January 25, 2019

Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, Ontario
Canada K1A CA4

Attention: Senator Rosa Galvez, Chair
Maxime Fortin, Clerk

Dear Senator Galvez:

Re: Written Submission of Total E&P Canada Ltd. ("TEPCA") on Bill C-69

Total is an integrated energy company with activities in more than 130 countries spanning the entire energy value chain. We are the 4th largest international oil and gas major and a global leader in low-carbon energy. We are also the world’s second largest LNG producer and the second largest solar panel producer.

Total’s Business

<table>
<thead>
<tr>
<th>Explore and Produce</th>
<th>Transform and Develop</th>
<th>Ship and Market</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Oil and Gas</td>
<td>• Specialty Chemicals</td>
<td>• Trading &amp; Shipping</td>
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<tr>
<td>• Solar</td>
<td>• Polymers</td>
<td>• Marketing &amp; Services</td>
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<tr>
<td>• Biomass</td>
<td>• Refining and Petrochemicals</td>
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Total in Canada

Total has been present in Canada since 1976. Total's Canadian operations consist of oil and gas exploration and production based in Calgary, and lubricant production and distribution based in Montreal.

TEPCA is currently the sixth largest oil and bitumen producer in Alberta, with average daily production in excess of 100,000 barrels per day. We hold: 25% ownership of the Fort Hills oil sands mine project, operated by Suncor; 50% ownership of the Surmont SAG-D project, operated by ConocoPhillips; 50% ownership of the Northern Lights oil sands mine project (currently undeveloped), operated by Total. We also hold a 1/3 interest in an exploration license offshore Newfoundland. In terms of transportation, we have a number of existing commitments on regional pipelines as well as a significant capacity reservation on the future expanded Transmountain pipeline.
Total: The responsible energy major

Our global commitment is to be the world’s responsible energy major. We have taken a strong international leadership role on climate change, and we are fully supportive of the Paris climate commitments. In fact, we are on track to reduce the carbon intensity of the energy products we make available to our customers by 15% before 2030. We have fully integrated climate goals into our strategy by: improving carbon intensity in our production mix, developing renewable energies, and improving energy efficiency. We support a global carbon tax as a financial tool to incentivize the transition to a low-carbon economy. In short, we are committed to providing energy to the world in a sustainable way.

In many ways, Canada’s opportunity and challenge is similar to our own: to responsibly develop resources. Canada is a country blessed with abundant energy resources, and we can see that Bill C-69 seeks to find a way to ensure that those resources are developed responsibly. However, our view is that the Bill does not achieve its objective. For the reasons set out below, we believe that the Bill introduces significant uncertainty for investors, and may act as a disincentive to future development of energy projects.

Why is this a concern? In our view, it remains important for the Government of Canada to continue to develop oil & gas projects. The International Energy Agency (IEA) in its recent publication, World Energy Outlook 2018, forecasts that global energy demand will increase by 25% by 2040, even accounting for improvements in energy efficiency. Notably, the IEA anticipates that oil and gas together will continue to account for approximately 50% of the target 2°C energy mix up to 2040. Canada has abundant natural gas and oil deposits which can be developed to meet the world’s energy needs.

It is with this in mind that Total offers its feedback on Bill C-69 below. In the interest of brevity, we have consolidated our comments under four categories: (i) Impact Assessment Timelines; (ii) Project Assessment Parameters; (iii) Public Engagement; and (iv) Judicial Review. We also offer some reflections on how we see Bill C-69 could affect our evaluation of Canada within our comprehensive risk assessment process.

Impact Assessment Timelines

The Preamble to the Impact Assessment Act (IAA) states that “the Government of Canada recognizes that a transparent, efficient and timely decision-making process contributes to a positive investment climate in Canada.” Indeed, for the Government of Canada to achieve its overarching goal of promoting business in a sustainable manner, the IAA must fulfill this critical objective.

With respect to the IAA timelines, we have two significant concerns: first, the overall time limits in the IAA are longer than under the existing legislation. Second, while the IAA incorporates specific time limits, the Minister and Governor in Council have the discretion to extend these time limits and the Minister may even suspend the time limits. This creates uncertainty around the actual timelines applicable to an impact assessment review.

Impact assessment timelines are a critical factor for Canada’s competitiveness. Large-scale investment decisions must account for the time value of money. The effect of a one-year delay can be to decrease a project’s value by nearly 10%. Canada is one of more than 40 resource-producing nations, but the timelines under the proposed legislation are among the longest.
To illustrate the timing concern, we have summarized in the table below the expected timelines for regulatory approval for an offshore oil project in Canada, the UK and the US Gulf Coast. In all cases, we can assume that the project technical requirements are the same: we would have to acquire seismic data, analyze the data, mobilize a rig, drill an exploration well, assess the data, and design and build an offshore production facility. The timeframe to complete these technical requirements is approximately 5-7 years.

