on which the Regulator considers that an application for a certificate in respect of a pipeline is complete.</u></p> <p><u>(8) On the proponent's request, the Minister or Governor in Council may extend the time limit referred to in subsection (7).</u></p> <p>Note – similar amendments should be made to subsections s. 262(2), 298 (3) of the CER Act</p>	To provide timeline certainty and a maximum cumulative timeline.
s. 12 (transition)	Appointments terminated 12 (1) Each permanent member of the National Energy Board appointed under subsection 3(2) of the National Energy Board Act, as it read immediately before the commencement day, who holds office immediately before the commencement day ceases to hold office on that day.	Appointments terminated 12 (1) Each permanent member of the National Energy Board appointed under subsection 3(2) of the <i>National Energy Board Act</i> , as it read immediately before the commencement day, who holds office immediately before the commencement day ceases to hold office on that <u>day unless appointed a Commissioner by the Governor in Council.</u>	To draw upon the expertise of the CER as the best-placed regulator. See comments re s. 28 above
s. 13 (Transition)	Appointments terminated 13 (1) Each temporary member of the National Energy Board appointed under subsection 4(1) of the National Energy Board Act, as it read immediately before the commencement day, who holds office immediately before the commencement day ceases to hold office on that day.	Appointments terminated 13 (1) Each temporary member of the National Energy Board appointed under subsection 4(1) of the <i>National Energy Board Act</i> , as it read immediately before the commencement day, who holds office immediately before the commencement day ceases to hold office on that <u>day unless appointed a Commissioner by the Governor in Council.</u>	To draw upon the expertise of the CER as the best-placed regulator. See comments re s. 12 of above

36	<p>Pending applications</p> <p>36 Applications pending before the National Energy Board immediately before the commencement day are to be taken up before the Commission of the Regulator and continued in accordance with the National Energy Board Act as it read immediately before the commencement day.</p>	<p>Pending applications</p> <p>36 Applications pending <u>pending filed</u> before the National Energy Board immediately before the commencement day are to be taken up before the Commission of the Regulator and continued in accordance with the National Energy Board Act as it read immediately before the commencement day.</p>	To provide clarity
80	<p>Notice or application not decided</p> <p>80 (1) Every notice of a proposed work given under subsection 5(1) of the Navigation Protection Act, as it read immediately before the coming into force of section 46 of this Act, and every application for an approval of a work submitted under subsection 6(1) of that Act, as it read immediately before that coming into force, that has not been decided before that coming into force is deemed to be an application for an approval made under subsection 5(1) of the Canadian Navigable Waters Act.</p>	<p>Notice or application not decided</p> <p>80 (1) Every notice of a proposed work given under subsection 5(1) of the Navigation Protection Act, as it read immediately before the coming into force of section 46 of this Act, and every application for an approval of a work submitted under subsection 6(1) of that Act, as it read immediately before that coming into force, that has not been decided before that coming into force is deemed to be an application for an approval made under <u>the existing <i>Navigation Protection Act</i> subsection 5(1) of the Canadian Navigable Waters Act.</u></p>	<p>To provide clarity</p> <p>The other transition provisions provide that applications already in the queue would proceed under the current legislation. This will align with those sections.</p>
196 of Bill	<p>Bill C-69</p> <p>196 (1) The provisions of this Act, other than sections 2 to 8, subsection 47(4), sections 55 and 60, subsection 61(5) and sections 62, 74 and 189 to 195, come into force on a day to be fixed by order of the Governor in Council,</p>	<p>Bill C-69</p> <p>196 (1) The provisions of this Act, other than sections 2 to 8, subsection 47(4), sections 55 and 60, subsection 61(5) and sections 62, 74 and 189 to 195, come into force on a day to be fixed by order of the Governor in Council, <u>which is to be no earlier than 1 year following royal assent.</u></p>	To allow more time to the enable the Agency / CER to acquire and transfer knowledge