TIMING OF CANADIAN PROJECT APPROVALS: A SURVEY OF MAJOR PROJECTS

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This article provides a detailed canvassing of the Canadian energy project approval process, beginning with an examination of the evolution of the project approval process in Canada and the current legal framework under the Canadian Environmental Assessment Act, 2012. *The article then applies the framework to numerous major energy project approvals in Canada from 2010 to present day, and provides a comparative analysis to the project approval processes in both the United States and Australia in order to find possible solutions to the issues plaguing our current system. This article identifies and discusses current, practical issues and provides recommendations for how the project approval process in Canada can become more efficient for all those involved.*

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I. INTRODUCTION

The Canadian energy industry is experiencing a period of almost unprecedented challenges. The explosion in natural gas production through the development of shale gas plays throughout North America has caused the North American price of natural gas to crater. Natural gas liquids prices have also plummeted as supply continues to outstrip demand by a significant margin. In addition, the competition for market share of the worldwide crude oil market has decimated the price of crude oil. The highest cost production, including bitumen produced from the Canadian oil sands, is the most threatened. The inability to get Canadian crude oil to tidewater to access world oil markets exacerbates the problem by further discounting the price received by Canadian producers. Canadian oil and gas producers continue to look to major projects to allow their products to access world markets. These projects include large-scale liquefied natural gas (LNG) and liquefied petroleum gas (LPG) export facilities, and oil, natural gas, and natural gas liquids pipelines.

These large-scale projects require significant amounts of power. This, together with growth in other Canadian industries and the general needs of the Canadian population, has created the need for additional power generation (almost all of which is to be from environmentally cleaner sources of power) and transmission to connect that generation to those markets where demand is highest. Many of these projects are imperative if Canada is to be able to develop the necessary energy projects to allow it to compete globally.

There is often a limited window of opportunity to bring these projects to fruition. A number of projects have failed on the basis that they were delayed for too long and either the window of opportunity closed or companies lost their will to push these projects forward and elected to redeploy resources elsewhere. Companies are continually faced with decisions as to the best opportunities to deploy their capital, and if it becomes too difficult for such companies to deploy their capital in Canada or if the returns from doing so are too low, such capital will be moved to other jurisdictions offering a more favourable economic climate. To the extent that the Canadian project approval process becomes detached from the economic decision-making process, Canadians will lose the opportunity to participate in major projects. We need only look at the failure of Canadians to develop LNG export facilities or the inability to find access for Canadian oil to the global market to see the opportunities that can be lost through the project approval process.

This article identifies practical issues and concerns arising from the Canadian project approval process. The analysis in this article is complementary to the commentary on the

legal aspects of project approvals previously published by the Canadian Energy Law Foundation and perhaps should serve as a starting point for ongoing monitoring of the effectiveness of the Canadian project approval process. This article commences with a brief look at the evolution of the project approval process in Canada, including the current legal framework under the *Canadian Environmental Assessment Act, 2012*,[1] to provide a context for the analysis that follows. An analysis is then performed on many of the major energy projects in Canada approved since 1 January 2010 (focused on pipelines, oil sands, LNG, power generation, and power transmission), with a more detailed look at some of the longer processes.

It is evident from our analysis that there exist a number of common themes among the major energy projects reviewed. Specifically, our analysis identifies the following key findings: (1) there is a clear provincial advantage in terms of time and process to reach final decisions under the provincial environmental assessment process relative to the federal environmental assessment process; (2) the use of "independent decision makers" at the federal level results in, or is at least highly correlated with, longer timelines as such decisions-makers can lack a sense of ongoing responsibility for market conditions in turning down or endlessly deferring approval of projects; and (3) delays associated with quasi-judicial hearing processes, which are used far more widely and expansively at the federal level, add to extended timelines for project approvals.

Using the trends or common themes from the project survey contained in this article (Project Survey) as a backdrop, the article then compares the project approval process in Canada to that found in the United States and Australia in an effort to determine if these other jurisdictions can provide any practical insights into how Canadian regulators can best approach some of the issues that plague the Canadian approval process.

II. EVOLUTION OF PROJECT REVIEW PROCESS IN CANADA

A. EARLY DAYS

The project approval process finds its roots in the US. Perhaps the leading, and certainly the earliest, case dealing with project approvals was the US case of *Scenic Hudson Preservation Conference v. Federal Power Commission*[2] which decided the following two core matters: (1) that a public interest group with a demonstrated interest and involvement in the environmental consequences of a power plant had standing to sue the Federal Power Commission, the licensing authority, to overturn an operating licence for a power plant;[3] and (2) that in making a decision to licence in "the public interest," the licensing authority was legally bound to consider reasonable alternatives to the proposed course of action, including

1 SC 2012, c 19 [*CEAA* 2012].
2 354 F (2d) 608 (2nd Cir 1965) [*Scenic Hudson*].
3 The United States Court of Appeals for the Second Circuit ruled that Scenic Hudson Preservation Conference had standing because of its special interest in the aesthetic, conservation, and recreational aspects of Storm King Mountain. Scenic Hudson was determined to be an "aggrieved" party under section 313(b) of the *Federal Power Act*, 16 USC § 825(1) (1920) (see *Scenic Hudson*, *ibid* at 616).

a "no action option."[4] By fundamentally redefining the rules on standing — to go beyond pure pre-existing economic interest — and by redefining the public interest to include a requirement for analysis of environmental impacts, need, and comparison of alternatives, *Scenic Hudson* in many ways anticipated the subsequent development of environmental assessment and project approvals. The decision also taught the important lesson that the courts, and the law generally, would be receptive to public interest challenges seeking to advance environmental interests, and that a well-financed public interest group with access to good technical advice and sophisticated legal skills could use legal process and the passage of time to complicate, disrupt, and ultimately defeat even the best financed and most well-established project proponent. Time, delay, and the use of legal process were immediately perceived by public interest groups as a useful — and entirely legitimate — technique to force change and re-evaluation on project proponents. The principles developed in *Scenic Hudson* have largely been recognized by Canadian courts and by special interest groups as well and are now part of the Canadian legal framework.[5]

B. US *NATIONAL ENVIRONMENTAL POLICY ACT*

Less than five years after *Scenic Hudson*, the US Congress and Senate passed, by overwhelming majorities, the *National Environmental Policy Act of 1969*.[6] *NEPA* is not regulatory and reactive; rather, it is "anticipatory in nature, involving the evaluation of alternatives to the proposed undertaking, and alternative methods of carrying it out, prior to the start of any construction."[7] *NEPA* itself explicitly provides that environmental assessment is a planning tool, and the cornerstone of *NEPA* was the requirement that an environmental assessment be undertaken prior to taking any federal action which could materially affect the environment.[8] Where the consequences of any such action were potentially serious, the federal government had to prepare and involve the public in reviewing an environmental impact statement (EIS).[9]

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4 The United States Court of Appeals for the Second Circuit determined that the Federal Power Commission (FPC) would need to keep a Record of Decision which could subsequently be examined for adequacy, and would have to consider need for the proposed facility and determine that construction of the proposed facility was superior to other reasonably achievable alternatives — in this case specifically involving interconnection to the existing electrical grid, construction of a gas plant, and taking no action (*Scenic Hudson*, *ibid* at 621–22).

5 See Robert D Lifset, *Power on the Hudson: Storm King Mountain and the Emergence of Modern American Environmentalism*, 1st ed (Pittsburgh: University of Pittsburgh Press, 2014). *Scenic Hudson* foreshadowed key developments on the issue of balancing energy supplies against environmental issues and was significant beyond the mere legal principles involved and determined in the decision itself. It was the first of what has now become a standard pitched battle between project proponents, public interest groups, and other stakeholders where regulatory and legal proceedings are used to deliberately delay and frustrate project construction, in the hope that the law, prevailing markets, or political forces lead to a modification of the proponent's plans. *Scenic Hudson* was simply one of the first steps in a 17 year process that saw the Storm King Mountain Project: remanded for reconsideration to the FPC (1966-67); reconfigured to decrease its environmental footprint (1970); reconsidered again by the Second Circuit (1971-72); reheard by the FPC over issues of adequacy of fisheries structures (1973); subject to a third suit in Federal Court, this time against the Army Corps of Engineers for dumping excavated rock in the Hudson River without a permit (1974); and, petitioning the FPC to restart hearings on the grounds that changing markets were making Storm King Mountain uneconomic (1976). Finally, the project proponent, Consolidated Edison "surrendered" by agreeing to terminate its Storm King Mountain Plan and establish a research fund to preserve the Hudson River (1980).

6 42 USC § 4321 (1976) [*NEPA*].

7 Michael I Jeffrey, "The New *Canadian Environmental Assessment Act* — Bill C-78: A Disappointing Response to Promised Reform" (1991) 36:3 McGill LJ 1070 at 1071.

8 42 USC § 4332 (2006).

9 *Ibid*.

From the dawn of *NEPA*, the speed of decision-making has never been the principal concern. Quite the contrary, the legislative intent behind *NEPA* was to deliberately slow down the pace of decision-making so that alternatives could be systematically considered and reviewed with effected interests, not least the general public. Broad construction of *NEPA*'s provisions in key court rulings[10] quickly made environmental assessments and the preparation of an EIS a key, and even a transformative, feature of governmental decision-making. As will be discussed in further detail below, Canada's environmental assessment legislation contains many of the same principles contained in and established by *NEPA*, including the principle that environmental assessment legislation must be anticipatory in nature, involving the evaluation of alternatives prior to the start of any project.

C. BERGER COMMISSION

One of the earliest examples of Canadian environmental assessment was the Berger Commission of Inquiry into the Mackenzie Valley Gas Pipeline (Berger Commission). The Mackenzie Valley Pipeline Inquiry was commissioned on 21 March 1974 to investigate the social, environmental, and economic impact of a proposed natural gas pipeline that would run through northern Yukon down the Mackenzie River Valley from the Northwest Territories to Alberta.

The Berger Commission took over three years to conduct consultations and hold hearings throughout northern Canada and released its report, *Northern Frontier, Northern Homeland*[11] on 9 June 1977. The report recommended that no gas pipeline be built through northern Yukon (abutting on the Arctic Ocean) and that any proposed pipeline through the Mackenzie River Valley be delayed for at least 10 years. The Berger Commission produced over 40,000 pages of text and evidence comprising 283 volumes, and the report's summary was a Canadian bestseller, with over 100,000 copies sold.[12]

D. ENVIRONMENTAL ASSESSMENT REVIEW PROCESS

The Environmental Assessment Review Process (EARP), though informal, established much of the architecture that has carried over into the *Canadian Environmental Assessment Act*[13] and the *CEAA* 2012 — including some of the features that have particularly contributed to delays and extended timelines for decisions. Established by simple cabinet directives in 1972 and 1973, EARP was most comprehensively described and formalized under the 1984 EARP Guidelines Order (Guidelines Order).[14]

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10 Generally regarded as the two key decisions on *NEPA*, and extending its reach forcefully within the federal government: see *Calvert Cliffs' Coordinating Committee Inc v United States Atomic Energy Commission*, 449 F (2d) 1109 (DC Cir 1971) and *Natural Resources Defence Council Inc v Morton*, 458 F (2d) 827 (DC Cir 1972). As much as the contents of the specific rulings, the tone in each case was stinging and dismissive of federal officials who failed to use all reasonable efforts and act in good faith to give full effect to *NEPA* as early as possible in federal agency decision-making.