<table>
<thead>
<tr>
<th>Seismic</th>
<th>Canada - Current process</th>
<th>Canada - Bill C-69</th>
<th>UK</th>
<th>US Gulf Coast</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploratory drilling</td>
<td><strong>CEAA Environmental Assessment (no hearing): 12 months</strong></td>
<td>Project designation: undetermined</td>
<td>Environmental Statement Approval: 3 months</td>
<td>Exploration/development plan: 6 months</td>
</tr>
<tr>
<td></td>
<td><strong>CEAA Drilling Operations Authorization (with hearing, after overlap with above): 6 months</strong></td>
<td>Early Planning: 6-9 months</td>
<td>Approval: 6 months</td>
<td>Drilling permit: 45 days</td>
</tr>
<tr>
<td>Facilities</td>
<td><strong>CEAA (hearing): 2 years</strong></td>
<td>Project designation: 0 months</td>
<td>Held Development Plan Approval: 12 months</td>
<td>Multiple permits approved concurrently with proponent's development planning: No hearing</td>
</tr>
<tr>
<td>development</td>
<td><strong>DNOPB Technical approval (after overlap above): 6-12 months</strong></td>
<td>Hearing: 2 years</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Approval: 3 months</td>
<td></td>
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<td></td>
<td></td>
<td><strong>DNOPB Technical approval (after overlap above): 6-12 months</strong></td>
<td></td>
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<tr>
<td><strong>Total Time</strong></td>
<td><em>4.5 years</em></td>
<td><em>6 years</em></td>
<td><em>2 years</em></td>
<td><em>8 months</em></td>
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Notes:
1. Assumed similar sized crude oil offshore project with offshore platform facilities, (no subsea pipelines)
2. Timeframes do not include proponent's internal technical and consultation preparatory work
3. Assumed that initial project designation and planning for drilling covers facilities
4. These are high level indicative timelines for Bill C-69 and all can be extended by regulator while waiting for information clarification.
5. The role of Provincial regulators is unclear under Bill C-69
6. DNOPB: Canada Newfoundland and Labrador Offshore Petroleum Board.

The "Total Time" row of the table clearly indicates that Bill C-69 would significantly exacerbate the existing competitive disadvantage created by Canada's regulatory approval timelines. As noted above, each additional year decreases a project's relative value by nearly 10%. That means a proposed project in Canada would have to provide significantly better resource density, lower costs, and/or lower taxes and royalties to bridge that gap that time creates. Clearly, this is not a reasonable goal. Against that lost opportunity, one must assess the potential value created by the process. The UK has some of the strongest environmental stewardship in the world for offshore oil development, yet its timelines are significantly shorter than what is being proposed. More time does not necessarily equate to better stewardship.

We recommend that:

(1) **Regional approvals be put in place for seismic exploration and exploration drilling in designated offshore areas, with the objective to have a maximum of a 6 month timeline for approval of a seismic or exploration drilling program within those areas.**

(2) **For facilities development projects, a hard time limit on impact assessment of 24 months, including the early planning phase and the Cabinet approval process. This time period should not be extendable.**

**Project Assessment Parameters**

The purpose of an impact assessment is to minimize or avoid adverse effects within a project proponent's control before they occur and to incorporate salient factors into decision making.
However, the IAA currently enumerates in section 22 over 20 factors that an impact assessment of a project must take into account, the last of which is "any other matter relevant to the inquiry." The broad and uncertain scope of these provisions introduces uncertainty and a lack of clarity for proponents, the community and the regulator.

We note that many of the factors set out in section 22 are not specific to any particular project. For instance, "the intersection of sex and gender with other identity factors" and the "extent to which the [project] may hinder or contribute to [Canada's] ability to meet its environmental obligations and its commitments in respect of climate change" and "the extent to which the project contributes to sustainability." Inclusion of larger societal considerations with no limit or clarity on how or whether they are assessed results in the assessment of a designated project becoming a policy-setting exercise that is beyond the ability of the Review Panel, Minister or even Governor in Council to address in the context of an individual project.

It is also unclear what the intended goal of assessment of each of the factors is or should be for the assessment body. For instance, if gender equity is a societal goal (as it well should be), then "analyzing the intersection of sex and gender and other identity factors with the project" does not advance that goal. The language does not make it clear what the regulator is actually assessing within the project description. "Intersection" is not an outcome that is measurable, transparent, clear, nor certain, and while it may be useful shorthand terminology within the social sciences, it is not, respectfully, language that belongs in legislation. This type of unclear language virtually ensures that court challenges will ensue, with neither regulator, proponents nor intervenors having sufficient clarity on the goal of the process. For a proponent, this adds additional uncertainty and risk.

