

November 28, 2018

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(via email: nrcan.designatedofficer-responsablesdesignes.nrcan@canada.ca)

Re: Response to Discussion Paper: Designated Officer Regulations

The Canadian Association of Petroleum Producers (CAPP) appreciates the opportunity to provide feedback in response to the Government of Canada's October 2018 Discussion Paper (the Discussion Paper) related to the *Canadian Energy Regulator Act* (CER Act) proposed through Bill C-69. CAPP represents companies, large and small, that explore for, develop and produce natural gas and crude oil throughout Canada. CAPP's mission, on behalf of the Canadian upstream crude oil and natural gas industry, is to advocate for and enable economic competitiveness and safe, environmentally and socially responsible performance and be the preferred source of global supply based on these considerations.

In response to the five questions posed, CAPP offers the following provided edits that are underscored to the draft text provided for consideration in the Discussion Paper.

Criteria for identifying decisions that are "technical or administrative in nature":

- The decision is unlikely to require weighing competing interests;
- The decision involves technical details for a project that has already been approved;
- There are likely to be few stakeholders directly affected by the decision;

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- The decision requires in-depth technical knowledge on a specific topic or topics;
- There are no significant findings of law (e.g. results of court cases) or constitutional considerations;
- There is a "test" or standard to be applied with no or limited ability to exercise discretion (e.g. assessment against quantitative threshold or legal requirement);
- The decision is a requested/required amendment or correction to an existing approval or order;
- There are current approvals or orders that are essentially identical to the requested approval or order, i.e., for "routine" approval/order types;
- A decision is required as part of a larger application that is being considered by the Commission, i.e., a technical or administrative subset of a larger application could be considered by a Designated Officer; and
- The decision does not have industry-wide impacts.

Circumstances when decisions that are "technical or administrative in nature" should be referred to the Commission rather than designated officers:

- A decision is required as part of a larger application that is being considered by the Commission;
- There is significant interest shown in the application by Indigenous groups, non-governmental organizations, government officials, and the public;
- The designated officer requests that the matter be considered by the Commission;
- The decision requires a balancing of various interests;
- The decision requires a weighing competing interests;
- There are likely to be many stakeholders impacted by the decision;
- There are no "tests" or standards that can be applied without discretion being exercised;
- The decision would set precedent or have industry-wide impacts; and
- Significant policy or legal issues arise or there are significant findings of law applied.

Additional Considerations

In addition to the suggested edits, CAPP strongly suggests that designated officers are granted the ability to make timely decisions in emergency situations when any delays from convening the Commission would pose undue risk to people, the environment or infrastructure.

We are committed to ongoing engagement to develop policy options that allow Canada's resource sector to remain viable and competitive while meeting our mutual desire to protect the environment and to better serve all Canadians. For questions or follow up related to the submission please contact Patrick McDonald at (403) 267-1136.

Sincerely,

A handwritten signature in blue ink, appearing to read 'P. McDonald', is positioned below the word 'Sincerely,'.

Patrick McDonald, P.Eng.
Director of Climate and Innovation, CAPP