11 Mr Justice Thomas R Berger, *Northern Frontier, Northern Homeland: The Report of the Mackenzie Valley Pipeline Inquiry*, vol 1 (Ottawa: Minister of Supply and Services Canada, 1977).

12 "Mackenzie Valley Pipeline: 37 Years of Negotiation," *CBC News* (16 December 2010), online: <www.cbc.ca/news/business/mackenzie-valley-pipeline-37-years-of-negotiation-1.902366>.

13 *Canadian Environmental Assessment Act*, SC 1992, c 37 [*CEAA* 1992], as repealed by *CEAA* 2012, *supra* note 1.

14 *Environmental Assessment Review Process Guidelines Order*, SOR/84-467 [*EARP Process Guidelines Order*].

The Guidelines Order emphasized that EARP is to be invoked where a federal proposal could have a significant impact on the environment, whether physical or socio-economic, and compliance with the Guidelines Order was subsequently held by Canadian courts to be a condition precedent to the granting of federal licences and approvals.[15] The Guidelines Order contained a broad definition of "proposal" that included any initiative, undertaking, or activity for which the Government of Canada had decision-making authority. Where an agency of the federal government determined, on a "self-assessment basis," that a proposal could have an effect on an area of federal responsibility, it had to refer the matter to the Minister of the Environment for public review by a review panel.[16] There were over 50 review panels struck under EARP and some of them tended to be prolonged (such as Newfoundland Offshore for six years and Saskatchewan Uranium Mining for five years) and to engage in a substantial number of public hearings.

Finally, EARP embraced from the beginning the importance of an independent and disinterested review; hence the use of independent review panels rather than existing federal agencies to carry out environment assessments. The NEPA model of an environmental assessment conducted by a lead agency was rejected — and that approach tended to be carried on under subsequent federal legislation.[17] The approach under the EARP was reinforced by the Federal Environmental Assessment Review Office (FEARO), established in 1987 to review the existing procedures for conducting public reviews under the EARP.[18]

E. *CEAA* 1992

The *CEAA* 1992 was the first legislative action to enshrine environmental assessments at the federal level and it carried through many of the recommendations of the FEARO. Formalized assessment included four different processes — screening, comprehensive study, review panel, and mediation — each with its own procedures and time frames. It is important to note that, similar to *NEPA*, there were no mandatory timelines attached to the conduct of environmental assessments under the *CEAA* 1992. All of the environmental assessment processes that subsequently gave rise to complaints from outside parties and to dissatisfaction within government were contained in the *CEAA* 1992. Most of these troublesome environmental assessments were administered by review panels, whether appointed

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15 See Jeffrey, *supra* note 7 at 1076. See also *Friends of the Oldman River Society v Canada (Minister of Transport)*, [1992] 1 SCR 3 [*Oldman River*], (where the Court found that the word "proposal," as it was used in the *EARP Process Guidelines Order*, *ibid* went beyond its ordinary meaning and included any "initiative, undertaking or activity" in some way other than receiving a formal application for some project at 17).

16 Jeffrey, *ibid* at 1080 (noting that the "self-assessment" nature of the Guidelines Order "clearly indicates that the government wished to retain as much flexibility as possible with respect to the environmental assessment of federal undertakings" at 1072).

17 M Husain Sadar & William J Stolte, "An Overview of the Canadian Experience in Environmental Impact Assessment (EIA)" (1996) 14:2 Impact Assessment 215; Jeffrey, *supra* note 7; Ron R Wallace, "Assessing the Assessors: An Examination of the Impact of the Federal Environmental Assessment and Review Process on Federal Decision Making" (1986) 39:3 Arctic 240; Kristen Douglas, *Environmental Assessment: Conference on Law and Process in Environmental Management* (Ottawa: Law and Government Division, Parliamentary Research Branch, 1993).

18 See Jeffrey, *supra* note 7 at 1081. The study group was chaired by the Honourable Allison M Walsh QC, a retired justice of the Federal Court.

exclusively by the federal government or by federal and provincial governments acting co-operatively.[19]

The strategic significance of the *CEAA* 1992 is that it basically carried on the tradition, beginning with the Berger Commission and extended under EARP, whereby environmental assessments routinely stretched into extended multi-year exercises with no reasonable expectations as to timeline or conduct, involving public outreach that went beyond *NEPA* and other comparable processes, and, perhaps most importantly, involved administration of the project approval process by "disinterested" review panels. On the fifth anniversary of the *CEAA* 1992 coming into force, a periodic review conducted by the Canadian Environmental Assessment Agency (CEAA) itself, but based on independent third party evidence, concluded that the Canadian project approval process under the *CEAA* 1992 was materially more burdensome than any other system in the world — other than the US.[20]

F. MAJOR PROJECTS INITIATIVE

The Major Projects Management Office (MPMO) was formed in 2007 in response to widespread concerns about the length of time, and the general unpredictability, of the federal environmental assessment process. The 2011 MPMO evaluation (MPMO Evaluation) provides excellent background information on the internal issues and problems under CEAA and the inherent deficiencies in the appointment and conduct of review panels. The MPMO Evaluation foreshadows the 2012 Report of the Standing Committee on the Environment and Sustainable Development[21] and the material provisions of the *CEAA* 2012.

The MPMO Evaluation canvassed 70 major (active) projects being managed by the MPMO, which represented anticipated capital investment of between $120 billion and $140 billion and divided the evaluation process into four separate phases or components: project description; environmental assessment; regulatory decision-making; and follow-up and monitoring. The main objective of this evaluation was to assess the performance and relevance of the MPMO initiative relative to the initiative's targeted outcomes and to provide recommendations for areas of improvement. The MPMO Evaluation demonstrated, among other things, that participating departments or agencies and the MPMO "effectively implemented a wide range of processes that clearly contributed to a high level of achievement of outcomes,"[22] including in relation to Aboriginal consultations and collaborative policy research. However, the MPMO Evaluation stated that "the extent to

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19 Tracey Sandgathe & Shi-Ling Hsu, *The Canadian Environmental Assessment Act and the Little Bow/ Highwood Project* (Vancouver: Faculty of Law, University of British Columbia, 2004), online: <www.allard.ubc.ca/sites/www.law.ubc.ca/files/uploads/enlaw/pdfs/ceaahighwood_04_20_09.pdf>; Andrew Green, "Discretion, Judicial Review, and the *Canadian Environmental Assessment Act*" (2002) 27:2 Queen's LJ 785; *Friends of the West Country Ass'n v Canada (Minister of Fisheries and Oceans*), [1998] 4 FCR 340.

20 Canada, RIAS Inc & Gartner Lee Limited, *Comparative Analysis of Impacts on Competitiveness of Environmental Assessment Requirements* (Ottawa: Canadian Environmental Assessment Agency, 2000), online: <www.ceaa-acee.gc.ca/default.asp?lang=En&n=0CDC5381-1>.

21 House of Commons, Standing Committee on Environment and Sustainable Development, *Statutory Review of the* Canadian Environmental Assessment Act*: Protecting the Environment, Managing Our Resources* (March 2012) (Chair: Mark Warawa), online: <www.publications.gc.ca/collections/collection_2012/parl/XC50-1-411-01-eng.pdf> [Standing Committee Report].

22 See Natural Resources Canada, *Evaluation of the Major Projects Management Office Initiative (MPMOI)* (Ottawa: NRC, 2012), online: <www.nrcan.gc.ca/evaluation/reports/2012/786> [NRC, *Evaluation of MPMOI*].

which these improvements have, to date, had an impact on timelines of the process is somewhat limited"[23] and that efforts to quantitatively demonstrate to what extent these improvements had translated into increased overall predictability and timeliness of the federal project review process under the MPMO "were limited and resulted in mixed findings."[24] Most importantly, the MPMO Evaluation revealed that the management objective was to conduct the environmental assessment and permitting phases within a period of 24 months — and that for a variety of reasons, very few of the 70 tracked projects between 2008 and 2011 had passed the permitting phase and only three out of 70 tracked projects had been completed.[25]

G. STANDING COMMITTEE

The Standing Committee Report was substantially influenced by the prior work of the MPMO Evaluation and strongly suggested that the existing the *CEAA* 1992 process was inefficient, duplicative, and ineffective. The Standing Committee Report made 20 recommendations, most of which were adopted by the federal government, including: (1) centralization of all environmental assessment processes in the CEAA, unless there is a better placed regulator; (2) require "binding timelines" for all environmental assessments; (3) narrow the triggering conditions giving rise to environmental assessment; (4) market triggering conditions readily determinable early in the process; (5) eliminate duplication between federal and provincial environmental assessments; and (6) modification of the environmental assessment process to better incorporate, coordinate, and streamline Aboriginal consultation during the process and to work with Aboriginal groups, provincial governments, and project proponents to define the roles and responsibilities of parties in the Aboriginal consultation process with an end result of a single consultation process that minimizes duplication.[26]

The Standing Committee Report led to the prompt introduction of the new *CEAA* 2012, which incorporated many of the recommendations set out in the Standing Committee Report.

H. *CEAA* 2012

Generally, the thrust of the *CEAA* 2012 was to respond to criticisms articulated in the Standing Committee Report — and foreshadowed in the MPMO Evaluation; namely that too many federal environmental assessments were taking far too long to complete and were unpredictable for project proponents, Aboriginal groups, and provincial governments.[27] As

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23 *Ibid*.

24 *Ibid*.

25 Canada, Major Projects Management Office, "Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects" (Ottawa: MPMO, 2012), online: <www.mpmo.gc.ca/reports-publications/77>; Canadian Nuclear Safety Commission, "Memorandum of Understanding (MOU) on the Substitution of the Environmental Assessment Process Followed by the Canadian Nuclear Safety Commission for an Environmental Assessment by a Review Panel Under the Canadian Environmental Assessment Act" (March 2011), online: <nuclearsafety.gc.ca/eng/pdfs/MoU-Agreements/March-2011-MOU-Substitution-Under-the-Canadian-Environmental-Assessment-Act_e.pdf>; Natural Resources Canada, *2010-2011 Estimates: A Report on Priorities* (Ottawa: NRC, 2011), online: <www.tbs-sct.gc.ca/rpp/2010-2011/inst/rsn/rsn01-eng.asp> (as to "service standards" and internal timelines for considering environmental assessments); NRC, *Evaluation of MPMOI*, *supra* note 22.

