Government of Yukon’s Submission on Bill C-69 to the Senate Committee on Energy, the Environment and Natural Resources

Spring 2019
Introduction

The Government of Yukon is grateful for the invitation to contribute to the discussion and investigation of Bill C-69, which enacts the Impact Assessment Act, the Canadian Energy Regulator Act, amends the Navigation Protection Act, and makes consequential and coordinating amendments to other Acts.

The Impact Assessment Act will have limited impact on the existing environmental and socio-economic assessment processes in Yukon; however, the Canadian Energy Regulator Act and Navigation Protection Act will affect the federal regulatory process within Yukon. As such the intent of this submission is to offer a general view on the anticipated and possible longer-term impacts of the legislative changes to Yukon.

General Themes of Bill C-69

The Government of Yukon is supportive of the development of assessment and regulatory regimes in Canada that will help preserve and enhance the share of domestic and global investment in Yukon and Canada’s highly regulated natural resource and energy sectors. Yukon has been fortunate to attract and retain investments - particularly in the mineral sector - over the last 15 years. Investment and growth in the resource sectors are key to Yukon’s economic and fiscal development, and increasing Yukon’s long-term capacity for generating its own revenue.

The Government of Yukon suggests that the purposes of the proposed legislation are clearly stated to highlight the economic, political and social importance of Canada’s natural and energy resources, the prevailing significance of assessment and regulatory regimes, the goal of reconciliation, and the values that all Canadians - Indigenous and non-Indigenous - have for their natural environment and clean water.
Impact Assessment Act

Yukon’s participation in the development of the Impact Assessment Act (IAA) goes back to the initial review of the environmental and regulatory process in 2016. Yukon provided input into all four of the review processes that Canada undertook in 2016/17. The Major Projects Yukon branch of the Executive Council Office is the Yukon government lead on this file.

The Yukon Environmental and Socio-economic Assessment Act (YESAA) is the impact assessment legislation in Yukon. Consequential amendments contained in the bill (part 4, section 188) confirms that the IAA will not apply on Yukon lands. That said, there may be cases where Yukon will participate alongside projects that are subject to the IAA. In cases where the IAA may apply for a transboundary panel review, section 67 of YESAA considers the need for a “joint panel” that will require assessing the project to a result consistent with both YESAA, and any other impact assessment legislation (in this case the IAA). Yukon is confident that with the enactment of the IAA, the purposes of YESAA will be fulfilled should a situation arise when both processes are triggered, and the integrity of Yukon’s assessment process will be respected and preserved.

YESAA abides by the principles of “one project, one assessment”, timely and meaningful engagement with affected Indigenous groups, and thorough review of environmental and socio-economic factors. As the rules and regulations for IAA projects are developed, attention should be paid to maintain a comparable assessment and regulatory environment across Canada, including Yukon.

Also of note is the “early planning stage” which is proposed. The independent Yukon Environmental and Socio-economic Assessment Board (YESAB) is also exploring a pre-engagement process for major projects in Yukon. Government of Yukon will participate in providing feedback directly to this process. If pre-assessment or ‘early planning’ work is implemented, at a minimum, it should be consistent with the applicable legislation, be conducted in a timely, efficient and effective manner, and to the extent practicable, provide certainty with respect to information requirements and time limits.
Canadian Energy Regulator Act (CERA)

Yukon government has provided input on the review of the National Energy Board Act (NEBA), since 2016. Yukon government’s Department of Energy, Mines and Resources participated through the federal, provincial and territorial working group on the modernization of the National Energy Board. Yukon government’s departments of Environment and Energy, Mines and Resources made further submissions to Natural Resources Canada and Environment and Climate Change Canada on December 5, 2018 regarding Bill C-69 implementation. The current Senate review of the legislation offers an opportunity to share some observations regarding the current context, more than two years after this legislative development began.

