

FEDERAL DISCUSSION PAPER ON ENVIRONMENTAL AND REGULATORY REVIEWS

By Stanley D. Berger

Consistent with my comments offered in May of this year when the Expert Panel Report on the review of environmental assessments (EA) was released, the Federal Government's June Discussion Paper on Environmental and Regulatory Reviews has carved out a larger role for the Canadian Nuclear Safety Commission (CNSC) and the National Energy Board (NEB). The Discussion Paper offers these "life-cycle regulators" a shared EA assessment authority with the proposed EA Reviewing Authority. The Discussion Paper has also limited the broad public policy role of the EA Reviewing Authority, which was put forward by the Expert Panel over economic, social and health impacts. The Discussion Paper confirms in this regard, ultimate decision-making authority with the federal Cabinet. Capacity building, particularly with First Nations is a priority, but the paper confirms that the government will "work with industry to define activities that should be cost-recovered." The development of new provisions to enable substitution of project assessments to indigenous governments offers First Nations an opportunity which the government and proponents may find difficult to refuse. The early engagement and planning phase which was recommended both by the Expert Panel and now in the Discussion Paper, is intended to give greater legitimacy to the EA process by involving stakeholders in the scoping of both the project and the factors to be considered as well as the EA process itself. The paper also signals potentially significant changes to the National Energy Board Act, broadening the public interest to explicitly include environment, safety, social and health considerations and restructuring the NEB. The restructuring could include separate hearing commissioners to review projects and provide regulatory authorizations, increased indigenous representation amongst the Board and Hearing Commissioners and the separation of the roles of CEO and Chairperson of the Board so that they are assumed by two, rather than the same individual. Indigenous peoples could have a greater role in the monitoring of pipelines and other energy infrastructure from construction to decommissioning, while an advocate to support landowners in the regulatory processes is being considered. Comments on the Discussion Paper are due by the end of August (the 28th).



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