26 Standing Committee Report, *supra* note 21.

27 See Sandy Carpenter, "Fixing the Energy Project Approval Process in Canada: An Early Assessment of Bill C-38 and Other Thoughts" (2012) 50:2 Alta L Rev 229 at 251–52.

a result and in recognition of this reality, the Standing Committee Report recommended that the federal government modify the environmental assessment process under the *CEAA* 2012 to better incorporate and streamline Aboriginal consultation, and further recommended that the federal government work with interested groups to define the roles and responsibilities of the parties in the consultation process.[28]

The thrust of the *CEAA* 2012 was clearly to improve efficiency in decision-making, rather than to try to improve the quality of analysis or outcomes. As Carpenter has noted: "17 of the [Standing] Committee's 20 recommendations were made under the heading of improving efficiency, while only three were made under the heading of improving outcomes."[29] The main efficiency initiatives were:

(1) establishing mandatory timelines of 12 months for the CEAA itself and 24 months in the case of a review panel (effective only after a Notice of Commencement of environmental assessment has been filed by the CEAA) to force quicker and more predictable decision-making from responsible federal authorities;[30]

(2) providing for more environmental assessments that are not under the jurisdiction of the National Energy Board (NEB) or the Canadian Nuclear Safety Commission (CNSC) to be effectively done at the provincial level through the "substitution" and "equivalency" provisions in the *CEAA* 2012, thereby avoiding duplication, and

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28 *Ibid*.

29 *Ibid* at 246–47.

30 *CEAA* 2012, *supra* note 1, s 38(3). For 12 and 24 month periods, the timeline runs from the formal Notice of Commencement of an environmental assessment being filed (*ibid*, ss 27(1)–(2)); see also Carpenter, *ibid* at 239). The Minister may extend the time limit up to a maximum of three months, which may be further extended by the Governor in Council (GIC) upon recommendation by the Minister (*CEAA* 2012, *ibid*, ss 27(3)– (4)). Similar changes were imposed by the NEB, except that the time period was extended to 15 months for any proceeding where a Certificate of Public Convenience and Necessity was required (*National Energy Board Act*, RSC 1985, c N-7, s 52(4) [*NEBA*]). Under the *NEBA*, the Minister may extend the time limit up to a maximum of three months, which may be further extended by the Governor in Council upon recommendation by the Minister (*NEBA*, *ibid*, ss 52(4), (7); Rowland J Harrison, Lars Olthafer & Katie Slipp, "Federal and Alberta Energy Project Regulation Reform : At What Cost Efficiency?" (2013) 51:2 Alta L Rev 249 at 251). The specific mechanism for effectively imposing these mandatory timelines on review panels requires the Minister to take additional steps in setting their terms of reference (*CEAA* 2012, *ibid*, s 38). The mandatory timelines do not include time for a proponent to respond to an information request (*CEAA* 2012, *ibid*, s 27(6)). The mandatory timelines can be extended by the Minister for up to three months to facilitate inter-jurisdictional co-operation or for reasons "specific to a project" (*CEAA* 2012, *ibid*, s 27(3)). The mandatory timelines can also be extended by the GIC for any length of time and for any reason (see e.g. *CEAA* 2012, *ibid*, s 27(4) the extensions announced 27 January 2016; Shawn McCarthy, "Ottawa Adds Additional Steps to Pipeline Reviews," *The Globe and Mail* (27 January 2016), online: <www.theglobeandmail.com/news/politics/liberals-to-announce-new-transition-rules-for-assessing-pipelines/article28412555/> where the extensions were announced for certain pipelines and LNG facilities due to extended environmental assessments of upstream carbon emissions). A decision by *CEAA* or a review panel remains valid notwithstanding any failure to comply with mandatory timelines (Harrison, Olthafer & Slipp, *ibid* at 260; for NEB, see *NEBA*, *ibid*, ss 55.1, 55.1(2)). For concerns about mandatory timelines potentially compromising the independence of decision-makers, see Harrison, Olthafer & Slipp, *ibid* at 263, 272 ("in the case of the time limits scheme under the [*NEBA*], there is a risk of allegations that efficiency comes at the expense of an assault on principles of procedural fairness" at 263). See e.g. the Site C Clean Energy Project, where the Co-operation Agreement provided that it could take 24 months to review, negotiate, and determine the completeness of the Project Description before a Notice of Commencement would be filed and an assessment formally commenced: Canadian Environmental Assessment Agency, "Agreement to Conduct a Cooperative Environmental Assessment, Including the Establishment of a Joint Review Panel of the Cite C Clean Energy Project Between the Minister of the Environment, Canada and the Minister of Environment, British Columbia" (Ottawa: CEAA, January 2013), online: <www.ceaa.gc.ca/050/documents/54272/54272E.pdf>.

tacitly speeding up environmental assessments in practice by giving provinces the right to demand this process be substituted for federal environmental assessments;[31]

(3) adopting public participation rules, procedures, and practices more in line with those already adopted under *NEPA* and by the provinces, and somewhat less expansive than the rules traditionally available in prior federal environmental assessment processes; and

(4) systematically reducing the federal jurisdiction over environmental assessment activity, by limiting the intake of environmental assessments to a relatively limited set of projects specifically designated for review by federal authorities, and restricting the scope of any federal environmental assessment that is undertaken to matters directly and particularly effecting federal jurisdiction.[32]

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[31] This right of a province to demand the substitution of its process for the federal one applies in every case, with three exceptions: (1) interprovincial and international pipelines and transmission lines over which the NEB already has exclusive jurisdiction; (2) nuclear facilities over which the CNSC already has exclusive jurisdiction; and (3) any other environmental assessment which the Minister has referred to a review panel (see the *CEAA* 2012, *ibid*, ss 32(1), 33). Where a substitution process must be approved, the GIC can go further and exempt a project specifically designated for review by federal authorities (Designated Project) from assessment under the *CEAA* 2012 entirely or rely on the equivalent assessment process of the Province (*CEAA* 2012, *ibid*, s 37(1)). The existing case law is broadly supportive of at least the substitution provisions of the *CEAA* 2012, as it entails reliance by federal and provincial governments on particular officials for common fact-finding, while in each case preserving their own independent right of decision (see *Canadian Environmental Law Association v Canada (Minister of the Environment)*, [1999] 3 FCR 564 at paras 11–12; *Oldman River*, *supra* note 15 at 71). See also Peter W Hogg, *Constitutional Law of Canada*, 4th ed (Toronto: Carswell, 1997) at 311–31. There is some commentary, which to date has not been followed by the courts, casting doubt on the legality and propriety of the substitution regime, on the grounds that an environmental assessment has been recognized by the courts as a "planning tool" for federal decision-making, and that it is too integral to the exercise of a decision-making power by the federal government to allow it to be delegated to any other level of government. See Franklin S Gertler, "Lost in (Intergovernmental) Space: Cooperative Federalism in Environmental Protection" in Steven A Kennett, ed, *Law and Process in Environmental Management: Essays from the Sixth CIRL Conference on Natural Resources Law* (Calgary: Canadian Institute of Resources Law, 1993) at 260. The equivalence provisions of the *CEAA* 2012, involving the complete exemption of a Designated Project from an environmental assessment and the effective removal of any federal power of decision in certain circumstances where the provincial process is recognized as adequate may be more constitutionally dubious. See the recent case *Coastal First Nations v British Columbia (Minister of Environment)*, 2016 BCSC 34, 85 BCLR (5th) 360 [*Coastal First Nations*]. If there is any constitutional or administrative law issue with the substitution and equivalence provisions in the *CEAA* 2012, there is no doubt that reduction in duplication and effectively streamlining an environmental assessment process can be accomplished through explicit co-ordination and co-operation arrangements between the federal and provincial governments (*MiningWatch Canada v Canada (Fisheries and Oceans)*, 2010 SCC 2, [2010] 1 SCR 6 at paras 24–25 [*MiningWatch*]). See also Brenda Heelan Powell, *Environmental Assessment & the Canadian Constitution: Substitution and Equivalency* (Edmonton: Environmental Law Center, 2014) at 29, online: <elc.ab.ca/media/94543/EAConstitutionBriefFinal.pdf>. The effect of the substitution provisions of the *CEAA* 2012 could give provinces the option, at least, of entirely side-stepping review panels in environmental assessments."

[32] Shane R Hopkins-Utter, "Streamlining the Environmental Assessment Act: An Overview" (7 May 2012) *Lexology*, online: <www.lexology.com/library/detail.aspx?g=d98009c9-8447-4b6b-947f-5b3174cbb8fd>; Kevin O'Callaghan & Tariq Ahmed, "New Canadian Environmental Assessment Act Streamlines Assessment Process" (20 July 2012), *Fasken Martineau (Environmental Bulletin)*, online: <www.faskin.com/new-canadian-environmental-assessment-act/>; Harrison, Olthafer & Slipp, *supra* note 30; Carpenter, *supra* note 27.

III. PROJECT SURVEY

The Project Survey conducted in this article is a quantitative analysis of the approval timelines of major energy projects in Canada, individually projecting $1 billion or more of costs, that have obtained a final decision (or still seek a final decision) since 1 January 2010 under provincial environmental assessment processes and the *CEAA* 1992 or the *CEAA* 2012, as applicable. Once the *CEAA* 2012 came into force: (1) if an environmental assessment was commenced under the *CEAA* 1992, that project continued and was completed under the *CEAA* 1992; and (2) if a project required an assessment by a review panel under the *CEAA* 1992, or if the Minister of Environment referred an environmental assessment to a review panel, then that project was to be completed under the *CEAA* 2012. The date of 1 January 2010 was chosen as the cut-off date for the purposes of this Project Survey as it provided an adequate sample size to see trends or common themes in the approval timelines of major energy projects under provincial environmental assessment processes and the *CEAA* 1992 and *CEAA* 2012. The five major categories of energy projects which we selected for this Project Survey are: (1) pipelines; (2) oil sands; (3) LNG; (4) power generation; and (5) power transmission.

For the purposes of the Project Survey, we were wholly reliant on publicly available sources that we believe are trustworthy and accurate. The elapsed time is based on determining the principal regulatory decision to approve the construction of a project and then looking at the first material filing to initiate that process for a particular project and concluding on the date of the final decision of that regulatory process. For projects that have not yet obtained a final decision, we have used an anticipated final approval date based on the timelines set forth in *CEAA* 2012 or the recommended timelines set forth by the Alberta Energy Regulator (AER), as applicable. In the tables that follow, we have put an "(E)" by those projects that have an estimated final approval date to identify our usage of such estimated final approval dates. For projects under the *CEAA* 1992 and *CEAA* 2012, we have relied exclusively on the MPMO Tracker, where available. For projects under the British Columbia Environmental Assessment Office (BCEAO), we have relied on the BCEAO Registry and specifically on the dates stated for "Pre-Application Filing" (as the start date) and for the Environmental Assessment Certificate (as the completion date). For projects under the AER and Alberta Utility Commission, we have relied on publicly available records on their respective websites and specifically on the dates stated for the initial application (as the start date) and for the final decision summarizing the regulatory process and approval (as the completion date). We recognize that there are elements of judgment involved in our determination of timelines; however, we do not believe these judgments materially affect the overall analysis and conclusions contained in this article.

The following table demonstrates, by project category, the timeline for project approvals in the Project Survey:

Project Category	**Timeline**	
	Range (months)	Average (months)
Pipelines (7)	17-104 (E)[33]	49
Oil Sands (9)	20-77 (E)[34]	42
LNG (3)	27-42 (E)[35]	32
Generation (9)	14-68	37
Transmission (5)	14-57	26

The next section will present each project category, in order to identify the applicable timelines at the project-specific level.

