Legal update

Alberta to set time limits on Alberta Energy Regulator’s assessment of oil and gas applications

June 15, 2020
Energy

The Alberta government is moving to speed up the approval of oil and gas projects by the Alberta Energy Regulator (AER).

In 2019 Alberta’s minister of energy began a review of the timelines of the AER’s processing of oil and gas applications. The minister noted that the AER was taking four times longer than other jurisdictions such as Texas to approve certain similar projects. The review has resulted in the introduction of Bill 7: Responsible Energy Development Amendment Act, 2020 (Bill 7) which, if passed and brought into law, will impose time limits for the AER to review oil and gas applications. Bill 7 passed first reading on May 27.

Changes introduced by Bill 7

If passed, Bill 7 will:

- authorize Cabinet to make regulations imposing time limits on the exercise of the AER’s powers, duties and functions; and
- require the AER to review and make decisions on project applications, appeals and reconsiderations within specified time periods.

Bill 7 does not set the specific timelines— they are to be set by regulations. It is also not known what exceptions or extensions, if any, will be authorized in the regulations.

Implication of Bill 7

Alberta’s oil and gas regulatory process has been criticized by some for the time the AER takes to review applications. In 2017, the Canadian Association of Petroleum Producers (CAPP) published a report that analyzed the competitiveness of Alberta’s oil and gas industry and compared the timelines required for well licensing applications in Alberta, British Columbia, Saskatchewan and certain US states, including Texas. The report was updated in 2018.

The updated report noted it took four to six years for approval of an in situ oil sands project and “non-routine” well licensing applications could take as long as 144 days and go as high as 220 days when there were public or industry concerns regarding the project, which was about 130 to 190 days longer than similar applications in BC, Saskatchewan and some US states.

The Fraser Institute’s 2018 Global Petroleum Survey assessed the attractiveness of oil and gas jurisdictions for investments based on a number of factors, including timeliness of regulatory process and cost of participating in
hearings. It found that Alberta's rank dropped from the 14th-most attractive jurisdiction (out of 156 jurisdictions) in 2014 to the 43rd (out of 80) in 2018. It also found that Alberta dropped from the third-most attractive jurisdiction to invest in oil and gas in Canada in 2014 to the fifth in 2018.

According to the survey and the CAPP reports, the AER's timelines have resulted in increased costs to oil and gas companies and contributed to the decline in investor confidence and capital investment in Alberta’s oil and gas sector compared to other jurisdictions in North America.

Some effects of the uncertainty and protracted timelines on oil and gas companies include the loss of millions of dollars in annual estimated lost profits, the inability to obtain financing, and the ongoing incurring costs that are not being offset by project revenues.

If passed, Bill 7 may increase predictability in Alberta’s oil and gas sector by ensuring projects are approved or rejected in a timely fashion. This should improve investor confidence and may provide a much-needed inflow of capital.

Some of the AER’s published estimated application processing timelines, as at October 2018, include:

<table>
<thead>
<tr>
<th>Type of Application</th>
<th>Average Number of Business Days from Application to AER Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oil sands mining project or major expansion</td>
<td>565</td>
</tr>
<tr>
<td>New in situ oil sands application</td>
<td>375</td>
</tr>
<tr>
<td>New primary recovery schemes used for bitumen recovery</td>
<td>103</td>
</tr>
<tr>
<td>Well or facility licence (non-routine due to public concerns)</td>
<td>100</td>
</tr>
<tr>
<td>Well or facility licence (routine)</td>
<td>5</td>
</tr>
<tr>
<td>Environmental Protection and Environmental Act (EPEA) approvals (initial)</td>
<td>175</td>
</tr>
<tr>
<td>EPEA approval (renewal)</td>
<td>131</td>
</tr>
<tr>
<td>Water Act licence</td>
<td>130</td>
</tr>
</tbody>
</table>

The AER notes that in certain cases, such as where a development is complex or stakeholder or indigenous consultation requirements have not been met, the review process might be longer than the estimated timelines.

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