Our view is that the primary goal of any impact assessment process should be to rigorously review a proposed project to ensure that it is carried out in an environmentally and socially acceptable manner. This means that the proponent should be required to clearly demonstrate that technically feasible measures have been carried out to minimize any potential adverse effects of the project. An assessment process that requires consideration of factors beyond the proponent's ability to control unnecessarily distracts from this focus. It must be understood that an assessment of a proposed project is not the proper forum in which to attempt to address complex and challenging social issues, no matter how legitimate those issues are.

Furthermore, courts are better suited to scrutinize project reviews that are based on clear, objective factors. The courts should not be the final arbiters on issues of public policy.

We recommend that:

(1) the factors to be considered in the impact assessment be specific, measurable and limited to project-specific considerations.

(2) the factors to be considered by the regulator must have clear goals set out in the legislation to guide the regulator in its assessment.

Public Engagement

The proposed IAA does not include a standing test for public participation nor does it expressly allow the Agency or Review Panels to establish "tiered" participation rights where certain individuals and groups are given additional opportunities to participate. In our view, without some
limits on who can participate in the assessments of individual projects, there is significant risk that
hearing and review processes will be unfocussed, unnecessarily lengthy and costly. It should also
be noted that Bill C-69 contemplates hearings at more than one stage of the regulatory approval
process, which makes this concern even more acute.

There is also reason to be concerned that without a clear test to establish standing, the process
could become a forum for policy grievances as opposed to a review of the specific project at issue.

We recommend that:

(1) the IAA include provisions allowing the Agency and Review Panels to determine what
participation rights different individuals or groups should be afforded in each assessment.

(2) full participation rights, including the right to cross-examine and present expert evidence,
should be reserved for those parties that can demonstrate an interest in the project that goes
beyond an indirect public interest or that possess relevant information related to the specific
project at issue that will assist the decision-maker.

Judicial Review

Impact assessment under the IAA is a long process during which the Agency or a Review Panel
must review and consider a significant volume of information that is often highly technical in nature.
Members of the Review Panel are required to have knowledge or experience relevant to the
proposed project’s effects or the interests and concerns of indigenous groups. There exists a high
level of expertise within the Agency and the members of the Review Panel. Subsequent to this,
the Minister or the Governor in Council must take into account the report provided by the Agency
or the Minister, as the case may be, and make a determination as to whether the effects of the
proposed project are in the public interest.

Unlike the Agency or the Review Panel, the courts do not possess the specialist knowledge and
expertise necessary to make an impact assessment. Furthermore, the judicial process is not
designed to balance a range of factors in order to make a public interest determination.
Accordingly, our view is that the scope of the courts’ review should be appropriately circumscribed.

We recommend that:

(1) the legislation provide for a standard of review of patent unreasonableness.

Impact within Total Risk Assessment Process

TEPCA competes for investment capital within the Total Group. The Total Group uses a
comprehensive risk assessment process to assess all major project investment decisions
worldwide. The intent of the assessment is to facilitate an international comparison of project risk
in 130 countries across 6 categories: Societal, Operatorship, Environment, Health, Safety and
Security.

Bill C-69 implementation is expected to increase Canada’s risk profile under our risk assessment
process. The higher risk is primarily attributable to a decrease in regulatory certainty. As a
prospective project proponent, we would be faced with a lack of firm and reasonable project review timelines and we could also be impacted by decisions on broad societal considerations over which we have no control. This will undoubtedly have a negative impact on our assessment of Canada’s overall risk, which would make it less likely that we would make a positive investment decision on future major energy projects or pipeline capacity commitments in Canada.

Conclusion

As the responsible energy major, TEPCA strongly supports the Government of Canada’s desire to implement a robust project assessment regime based on world-class environmental standards.

However, in light of the significant global competition for investment capital, and the need for investors, proponents, regulators and the public to have transparency and clarity in legislation that directly affects them, TEPCA invites Senators to carefully consider our recommendations to improve the IAA.

We thank you for your time. We would welcome the opportunity to meet with you at any time to discuss this topic.

Best regards,

TOTAL E&P CANADA LTD.

Christine Healy
President & CEO

cc: The Honourable Catherine McKenna
Minister of Environment and Climate Change

The Honourable Bill Morneau
Minister of Finance

The Honourable Amarjeet Sohi
Minister of Natural Resources

The Honourable Seamus O'Regan
Minister of Indigenous Services

The Honourable Doug Black, Q.C.
Senate of Canada