A. PIPELINES

The timelines for obtaining the key project approvals for pipelines in the Project Survey[36] are, or are estimated to be, as follows:

Project	**Timeline (months)**	**Jurisdiction**
Northern Gateway	104	Federal
Mackenzie Gas	77	Federal
Energy East	54 (E)	Federal
Trans-Mountain Expansion	43 (E)	Federal
Westcoast Connector Gas Transmission	24	Provincial (BC)
Coastal GasLink	22	Provincial (BC)
Prince Rupert Gas Transmission	17	Provincial (BC)

[33] This range includes the Energy East project and the Trans-Mountain Expansion project which do not have final approval yet. As a result, we have used estimated final approval dates for these projects. These estimated dates were calculated as of July 2016.

[34] This range includes the Grouse project which does not have final approval yet. As a result, we have used an estimated final approval date for this project. This estimated date was calculated as of July 2016.

[35] This range includes the Pacific NorthWest LNG project which does not have final approval yet. As a result, we have used an estimated final approval date for this project. This estimated date was calculated as of July 2016.

[36] See Exhibit A, below for a brief description of the projects noted in this table and their respective proponents.

B. OIL SANDS

The timelines for obtaining key project approvals for oil sands plants and facilities in the Project Survey[37] are, or are estimated to be, as follows:

Project	Timeline (months)	Jurisdiction
Jackpine Mine Expansion	77	Joint (Federal/AB)
Joslyn North Mine	70	Joint (Federal/AB)
Grouse In Situ Oil Sands	50 (E)	Provincial (AB)
Dover Commercial	39	Provincial (AB)
Telephone Lake	36	Provincial (AB)
Taiga	33	Provincial (AB)
Kirby In Situ Oil Sands Expansion	39	Provincial (AB)
Pelican Lake Grand Rapids	27	Provincial (AB)
Quest Carbon Capture and Storage	20	Provincial (AB)

C. LNG TERMINALS

The timelines for obtaining key project approvals for LNG terminals in the Project Survey[38] are, or are estimated to be, as follows:

Project	Timeline (months)	Jurisdiction
Pacific NorthWest LNG	42 (E)	Joint (Federal/BC)
Woodfibre LNG	28	Provincial (BC)
LNG Canada	27	Provincial (BC)

37 *Ibid.*
38 *Ibid.*

D. POWER GENERATION

The timelines for obtaining key project approvals for generation and related facilities in the Project Survey[39] are as follows:

Project	Timeline (months)	Jurisdiction
Darlington New Nuclear Power Plant	68	Federal
Lower Churchill Muskrat Falls	64	Joint (Federal/Nfld)
Site C Clean Energy	41	Joint (Federal/BC)
Darlington Refurbishment	36	Federal
Keeyask Hydroelectric Generation	35	Joint (Federal/MB)
HR Milner Power Plant Expansion	30	Provincial (AB)
Mica Units 5 & 6	24	Provincial (BC)
Sheppard Energy Centre	20	Provincial (AB)
Sundance 7	14	Provincial (AB)

E. POWER TRANSMISSION

The timelines for obtaining key project approvals for transmission and related facilities in the Project Survey[40] are as follows:

Project	Timeline (months)	Jurisdiction
Labrador-Island Link	57	Federal/Nfld
Western Alberta Transmission Line	21	Provincial (AB)
Eastern Alberta Transmission Line	20	Provincial (AB)
Maritime Transmission Link	19	Joint (Federal/NS)
Heartland Transmission	14	Provincial (AB)

39 *Ibid.*
40 *Ibid.*

F. THE PROVINCIAL ADVANTAGE

As can be seen from the results of the Project Survey, the timelines for project approvals are not randomly distributed across governments or project categories. It clearly and consistently appears that project approval processes that require material federal participation will tend to take longer than those that do not.

This next table shows the timelines for project approvals broken down by project category, where the approvals process was led by, or was at least materially influenced or impacted by, the federal government.

Project Category	**Federal Timeline**	
	Range (months)	**Average (months)**
Pipelines (4)	43-104 (E)[41]	70
Oil Sands (2)	70-77	74
LNG (1)	42 (E)[42]	42
Generation (5)	35-68	49
Transmission (2)	19-57	38

By contrast, those projects for which the project approvals process was not run, or materially influenced, by the federal government were materially faster and were far more predictable in terms of timing.

Project Category	**Provincial Timeline**	
	Range (months)	**Average (months)**
Pipelines (3)	17-24	21
Oil Sands (7)	20-50 (E)[43]	33
LNG (2)	27-28	28
Generation (4)	14-30	22
Transmission (3)	14-21	18

41 This range includes the Energy East project and the Trans-Mountain Expansion project which do not have final approval yet. As a result, we have used estimated final approval dates for these projects. These estimated dates were calculated as of July 2016.

42 This range includes the Pacific NorthWest LNG project which does not have final approval yet. As a result, we have used an estimated final approval date for this project. This estimated date was calculated as of July 2016.

43 This range includes the Grouse project which does not have final approval yet. As a result, we have used an estimated final approval date for this project. This estimated date was calculated as of July 2016.

Please note that the Grouse project is the only provincial project that does not conform to the provincial advantage noted above. The application for Grouse was submitted by Canadian Natural Resources Ltd. (CNRL) on 29 February 2012 and a final decision on the regulatory process remains outstanding from the AER. The current estimated timeline for Grouse is over 50 months, which is more typical of projects impacted by federal government participation. The key factor in the delay for Grouse appears to be the prolonged depression in oil prices. CNRL is considering deferring Grouse as part of a larger effort to reduce capital spending.[44] Thus, the long timeline may be a result of CNRL slowing down the process of their own accord as market conditions continue to deteriorate.

IV. EXTENDED APPROVAL PROCESSES

In all of the projects outlined in our survey, the approval processes materially influenced or impacted by the federal government have been the longest. These project approval processes have generally been led by federal review panels, agencies, or federally mandated review panels conducted by the federal government jointly with an effected province, in each case acting in a quasi-judicial manner and in accordance with a fairly formal legal process. In particular, we note the following:

Project	**Timeline (months)**	**Agency**
(a) Northern Gateway	104	Federal (Review Panel)
(b) Mackenzie Gas	77	Federal (Review Panel)
(c) Jackpine Expansion	77	Joint (Review Panel)
(d) Joslyn North Mine	70	Joint (Review Panel)
(e) Darlington New Nuclear Power Plant	68	Federal (Review Panel)
(f) Labrador-Island Link	57	Federal/Nfld
(g) Energy East	54 (E)	Federal (NEB)
(h) Trans-Mountain Expansion	43 (E)	Federal (NEB)

The following is a brief discussion with respect to these projects.

[44] Rebecca Penty, "Canadian Natural May Defer Grouse Project on Weak Prices," *Bloomberg* (6 November 2014), online: <www.bloomberg.com/news/articles/2014-11-06/canadian-natural-may-defer-grouse-project-on-weak-prices>. See also Judy McKinnon, "Canadian Natural Profit Drops 89% Company Cuts Spending," *The Wall Street Journal* (3 March 2016), online: <www.wsj.com/articles/canadian-natural-profit-drops-89-company-cuts-spending-1457011560>.

A. NORTHERN GATEWAY

Key dates:

Initial Filing:	31 October 2005
Environmental Assessment Commenced:	5 May 2011
Final Decision:	17 June 2014[45]

Northern Gateway consists of a marine terminal in Kitimat, British Columbia, an inland terminal in Bruderheim, Alberta, and two pipelines, approximately 1,177 km in length, running across the two terminals. Gateway Pipelines is an affiliate of Enbridge, which proposes to construct and operate Northern Gateway,[46] with an estimated cost of $7.9 billion.[47]

One pipeline would be a 36-inch export pipeline that would carry an average of 525,000 barrels per day (bbl/d) of oil product west from Bruderheim to Kitimat and a parallel 20-inch import pipeline that would carry an average of 193,000 bbl/d of condensate east from Kitimat to a terminal in Bruderheim.[48]

As an interprovincial pipeline, Northern Gateway was subject to the jurisdiction of the NEB and was required to comply with applicable CEAA legislation. The project approval process was administered by a joint review panel named by the chair of the NEB and the federal Minister of the Environment.[49]

Approximately 104 months elapsed between the date of the initial filing for Northern Gateway and the date of the final decision.[50] However, roughly 19 months between 26 November 2006 and 18 June 2008 represented a deferral requested by Enbridge as a result of project economics and general market conditions.[51] The joint review panel conducted public hearings over the better part of three years (2011 to 2013, inclusive).[52] Over 1,000 witnesses provided oral statements or other evidence at the various hearings, over 200

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45 Canadian Environmental Assessment Agency, "Enbridge Northern Gateway Project" (Ottawa: CEAA, 17 June, 2014), online: <www.ceaa-acee.gc.ca/050/details-eng.cfm?evaluation=21799>.

46 Gateway Pipeline Limited Partnership, *Preliminary Information Package: Enbridge Gateway Project* (Calgary: Gateway Pipeline Inc, 2005), online: <www.ceaa-acee.gc.ca/050/documents_staticpost/cearef_21799/2075.pdf>.

47 Justine Hunter & Carrie Tait, "Why Northern Gateway is Probably Dead," *The Globe and Mail* (5 December 2015), online: <www.theglobeandmail.com/news/british-columbia/why-the-northern-gateway-project-is-probably-dead/article27620342>.

48 *Ibid*.

49 Canadian Environmental Assessment Agency, "Notice of Referral to a Review Panel: Northern Gateway Pipeline Project" (Ottawa: CEAA, 29 September, 2006), online: <www.ceaa-acee.gc.ca/050/document-eng.cfm?document=80035>.

50 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Northern Gateway Pipeline" (Ottawa: MPMO, 2012), online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=82&psid=0>.

51 Canadian Environmental Assessment Agency, "Additional Information: Enbridge Northern Gateway Project" (Ottawa: CEAA, 17 June 2014), online: <www.ceaa.gc.ca/050/documents-eng.cfm?evaluation=21799&page=9&type=1&sequence=0>.

52 Canadian Environmental Assessment Agency, "Hearing Documents: Enbridge Northern Gateway Project" (Ottawa: CEAA, 4 December 2013), online: <www.ceaa-acee.gc.ca/050/documents-eng.cfm?evaluation=21799&type=4>.

interveners and government participants presented oral and written evidence in the formal hearings, and over 50 participated through to filing final arguments.[53]

The Northern Gateway approval was subject to 209 conditions. The project approval process for Northern Gateway was ungainly, at best, and may well have been an impetus to the determination by the Harper government to materially reform the *CEAA* 1992.[54]

B. MACKENZIE GAS

Key dates:

Initial Filing:	7 October 2004[55]
Environmental Assessment Commenced:	18 July 2005[56]
Final Decision:	10 March 2011[57]

Mackenzie Gas is a joint proposal by Imperial Oil Resources Ventures Limited (Imperial Oil), as operator, Shell Canada Limited, ConocoPhillips Canada (North) Limited, ExxonMobil Canada Properties, and the Aboriginal Pipeline Group. This group has proposed to develop three anchor fields holding six trillion cubic feet of natural gas in the Mackenzie Delta, Northwest Territories, gathering lines, processing facilities, and a 1,200 km natural gas pipeline from Inuvik, Northwest Territories to Northern Alberta.[58] Mackenzie Gas would connect otherwise stranded natural gas resources in the Mackenzie Delta to markets in the rest of North America. Mackenzie Gas had capital cost initially estimated at $7.5 billion — over the years, pending the start of construction that has been deferred or delayed by almost a decade, estimated capital costs have risen to over $16 billion.[59] As of 2016, the project has not yet started construction and the economics of the project have changed dramatically since the initial filing date.

