

Energy and Natural Resources

Section R of Stikeman Elliott's *Doing Business in Canada*



Energy and Natural Resources

JURISDICTION

Responsibility for the regulation of energy and natural resources in Canada is shared by the federal and provincial governments. The principal federal regulatory body is the National Energy Board (NEB). In addition, there are numerous provincial bodies whose statutory mandates relate to energy and natural resources. The determination of which level of government has jurisdiction over a particular matter depends on a number of factors including the scope of the undertaking, the nature of the energy development and the national importance of the energy resource. The federal government will normally be the relevant authority regarding energy issues of interprovincial or international significance.

The Canadian Nuclear Safety Commission (CNSC) controls the development, application and use of atomic energy in Canada. With federal cabinet approval, the CNSC may make regulations relating to nuclear research, controlling and licensing the production, application and use of atomic energy, and controlling the import, export, use and sale of uranium, thorium, plutonium, neptunium, deuterium and their derivatives.

Provincial governments have basic responsibility for energy and natural resources within their own boundaries and, in most cases, are the owners of the resources. The role of the provincial governments in energy and natural resources is, therefore, fundamental. In addition, the provinces regulate energy transportation and marketing within their borders. The provinces also have limited jurisdiction to regulate interprovincial exports of certain energy and other natural resources, subject to the paramountcy of any applicable federal laws.

THE NATIONAL ENERGY BOARD

The general responsibility of the NEB is to regulate defined aspects of the interprovincial and international movement of oil and gas and the import/export of electricity in the public interest. The NEB grants certificates of public convenience and necessity for the construction of interprovincial and international pipelines and international power lines, issues licences for exports of oil, gas or electricity and for imports of gas and approves tolls and tariffs for interprovincial and international pipelines. The NEB also has the authority to hold inquiries into any aspect of energy matters under its jurisdiction and to issue reports for the information of the government and the general public. The NEB generally does not regulate any of the following:

- hydrocarbon exploration, drilling or exploitation (except in the territories and some offshore areas);
- the generation of electric power; or

- the construction or operation of pipelines that do not cross provincial or national boundaries.

Many of the decisions of the NEB require federal cabinet approval. Such decisions include the issuance of certificates for interprovincial and international pipelines and for international power lines and of licences for the long-term export of oil, gas or electricity.

NEB approval is required for the construction of interprovincial and international pipelines and international power lines. The approval process normally includes a public hearing and will involve consideration of the technical and financial feasibility and the environmental and socioeconomic impacts of the proposed project. The long or short term export of oil, gas or power will also require NEB approval. The Board will generally have to be satisfied that there will be an adequate supply of energy for Canadian requirements following the export of the proposed quantity, among other things. The market-based procedure used in the approval of long term gas export proposals involves a complaints procedure that gives Canadian users an opportunity to object on the grounds that they are not able to obtain supplies on similar terms and conditions. The required filing of an Export Impact Assessment is required to allow the NEB to determine whether the proposed export is likely to cause Canadians difficulty in meeting their energy requirements at fair prices. The NEB is also allowed to consider virtually any other relevant factors that will allow it to make a “public interest determination”.

EFFECT OF FREE TRADE AGREEMENTS

NAFTA, like the FTA before it, has reduced the scope of regulatory intervention in the trade in energy, particularly between Canada and the United States. As a starting point, the FTA and NAFTA confirm that trade in electricity and other energy goods will be subject to GATT rights and obligations as well as to the provisions of the FTA and NAFTA agreements. The tariff elimination provisions of the agreements eliminate existing duties on energy imports and exports and ensure that no new tariffs will be instituted. Canada is also exempt from U.S. oil import fees. The parties agreed to lift most restrictions on energy imports and exports, subject to the conditions under which GATT allows restrictions (these include short supply, conservation of an exhaustible resource, national security or the imposition of price controls). No taxes, duties or charges on the export of any energy good from the U.S. to Canada or vice versa will be imposed unless such taxes, duties or charges are also imposed on such energy goods when destined for domestic consumption. The *National Energy Board Act* requires the NEB to give effect to the FTA and NAFTA when exercising its functions. A further discussion of the FTA and NAFTA is included in our section on free trade agreements.

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