The first observation relates to the implications of replacing the NEBA with CERA. A new regime for the regulation of energy projects within federal jurisdiction has the potential to restart the judicial framework that is well established under the NEBA. Recent case law as a result of legal challenges to decisions under the NEBA provides important direction to the conduct of regulatory reviews of energy projects and it is important the CERA sufficiently integrate this direction. Many of the recent judicial reviews fall to matters of consultation and accommodation, suggesting the need for improvement and clarification of existing guidelines, or enactment of supporting legislation, regulation, or policy that clarifies the Crown’s duty of consultation.

The second observation relates to potential uncertainty of legislative commitments to United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the principal of free prior and informed consent of indigenous groups for projects that may impact their rights. This is an area where the proposed IAA and CERA regimes will create a gap in jurisdictional comparability between Yukon and Canada. In the Yukon, 11 of 14 Yukon First Nation have comprehensive land claim and self government agreements that establish settlement lands that are under the administration and control of the First Nation and establishes co-management boards and committees to support decision making for the entire First Nation traditional territory. As a result,
commitments to UNDRIP has the potential to add complexity in the administration of CERA and YESAA in Yukon. Providing clarity on consultation and accommodation, and what UNDRIP means in the context of Yukon First Nations' comprehensive land claims is key to improving Yukon’s understanding of the legal landscape going forward.

The third observation relates to the scope of matters considered in the proposed regulatory process. Since the proposed regulatory process expands the matters to be considered to include policy and program objectives, Government of Yukon suggests that descriptions of how that policy and program objectives are considered and transmitted to decision makers is required.

Parallel to the implementation of CERA, efforts to resume negotiations on Beaufort Sea oil and gas management are underway and Yukon government notes the merits of establishing a working table at the offshore negotiation process to address specific matters around the assessment and regulatory regimes. The mosaic of legislation and agreements suggests the need for dedicated consideration of the assessment and regulatory components of the eventual Beaufort Sea management agreement.

**Navigation Protection Act**

Yukon government has been engaged and participated in the federally led review of the existing Navigation Protection Act (NPA). Throughout this process, our views have been represented by Yukon government’s Department of Highways and Public Works. We continue to participate in an ongoing federally-led working group that includes several provincial and territorial jurisdictions and Transport Canada. This working group is dedicated to the review, dialogue, and provision of guidance and feedback to the federal government in their work relating to the new Canadian Navigable Waters Act (CNWA), as well as the associated processes and regulations that will accompany the new act when it comes into force.

Yukon government is of the opinion that the proposed steps and process for implementation of the Act are relatively straightforward and it does not have significant
concerns at this time. However, as with any proposed changes to existing legislation, and the evolution into a new process, there will be a transition period where additional effort and resources will be required and challenges experienced. Also, given that the nearest Transport Canada regulatory office is located in Edmonton, Alberta approximately 1,500 km from Whitehorse, Government of Yukon may have challenges engaging with Transport Canada particularly for time sensitive matters such as the need to perform emergency works where required, while also complying with the legislation.

Government of Yukon also sees the potential for repetition and digital fatigue with the implementation of another online registry. Currently in Yukon there is the online registry for projects under the Yukon Environmental and Socio-economic Assessment Act, the Yukon Waters Act, and it is expected that there will be another new online registry following the Bill C-68 changes to the Fisheries Act, in addition to the new IAA registry proposed earlier in Bill C-69. Often, the information, comments and submissions that are made to each such registry is either the same or very similar. Yukon government recommends a strong effort on behalf of Government of Canada to coordinate and minimize the number and maximize the integration of any existing and proposed online registries.

Consequential and Coordinating Amendments

Yukon takes note that the consequential and coordinating amendments will induce changes to several Acts that affect Yukon. Should the bill pass, Yukon government concurs that changes to the following Acts that affect Yukon are required:

- Northern Pipeline Act (s. 116, 121)
- Yukon Surface Rights Board Act. (s. 163)
- Yukon Act (s. 172, 189, 190, 191)
- Yukon Environmental and Socio-economic Assessment Act (s. 176, 177, 188)
Conclusion

Government of Yukon continues to work alongside our federal, provincial and territorial colleagues on the acts contained in Bill C-69, and the progressive future of project development in Canada.