The project approval process for Mackenzie Gas can be divided into five significant phases. First, from 7 October 2004 to 1 February 2006, Imperial Oil filed a draft EIS and a joint review panel reviewed the EIS and prepared for public hearings.[60] Second, from 14 February 2006 to 29 November 2007, the joint review panel held 115 days of public hearings

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53 *Northern Gateway Pipelines Inc. Written Argument* (31 May 2013), A3I1I9 at 20, online: NEB <https://docs.neb-one.gc.ca>.

54 *Ibid*.

55 Imperial Oil Resources Ventures, "Application by Imperial Oil Resources Ventures Limited Pursuant to Parts III and IV of the NEB Act" (7 October 2004), online: <www.mackenziegasproject.com/the Project/regulatoryProcess/applicationSubmission/Documents/CPCN%20Gas%20Pipeline%20Signed %20Application.pdf>.

56 *Joint Review Panel for the MacKenzie Gas Project* (18 July 2005), A2F2V4, online: NEB <https://docs.neb-one.gc.ca>.

57 *Mackenzie Gas Project: Certificate of Public Convenience GC-116* (10 March 2011), A1Y0T6, online: NEB <https://docs.neb-one.gc.ca> [NEB, "Mackenzie Gas Project Certificate"].

58 Canada, Ministry of Environment, *Foundation for a Sustainable Northern Future: Report of the Joint Review Panel for the Mackenzie Gas Project*, vol 1 (Ottawa: Government of Canada, March 2010) at 226, online: <www.reviewboard.ca/upload/project_document/EIR0405-001_JRP_Report_of_Environmental_Review_Executive_Volume_I.PDF>.

59 Jeffery Jones, "Mackenzie Valley's New Price Tag: $20-Billion (And Rising)," *The Globe and Mail* (23 December 2013), online: <www.theglobeandmail.com/report-on-business/international-business/us-business/mackenzie-valleys-new-price-tag-20-billion-and-rising/article16095114/>.

60 *In the Matter of the Mackenzie Gas Project Written Evidence of Sandae Energy Ltd* (1 June 2005), A0R0Q3, online: NEB <https://docs.neb-one.gc.ca>.

in Edmonton, Alberta. Third, on 30 December 2009, the joint review panel delivered its report and recommendations to the federal government and the government of the Northwest Territories. Fourth, the federal government prepared a response to the joint review panel report which took 11 months to finalize. The final stage of the project approval process included the referral of the matter to the NEB to complete the process of issuing a Certificate of Public Convenience and Necessity, which occurred March 2011.[61]

The project approval process was administered by a joint review panel appointed by the Mackenzie Valley Environmental Impact Review Panel, the Inuvialuit Game Council, and the federal Minister of Environment.[62] The joint review board operated in accordance with a Co-operation Plan for the Environmental Assessment and Regulatory Review of a Northern Gas Pipeline Project through the Northwest Territories involving various federal agencies with an interest in the Mackenzie Valley (Co-operation Plan).[63]

It is widely believed that the federal government found the conduct of the project approval process for Mackenzie Gas profoundly unsatisfactory. Shortly after the project approval process concluded, the federal government passed sweeping changes to the CEAA process. Most significantly, these changes sought to impose some further discipline and controls of the project approvals process by imposing a set of deadlines or time limits for reaching decisions, and also modified the decision process to ensure final decisions and judgments were made exclusively by the federal cabinet.

C. JACKPINE MINE EXPANSION[64]

Key dates:

Initial Filing:	16 July 2007
Environmental Assessment Commenced:	13 December 2010
Final Decision:	6 December 2013

Shell Canada Limited, for and on behalf of Shell Canada Energy, Athabasca Oil Sands Project joint venture owners, Chevron Canada, and Marathon Oil Canada, proposes to expand its current Jackpine Mine to access adjacent oil sands mining leases. The Jackpine Mine Expansion project (Jackpine Expansion) is to be located about 70 km north of Fort McMurray on the east side of the Athabasca River. Jackpine Expansion would increase the

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61 Mackenzie Gas Project, "Project Phases and Scheduling" (January 2004), online: <www.mackenziegasproject.com/moreInformation/publications/documents/Project_Phases&Sched.pdf>; Canadian Environmental Assessment Agency, *Governments of Canada & of the Northwest Territories: Final Response to the Joint Review Panel Report for the Proposed Mackenzie Gas Project* (Ottawa: CEAA, November 2010), online: <www.ceaa.gc.ca/Content/1/5/5/155701CE-6B5C-4F54-84E3-5D9B8297CD15/MGP_Final_Response.pdf>. See also NEB, "Mackenzie Gas Project Certificate," *supra* note 57.

62 Mackenzie Gas Project, "Project Phases and Scheduling," *ibid* at 2.

63 *Ibid*.

64 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Jackpine Oil Sands Mine Expansion," online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=111&psid=0>.

capacity of the Jackpine Mine by 100,000 bbl/d, bringing the total bitumen production capacity of the mining facility to 300,000 bbl/d.[65]

The environmental assessment of Jackpine Expansion was initiated under the former *CEAA* 1992. At that time, there was no requirement for a proponent to "formally apply" to the CEAA for approval of a project through the submission of a project description, as is currently required under the *CEAA* 2012. However, the CEAA did officially commence the environmental assessment and referred the project to a review panel on 13 December 2010.[66] The joint review panel submitted its report to the Minister of Environment and the AER (formerly the Energy Resources Conservation Board) on 9 July 2013, including 88 recommendations to improve oversight and address the overall impacts of the project. Approval was granted on 6 December 2013, a decision which took 77 months to arrive at.[67]

A large portion of the 405-page ruling was dedicated to an unprecedented list of warnings pertaining to the negative impacts on the environment and on Aboriginal communities.[68] Due to the increasing public scrutiny that the oil sands industry is undergoing, this decision signals that regulators are not willing to take responsibility for broader societal choices and instead prefer that government take the blame.[69]

D. JOSLYN NORTH MINE[70]

Key dates:

Initial Filing:	February 2006
Environmental Assessment Commenced:	12 February 2008
Final Decision:	8 December 2011

Total E&P Canada Ltd. (Total) is proposing the Joslyn North Oil Sands Mine development (Joslyn North Mine) in northeastern Alberta. The construction phase was scheduled to begin in the winter 2011/2012 with the mining production phase proposed to start in early 2017 and continue until 2037. Joslyn North Mine is one of several actual or proposed oil sands developments in the vicinity of the Athabasca River, north of Fort McMurray, Alberta.

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65 Shell Canada Ltd, "Project Description: Jackpine Oil Sands Expansion Project," online: <www.shell.ca/can/en_ca/about-us/projects-and-sites/jackpine-mine-expansion.html>. See also Canada, Ministry of the Environment, "Decision Statement Issued Under Section 54 of the *Canadian Environmental Assessment Act, 2012*" (6 December 2013), online: <www.ceaa.gc.ca/050/documents/p59540/96773E.pdf> ["Jackpine Decision Statement"].

66 Canadian Environmental Assessment Agency, "Jackpine Mine Expansion Project" (Ottawa: CEAA, 1 September 2016), online: <www.ceaa.gc.ca/050/details-eng.cfm?evaluation=59540>.

67 "Jackpine Decision Statement," *supra* note 65.

68 Claudia Cattaneo, "Shell Jackpine Oil Sands Project Approved by Regulator, but with Slate of Environmental Warnings," *Financial Post* (10 July 2013), online: <business.financialpost.com/news/energy/shell-jackpine-oil-sands-project-approved-by-regulator-but-with-slate-of-environmental-warnings?>.

69 *Ibid*.

70 *Report of the Joint Review Panel Established by the Federal Minister of the Environment and the Energy Resources Conservation Board* (27 January 2011), 2011 ABERCB 005 at 3, online: ERCB <www.aer.ca/documents/decisions/2011/2011-ABERCB-005.pdf> [*JRP Joslyn*]. See also Canadian Environmental Assessment Agency, "Joslyn North Mine Project, Townships 94-96, Ranges 11-13, West of 4th Meridian" (Ottawa: CEAA, 5 December 2012), online: <www.ceaa-acee.gc.ca/052/details-eng.cfm?pid=37519>.

Joslyn North Mine consists of an oil sands surface mine and ore preparation and bitumen extraction facilities. The Joslyn North Mine portion of the lease is expected to yield over 874 million barrels of bitumen over its 20 year lifespan at a production rate of approximately 160,000 bbl/d.[71]

In August 2008, the federal Minister of Environment and the chairman of the Energy Resources Conservation Board (currently the AER) established a joint review panel.[72] The joint review panel granted approval in January 2011, which included 20 conditions for Total and 17 recommendations for governments, even though no significant environmental impacts were identified in the joint review panel's report.[73]

In March 2014, Total submitted an application to the AER to amend the initial approval for Joslyn North Mine to increase the size of the project. However, due to changes in global energy market conditions, Total withdrew the project from Alberta regulatory consideration in February 2015. The estimated cost of the project was $11 billion.[74]

E. DARLINGTON NEW NUCLEAR POWER PLANT[75]

Key dates:

Initial Filing:	26 September 2006
Environmental Assessment Commenced:	1 June 2007
Final Decision:	8 May 2012[76]

In 2006, Ontario Power Generation (OPG), an Ontario Crown Corporation, proposed to construct and operate four new nuclear reactors, with an aggregate capacity of 4,800 megawatts, some 65 km east of Toronto (Darlington New Build).[77] The aggregate capital costs for the Darlington New Build would almost certainly have been a minimum of $20 billion.[78]

The project approval process was administered by a joint review panel appointed by the chair of the CNSC and the federal Minister of the Environment.[79]

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71 Suncor Energy Inc, "Mining" (2016), online: <www.suncor.com/about-us/oil-sands/mining>.

72 *JRP Joslyn*, *supra* note 70.

73 *Ibid* at 1–2.

74 Carrie Tait, "Total Shelves $11-Billion Alberta Oil Sands Mine," *The Globe and Mail* (29 May 2014), online: <www.theglobeandmail.com/report-on-business/joslyn/article18914681/>.

75 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Darlington New Nuclear Power Plant" (Ottawa: MPMO, 14 June 2012), online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=85&psid=4>. See also Canadian Nuclear Safety Commission, "Darlington Nuclear Power Plant," online: <www.nuclearsafety.gc.ca/eng/resources/status-of-new-nuclear-projects/darlington/index.cfm> [CNSC, "Darlington"].

76 Natural Resources Canada, News Release, "Government Accepts Recommendations of Joint Review Panel for Darlington New Nuclear Power Plant Project" (2 May 2012), online: <www.nrcan.gc.ca/media-room/news-release/2012/2011>.

77 See also CNSC, "Darlington," *supra* note 75.

78 The Canadian Press, "New Nuclear Reactors Not in Ontario's Future," *CBC News* (10 October 2013), online: <www.cbc.ca/news/canada/toronto/new-nuclear-reactors-not-in-ontario-s-future-1.1959328>.

79 Canadian Nuclear Safety Commission, "Joint Review Panel (JRP): Darlington New Nuclear Power Plant" (Ottawa: CNSC, 2011), online: <nuclearsafety.gc.ca/eng/the-commission/joint_review_panel/darlington/index.cfm>.

OPG engaged in a prescribed process of consultation with the public. Upon the issuance of the CEAA Decision Statement, several interveners brought an application for judicial review of the CNSC decision, recommending a Decision Statement in connection with Darlington New Build. In 2014, the Federal Court required further consideration be given to hazardous emissions from Darlington New Build, including the treatment of spent nuclear waste. A year later, on 10 September 2015, the decision of the Federal Court was overturned.[80]

In the meantime, OPG announced in October 2013 that it was withdrawing its plans for Darlington New Build and would proceed instead with the refurbishment of four existing reactors at the Darlington generating station.[81]

F. LABRADOR-ISLAND LINK[82]

Key dates:

Initial Filing:	2 February 2009
Environmental Assessment Commenced:	26 November 2009
Final Decision:	26 November 2013

Nalcor Energy, a Newfoundland crown corporation, proposed to construct and operate a 450 kilovolt direct current transmission line, running 1,100 km from the Muskrat Falls Dam near Gull Island, Labrador, under the Strait of Belle Isle between Labrador and Newfoundland, and then overland to Soldier's Pond on Newfoundland's Avalon Peninsula (Labrador-Island Link).[83] The estimated capital costs for Labrador-Island Link were in excess of $2.1 billion.[84]

The project approval process was administered separately by the federal government and government of Newfoundland and Labrador.[85] While the project was located entirely within the Province of Newfoundland and Labrador, significant federal approvals were required under the *Fisheries Act* and various navigable waters legislation.[86] In addition, the federal

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80 *Ontario Power Generation Inc v Greenpeace Canada*, 2015 FCA 186, 388 DLR (4th) 685.

81 "Ontario Unveils $12.8B Darlington Nuclear Refurbishment," *CBC News* (11 January 2016), online: <www.cbc.ca/news/canada/toronto/darlington-nuclear-refurbishment-1.3395696>.

82 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Labrador-Island Transmission Link" (Ottawa: MPMO, 14 June 2012), online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=94&psid=0>. See also Canadian Environmental Assessment Agency, "Notice of Commencement of an Environmental Assessment: Labrador-Island Transmission Link Project" (Ottawa: CEAA, 2013), online: <www.ceaa.gc.ca/050/document-eng.cfm?document=80048> [CEAA, "Notice of Commencement"].

83 Newfoundland and Labrador, Department of Environment and Conservation, "Labrador-Island Transmission Link," online: <www.env.gov.nl.ca/env/env_assessment/projects/Y2010/1407/index.html>.

84 Government of Newfoundland and Labrador, "Quick Facts: Muskrat Falls Development Generation and Transmission Project Costs," online: <www.gov.nl.ca/lowerchurchillproject/backgrounder_7.htm>.

85 Canadian Environmental Assessment Agency, *Government of Canada Response to the Report of the Joint Federal-Provincial Review Panel for Nalcor's Lower Churchill Generation Project in Newfoundland and Labrador* (Ottawa: CEAA, 2012) at 2–4, online: <www.ceaa-acee.gc.ca/050/documents/54772/54772E.pdf>.

86 *Fisheries Act*, RSC 1985, c F-14; Canadian Environmental Assessment Agency, "Background Information: Comprehensive Study Pursuant to the *Canadian Environmental Assessment Act* of the Labrador-Island Transmission Link," (Ottawa: CEAA, July 2010), online: <www.ceaa.gc.ca/050/documents/44203/44203E.pdf> [CEAA, "Background Information"].

government agreed to provide financial assistance for elements of the Muskrat Falls Dam and indirectly for the Labrador-Island Link. The project approval process was conducted co-operatively with Newfoundland's Department of Environment and Conservation[87] under its *Environmental Assessment Regulations, 2003*.[88]

The project approvals process took in excess of four years (57 months), from the date of the initial filing to the final decision. The project approval process initially commenced under the *CEAA* 1992 as a limited project screening but, in April 2010, was converted to a more rigorous comprehensive study under the *CEAA* 1992, in response to judicial criticism of the *MiningWatch* case.[89]

In August 2011, the Ministry of Natural Resources was added late as a responsible authority in the CEAA review process as a result of the federal government agreeing to provide financial assistance for the Muskrat Falls Dam and the related Labrador-Island Link.[90] In December 2012, Environment Canada ceased to be a responsible authority for purposes of the project approval process as modifications to the project eliminated the need for certain permits under the *Canadian Environmental Protection Act*.[91]

Nalcor Energy conducted a prescribed program of public consultations and engaged in detailed and monitored consultations with the Innu Nation, the NunatuKaut, the Nunatsiavut Governments, and at least seven other First Nations or specified communities.[92]

In July 2010 a series of amendments to the *CEAA* 1992 came into effect placing CEAA in an enhanced role in performing environmental assessments for the federal government, and from that date the CEAA assumed responsibility for the environmental assessment.[93]

87 NLR 54/03.
88 CEAA, "Background Information," *supra* note 85.
89 CEAA, "Notice of Commencement," *supra* note 82; *MiningWatch*, *supra* note 31.
90 Canadian Environmental Assessment Agency, *Labrador-Island Transmission Link: Comphrehensive Study Report* (Ottawa: CEAA, June 2013) at 2, online: <www.ceaa.gc.ca/050/documents/p51746/90383E.pdf>. This agreement was finalized on 30 November 2012.
91 *Ibid*; *Canadian Environmental Protection Act*, SC 1999, c 33.
92 *Ibid* at 15.
93 CEAA, "Notice of Commencement," *supra* note 82.

G. ENERGY EAST[94]

Key dates:

Initial Filing:	4 March 2014
Environmental Assessment Commenced:	June 2016
Final Decision:	(estimated) September 2018

Energy East Pipeline Ltd., a wholly owned subsidiary of TransCanada Oil Pipelines (Canada) Ltd., proposes to construct and operate the Energy East Pipeline Project (Energy East). Energy East is a 4,500 km pipeline, with the capacity to carry 1.1 million bbl/d of crude oil, running from Alberta and Saskatchewan to refineries in Eastern Canada (Quebec and New Brunswick as well as to marine terminals in the respective provinces).[95] In 2015, the proposal was amended to provide that there would be no Quebec marine terminal.[96]

The NEB is administering the project approvals process. Almost two years have passed since Energy East made its first filing, and the formal review of the project has yet to commence. This time has been spent in a pre-application phase, as the proposed project is analyzed and scoped. On 17 December 2015 Energy East amended its application, making numerous proposed route changes, altering its plans to deliver oil to a port in Quebec.[97] Until the revised material has been reviewed and accepted by the NEB, the formal review process will not commence, including the triggering of any required timelines. In addition, on 27 January 2016, the new federal government announced fresh requirements for Energy East requiring that the NEB consider the "upstream" Greenhouse Gas (GHG) emissions caused by or resulting from expansion of pipeline capacity.[98]

Energy East is expected to cost in excess of $15 billion and has become highly controversial.[99] A substantial amount of interveners have registered to participate in any future NEB hearings, of which over 50 are First Nations. Before Energy East's application

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94 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Energy East Oil Pipeline" (Ottawa: MPMO, 14 June 2012), online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=255&psid=2>. The NEB estimates that, based on the 21-month extended time limit, they will submit their report to the GIC by March 2018. An additional three months have been allotted to the GIC to make a final decision. See Government of Canada, New Release, "NEB Releases Preliminary Timeline for Energy East" (26 April 2016), online: NEB <news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1057109&crtr.tp1D=1>.

95 TransCanada Pipelines Limited, *Energy East Pipeline Project: Project Description*, vol 1 (Calgary: TransCanada, 2014), online: <www.energyeastpipeline.com/wp-content/uploads/2014/03/Energy-East-Project-Description-Volume-1.pdf>.

96 *TransCanada Pipelines Limited Eastern Mainline Project Application Amendment* (December 2015), A748778, online: NEB <https://docs.neb-one.gc.ca>.

97 *Ibid*.

98 Natural Resources Canada, News Release, "Government of Canada Moves to Restore Trust in Environmental Assessment" (27 January 2016), online: <www.news.gc.ca/web/article-en.do?nid=1029999> [NRC, News Release]. See also Natural Resources Canada, News Release, "Interim Measures for Pipeline Reviews" (27 January 2016), online: <news.gc.ca/web/article-en.do?mthd=tp&crtr.page=1&nid=1029989>.

99 "PotashCorp Mine Closure Will Have Widespread Economic Impact" *CBC News* (20 January 2016), online: <www.cbc.ca/news/canada/new-brunswick/potash-mine-picadilly-impact-1.3410569>.

has even been accepted as complete, there has been at least one application for injunctive relief, which was denied by the Federal Court.[100]

H. TRANS MOUNTAIN EXPANSION[101]

Key dates:

Initial Filing:	23 May 2013
Environmental Assessment Commenced:	2 April 2014
Final Decision:	(estimated) December 2016 received on 19 May 2016

Trans-Mountain Pipeline ULC (TMP) is proposing to expand the existing Trans-Mountain Pipeline System between Edmonton, Alberta and Vancouver, British Columbia (TMPL).[102] The capacity of TMPL would be increased from the current 300,000 bbl/day to 890,000 bbl/d[103] at an estimated capital cost of $6.8 billion.[104]

The authority responsible for administering the project approvals process for TMPL is the NEB.[105] The project approval process for TMPL was originally expected to have been completed by July 2015, in accordance with the 15 month time limit under the *CEAA* 2012.[106] TMPL was initially expected to have an in-service date of 2017. Moreover, on 27 January 2015, the new federal government announced changes to the environmental assessment process for certain major projects, including TMPL, to require any environmental agency to assess the "upstream" costs and consequences of proceeding with TMPL as well as requiring enhanced consultation with effected First Nations.[107] In connection with those changes the federal government also proposed to extend the time limits for the NEB to make its recommendation by three months and to extend the time period for the federal government

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100 Nigel Bankes, "Pipelines, the National Energy Board and the Federal Court" (2015) 3:2 Energy Regulation Q 59, online: <www.energyregulationquarterly.ca/case-comments/pipelines-the-national-energy-board-and-the-federal-court#sthash.xWjptNir.dpbs>.

101 Canada, Major Projects Management Office, "MPMO Tracker, Milestones & Tasks: Trans Mountain Oil Pipeline Expansion" (Ottawa: MPMO, 2012), online: <www2.mpmo-bggp.gc.ca/MPTracker/project-projet-03.aspx?pid=213&psid=0>. See also Canada, National Energy Board, "Key Milestones for Trans Mountain Expansion Project Review," online: <www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/mlstns-eng.html>; Canadian Environmental Assessment Agency, "Trans Mountain Expansion Project," (Calgary: CEAA, 18 August 2016), online: <www.ceaa.gc.ca/050/details-eng.cfm?evaluation=80061> [CEAA, "TransMountain Expansion"].

102 CEAA, "TransMountain Expansion," *ibid*.

103 Trans Mountain Pipeline ULC, *Trans Mountain Expansion Project: An Application Pursuant to Section 52 of the National Energy Board Act*, vol 2 (KinderMorgan Canada, 2013), online: <transmountain.s3.amazonaws.com/application14/V2_PROJ_OVERVIEW.pdf> at 1 [TMP, *Application*].

104 Conference Board of Canada, "The Trans Mountain Expansion Project: Understanding the Economic Benefits for Canada and Its Regions" (6 March 2014) in TMP, *Application*, *ibid* at Appendix B, 49.

105 TMP, *Application*, *ibid* at 2-6.

106 "Trans Mountain Pipeline ULC, Trans Mountain Expansion Project" (2 April 2014), Hearing Order OH-001-2014, online: <www.burnaby.ca/Assets/TMEP/NEB+Public+Hearing+Order.pdf>.

107 NRC, News Release, *supra* note 98.

to make its final decision by four months.[108] The NEB granted conditional approval for TMPL on 19 May 2016 subject to the satisfaction of 157 conditions prior to final approval.[109]

If TMPL complies with the timing rules established by the new federal government, the project approval process will have lasted at least 39 months from the date of TMPL's initial filing. Of that time, however, roughly three months was an excluded period resulting from a procedural issue relating to the federal government's decision to appoint an expert witness for Energy East to the NEB — though not to the panel responsible for hearing the Energy East application.[110] In addition, the timing has been complicated by the federal government's decision to require Energy East to file evidence of the impact of the project on "upstream" GHG emissions that will be heard by a three-member panel appointed on 17 May 2016.[111]

Recently, BCEAO has put up a new hurdle in advising TMPL that the expansion project will have to pass provincial scrutiny before it can proceed.[112] Due to a British Columbia Supreme Court decision related to Enbridge's proposed Northern Gateway project, the province cannot assign environmental assessment responsibilities solely to the NEB.[113] The Court ruled that British Columbia's *Environmental Assessment Act*[114] applies to NEB projects to the extent that they require a provincial environmental assessment certificate.[115]

V. THE ENVIRONMENTAL ASSESSMENT PROCESS IN OTHER COMPARABLE JURISDICTIONS

As noted in Part II in this article, much of Canada's initial environmental assessment process comes out of similar processes in the US. Canada and the US continue to be plagued by many of the same issues.

A. UNITED STATES

In the US, all energy projects under federal jurisdiction are subject to *NEPA*.[116] *NEPA* requires federal agencies to conduct environmental assessments to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by

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108 Note that the NEB will make its final recommendation to the Governor in Council by 20 May 2016. See Canada, National Energy Board, "Trans Mountain Pipeline ULC - Trans Mountain Expansion" (13 July 2016), online: <www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/index-eng.html>.

109 Brent Jang & Shawn McCarthy, "NEB Conditionally Approves Trans Mountain Pipeline Expansion," *The Globe and Mail* (19 May 2016), online: <www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/neb-conditionally-approves-trans-mountain-oil-pipeline-expansion/article30097733/>.

110 *Trans Mountain Pipeline ULC (Trans Mountain) Application for the Trans Mountain Expansion Project Procedural Decision No 18: Revised Hearing Events and Steps Table* (24 September 2015), A4T5R5, online: <https://docs.neb-one.gc.ca>.

111 Chris Hall, "Trudeau Government Names Trans Mountain Environmental Review Panel," *CBC News* (17 May 2016), online: <www.cbc.ca/news/politics/trans-mountain-kinder-morgan-pipeline-review-panel-1.3585154>.

112 Mark Hume, "Trans Mountain Pipeline Project to Require B.C. Environmental Test," *The Globe and Mail* (25 April 2016), online: <www.theglobeandmail.com/news/british-columbia/trans-mountain-pipeline-project-to-require-bc-environmental-test/article29756721/>.

113 *Coastal First Nations*, *supra* note 31.

114 SBC 2002, c 43.

115 *Coastal First Nations*, *supra* note 31.

116 *Supra* note 6.

NEPA is broad and includes decisions on permit applications, federal land management actions, and construction of highways and other publicly owned facilities.

The federal agency carrying out the federal action is responsible for complying with the requirements of *NEPA*. In many cases, there is more than one federal agency involved in the proposed action. In this situation, a "lead agency" is designated to supervise the preparation of the environmental assessment. A federal, state, tribal, or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency that has the responsibility to assist the lead agency in the *NEPA* process.[117] The *NEPA* process is supervised by the Council on Environmental Quality (CEQ).

Under the *NEPA* process, a federal action may involve three different levels of analysis: categorical exclusion determination, environmental assessment, and EIS. If a categorical exclusion determination does not apply to the decision, the federal agency may then prepare an environmental assessment that determines whether or not a federal action has the potential to cause significant environmental effects. If the environmental assessment determines that the environmental impacts of a proposed federal action will be significant, an EIS is prepared. The EIS process requires the agency to solicit participation from the public through publishing a notice of intent that starts the period in which the federal agency and the public collaborate to define the range of issues and possible alternatives to be addressed in the EIS. A draft EIS is published for public review and comment for a minimum of 45 days. A final EIS is then published, which provides responses to substantive comments, and commences the 30 day "wait period" before a final decision on a proposed action can be made.[118] The *NEPA* process does not mandate formal hearings or other formal evidentiary sessions.

Many federal agencies have developed their own procedures to comply with *NEPA*. Concurrent with the *NEPA* process, proponents of a project must comply with the certification process from their respective federal agency, if applicable. For example, the Federal Energy Regulatory Commission (FERC) has jurisdiction over all interstate natural gas pipelines, as set out in Subsection 7(c) of the *Natural Gas Act of 1938*,[119] and has its own *NEPA* process developed that is concurrent with its certification process. Prior to applying to FERC for a pipeline certificate, applicants may file a request with FERC to use the commission's pre-filing procedures seven to eight months prior to filing a certificate application.[120] Through this process, an applicant notifies all stakeholders about a proposed project so that the applicant and commission staff can provide a forum to hear stakeholder concerns. The applicant may then incorporate proposed environmental mitigation measures into the project design, taking into account stakeholder input. The expectation is that the pre-filing will improve an applicant's proposal and avoid problems during the subsequent certification review.[121]

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117 US Environmental Protection Agency, "What is the National Environmental Policy Act?" (31 August 2016), online: <www.epa.gov/nepa/what-national-environmental-policy-act>.

118 US Environmental Protection Agency, "National Environmental Policy Act Review Process" (5 July 2016), online: <www.epa.gov/nepa/national-environmental-policy-act-review-process>.

119 15 USC § 717f(c) (1988).

120 18 CFR § 157.21 (2012).

121 US, Congressional Research Service, "Interstate Natural Gas Pipelines: Process and Timing of FERC Permit Application Review" (Washington, DC: CRS, 2015), online: <https://www.fas.org/sgp/crs/misc/R43138.pdf>.

Although *NEPA* does not prescribe universal time limits, federal agencies are encouraged to set time limits appropriate to individual actions. For example, FERC establishes regulations requiring certificate-related final decisions from other federal or state agencies (acting pursuant to delegated federal authority) no later than 90 days after the final environmental document is issued by FERC. These provisions are intended to address concerns that some interstate gas pipeline and energy infrastructure approvals are being unduly delayed by a lack of coordination or insufficient action among agencies involved in the certification process.[122]

According to a February 2013 Government Accountability Office Study of FERC pipeline certificate reviews, the average time from pre-filing to certification was 558 days. Subtracting an estimated 210 day pre-filing period from the 558 days reported by the study for the whole process suggests a post-filing review period of 348 days, or about 11.6 months, on average, for projects that pre-filed.[123] Generalizing from the *NEPA* and certification process led by FERC, the time frame is roughly seven to eight months for pre-filing and 11 to 12 months for post filing.

Although *NEPA* does not prescribe universal timelines for its process, statutory timelines for energy permits have been proposed by Congress on other agencies over the last ten years. The following are some examples of energy projects with explicit timelines:

- The *Mineral Leasing Act*, as amended, requires the Secretary of the Interior to approve or disapprove of drilling permit applications submitted by federal leaseholders within 30 days of submission unless they fail to meet certain required criteria.[124]

- The Maritime Administration (MARAD) has a 330-day time limit for granting or denying a deep-water port license, including a 45-day deadline after the last public hearing for specific agency reviews. Notably, this provision applies to offshore LNG terminal applications.[125]

- The *Outer Continental Shelf Lands Act* as amended requires the Secretary of the Interior to approve or disapprove of oil and gas exploration plans (drilling permits) submitted by federal leaseholders within 30 days of submission unless the plans fail to meet certain required criteria.[126]

- The *Nuclear Waste Policy Act of 1982* requires the Nuclear Regulatory Commission to issue a final decision approving or disapproving a nuclear waste repository

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122 *Ibid* at 6.

123 US, Government Accountability Office, "Time Frames for Interstate and Intrastate Pipeline Permitting Processes Vary Because of Multiple Factors" in *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, GAO-13-221, (Washington, DC: GAO, 2013), online: <www.gao.gov/assets/660/652225.pdf> (the projects reviewed "varied in size and function and included pipelines, pipeline expansions, compressor stations, and other pipeline facilities," so its calculations of the time required for certification may not be generalizable to any specific future project at 26).

124 30 USC § 226(p) (2012).

125 33 USC § 1504 (2012).

126 43 USC §1340(c) (1988).

project proposal "not later than the expiration of 3 years after the date of the submission of such application."[127]

- The *Energy Policy Act of 2005* gives FERC authority to permit an electric transmission siting application if "a State commission or other entity that has authority to approve the siting of the facilities has—(i) withheld approval for more than 1 year."[128]

- The *Energy Policy Act of 2005* requires the Secretary of Energy to approve or disapprove a tribal energy resource agreement from an Indian tribe not later than 270 days after receiving an initial agreement or not later than 60 days after the Secretary receiving a revised agreement.[129]

- The *Temporary Payroll Tax Cut Continuation Act of 2011* required the Secretary of State to issue a permit for the Keystone XL pipeline within 60 days, unless the President determined the project not to be in the national interest.[130]

The US faces three main challenges with regards to energy project development:

(1) The executive branch of the government has limited authority to exercise discipline over various competing regulatory agencies. This often results in lack of coordination and even conflicting results that unnecessarily prolong final approvals. For example, although FERC sets regulations that require other agencies to issue their respective regulatory approvals within 90 days of the final decision made by FERC, nearly 20 percent of the certifications were delayed 90 days or longer beyond FERC's agency deadline.[131]

(2) Energy projects in the US are subject to high levels of political intervention that may help or hurt approvals. Political involvement may be in the form of legislation, withheld appropriations, or other more subtle forms of persuasion. These political interventions increase the level of uncertainty with the approvals process.

(3) The judiciary in the US often plays a disruptive role that can contribute to unpredictability and delay for energy development. This is particularly prevalent with energy projects subject to the jurisdiction of state regulatory agencies, such as oil pipelines. It appears courts in certain states tend towards decisions that facilitate development while courts in other states tend towards disruptions.

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127 42 USC § 10134(d) (1988).
128 16 USC § 824p (2006).
129 25 USC § 3504(e) (2006).
130 Pub L No 112-78, § 501(a), 125 Stat 1280 at 1289 (2011).
131 INGAA Foundation, "Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAct 2005?," Report No 2012.05 (2015) at 14, online: <www.ingaa.org/File.aspx?id=19472&v=77d7be9>.

B. AUSTRALIA

Most energy projects in Australia have seen greater success relative to similar projects in North America from a point of view of obtaining approvals in a timely manner. Indeed, the MPMO Evaluation identifies certain practices seen in Western Australia which could inform future improvements to the Canadian regulatory system for major resource projects.

Australia has a comprehensive environmental assessment regime at both the federal and state level. There are six matters of national environmental significance under the Government of Australia's *Environment Protection and Biodiversity Conservation Act*[132] that are required for review under the federal legislation and all other matters are left to the state:

1. World heritage properties;
2. Ramsar wetlands of international significance;
3. Nationally threatened species and ecological communities;
4. Migratory species;
5. Australia marine areas; and
6. Nuclear actions.

The *EPBC Act* enables the Government of Australia to join with the states and territories to provide a national scheme of environment protection and biodiversity conservation. The *EPBC Act* provides the Government of Australia with the capacity to accredit state environmental assessment processes and, in some cases, state decisions.[133] This allows the Government of Australia to: accredit state processes on a case-by-case basis at the commencement of the environmental assessment process; accredit state environmental assessment processes and systems (avoiding the need to provide accreditation on a case-by-case basis for all projects); and accredit state decisions under specific circumstances.[134]

The environmental assessment process is as follows:

(1) First, a proponent, Government of Australia agency, or state refers the action to the Australian Minister of Environment (Minister).

(2) Second, the Minister decides whether the action requires approval under the *EPBC Act*. Under this process, if the action is covered by a bilateral agreement accrediting a state environmental assessment process or there exists a ministerial declaration accrediting a Government of Australia process, the action is assessed by the accredited state or Government of Australia agency, otherwise the Minister decides on the assessment approach.[135]

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132 *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 3 [*EPBC Act*].

133 *Ibid*.

134 Canadian Environmental Assessment Agency, "Comparative Analysis of Impacts on Competitiveness of Environmental Assessment Requirements" (Ottawa: Canadian Environmental Assessment Agency, 2016) at 4.1.1, online: <www.ceaa-acee.gc.ca/default.asp?lang=En&n=0CDC5381-1&offset=4> [RIAS Inc & Gartner Lee Limited, "Comparative Analysis"].

135 *Ibid*.

(3) Third, within 30 days of the closure of the public comment period, the Australian Environmental Secretary prepares its own assessment report based on the documents provided by the proponent. The Minister, based on the report, decides on approval and conditions within 30 days.[136]

In 2002, the Government of Australia accredited the Western Australia Environmental Impact Assessment (EIA) process in order to minimize duplication and strengthen intergovernmental cooperation.[137] As a result, Western Australia is largely responsible for environmental assessment of major projects carried out on the state territory.[138] In these instances, the Government of Australia may: allow the Western Australia Environmental Protection Authority (WA-EPA) to carry out the assessment; decide to collaborate on a joint assessment; or decide to conduct its own assessment parallel to that of the WA-EPA.[139] In 2008, the WA-EPA established a Stakeholder Reference Group (SRG) to provide input into reforms of the EIA system.[140] The group meets quarterly, acting as an informal liaison between the WA-EPA and the industry and environmental organizations, leading formal stakeholder engagement.

Australia's practice includes delegating its environmental assessment responsibilities from the central government to regional governments.[141] In Western Australia, indigenous groups are expected to be consulted by proponents, rather than by crown representatives.[142] Project proponents are responsible for negotiating agreements (including substantial financial agreements) with Aboriginal groups for projects that will occur on native title land in order to obtain regulatory approvals under the *Aboriginal Heritage Act*.[143]

Australia exemplifies a high level of coordination and collaboration between the federal and provincial governmental bodies, bringing further efficiencies. The Government of Australia closely follows the reviews of projects deemed nationally significant and may decide to carry out its own environmental assessment (parallel to the state) or establish a joint review with the state. The Government of Australia accredited environmental assessment processes in some of its states and subsequently delegated its review responsibilities to the state governments for projects occurring within the states' jurisdictions.[144] Actions that are likely to have a significant impact on matters of national environmental significance are subject to a Government of Australia environmental assessment and approval process.[145]

It is argued that Western Australia has an efficient and effective regulatory system, pertaining specifically to the regulatory system for major resource projects, including: bilateral and substitution agreements with states, a lead agency framework model (instead

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136 *Ibid*.
137 NRC, *Evaluation of MPMOI*, *supra* note 22 at 4.2.2. The agreement is limited to certain types of projects, such that dual assessments by both the state and the federal government still occur.
138 *Ibid*.
139 *Ibid.*
140 *Ibid*.
141 *Ibid*. Note that the Government of Australia's accredited EA and regulatory processes in some of its states, and subsequently delegated its review responsibilities to the state governments for projects occurring within the states' jurisdictions.
142 *Ibid*.
143 *Ibid*; *Aboriginal Heritage Act* (WA).
144 NRC, *Evaluation of MPMOI*, *ibid.*
145 RIAS Inc & Gartner Lee Limited, "Comparative Analysis," *supra* note 134 at 4.1.1.

of a central office), and a proponent and stakeholder engagement that is formalized and commences sooner.[146] Some practices seen in Western Australia might inform future improvements to the Canadian regulatory system.

VI. SUMMARY OF KEY FINDINGS

Our Project Survey effectively documents three key findings:

A. THE PROVINCIAL ADVANTAGE

The federal environmental assessment process is the principal source of delay and unpredictability in the Canadian project approval process. The Project Survey results show that all, or virtually all, of the ten longest and least predictable environmental assessment processes have been run either exclusively by the federal government or substantially in accordance with its rules and practices. Moreover the Project Survey results also show that, in virtually all project categories, environmental assessment processes which the federal government controls, or significantly participates in, are materially longer than provincial environmental assessment processes.[147]

We note that this conclusion is broadly consistent with a variety of other evidence. It is, after all, the federal *CEAA* 1992 legislation which was under virtually constant review since its passage, largely as a result of external criticism from project proponents about the length of time required for the completion of the federal environmental assessment process. It was the federal government which felt the need to appoint the MPMO in 2007 to help find solutions to continuing environmental assessment process problems. Likewise, it was the MPMO which initially proposed many of the reforms to the *CEAA* 1992 designed to improve its function and efficiency. The Standing Committee in 2012 contained abundant evidence that it was federal processes that had bogged down — from comments by leading environmental lawyers to submissions from several provinces pointing to disparities in timing between the federal and provincial environmental assessment processes.

As noted above in this article, the *CEAA* 2012 recognized these problems and sought to manage or eliminate them in two principal ways. First, the *CEAA* 2012 restricted the scope of, and potential intake under, federal environmental review legislation. Second, the *CEAA* 2012 sought through substitution and equivalence provisions to effectively transfer the conduct of many environmental assessment processes to the provinces.

If successive federal governments continue to implement the substitution and equivalence provisions in the *CEAA* 2012 in their current form, the *CEAA* 2012 could substantially diminish the timing challenges for many Canadian project approvals. However, by themselves, such changes would not be sufficient to eliminate these problems. Two key areas, where delays and unpredictability have been most endemic and potentially damaging

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146 NRC, *Evaluation of MPMOI*, *supra* note 22 at 4.2.2.

147 We acknowledge that the federal environmental assessment process often reviews complex projects that may span one or more provincial jurisdictions, which may contribute to the longer environmental assessment process. However, we note that the British Columbia provincial environmental assessment took only 16 months to review the Pacific NorthWest LNG project, while the federal environmental assessment is estimated to take at least 42 months to review this same project.

— interprovincial pipelines and nuclear facilities — remain wholly or substantially under federal jurisdiction, even under the *CEAA* 2012. To reduce delays and unpredictability in those key areas requires further changes in the practices and procedures of existing federal institutions.

B. INDEPENDENCE AND ACCOUNTABILITY

Environmental assessments which are carried out by a lead agency responsible for the project or which at least report to a unitary executive authority such as cabinet ensure some level of accountability. Everyone involved in the process is ultimately accountable to, and subject to the direct control and authority of, a politically responsible and accountable authority. Under all, or substantially all, provincial environmental assessment legislation, as well as in the US under *NEPA*, environmental assessments are carried out either by a lead agency or at the very least by an agency which reports to a unitary executive authority — such as the President in the US or a provincial cabinet in Canada.

This approach is, or at least historically has been, most highly qualified at the federal level where, since the earliest days of environmental assessments, most of the significant assessments have been carried out wholly by, or have been materially influenced or affected by, "independent" review panels, effectively operating beyond the day-to-day control of the federal government.[148] This emphasis on de facto independence of the environmental assessment process was not merely a casual or accidental choice made by the federal government, it has been an inherent feature of Canadian federal environmental assessment practice since the beginning, largely as manifested by the continuous legislative support for independent review panels to lead the most delicate and controversial assessments, at least prior to the *CEAA* 2012.[149]

While there is, of course, much to be said for independent decision-making, it also ultimately reduces the accountability of the only executive authority which reports to, and can be replaced by, the public. Certainly, in various US cases and decisions, concerns have been raised that bodies entirely, or at least de facto, free from direct executive supervision can explore the same issue endlessly, with a limitless budget and ultimately at a cost to the credibility and accountability of governmental decision processes.[150]

In light of those concerns it is perhaps not surprising that, in the Project Survey, a disproportionate number of the environmental assessment processes that were unusually and particularly extended were under the control and supervision of independent review panels. Each of these review panels was either appointed exclusively by the federal government or was mandated by the federal government as a condition of conducting a joint environmental assessment with a province.

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148 Prior to EARP, see the Berger Commission and Lysyk Commission: University of Colorado Boulder, "The Mackenzie Gas Pipeline: The Berger Inquiry," online: <www.colorado.edu/geography/blanken/GEOG%206181%20Fall%202003/ryen/berger.html>; *EARP Process Guidelines Order*, *supra* note 14. *CEAA* 1992, *supra* note 13, s 33.

149 Jeffrey, *supra* note 7 at 1071. Where commenting on the policy decision under *NEPA* to have lead agencies carry out their own environmental assessments, he noted: "Although the scope of the American legislation is extremely broad, it is nevertheless considered by many to be fundamentally flawed because it fails to provide an independent regulatory/enforcement mechanism or process" (*ibid*).

150 See e.g. *Morrison v Olsen*, 108 S Ct 2597 (1988).

Concern about the impact of these independent review panels, unmonitored and largely unaccountable to the regular federal bureaucracy was also shared by the MPMO — the only federal agency tasked with monitoring the efficiency timeliness of the federal environmental assessment process. The MPMOI Evaluation noted as follows about review panels and their impact on environmental assessments:

> Specific to EAs, another notable challenge is posed by review panels, which are not governed by MPMOI timelines but rather by their own terms of reference. In fact, striking the terms of reference, establishing review timelines, and submitting additional information requests are largely determined independently from the MPMOI (although the Initiative monitors and tracks these processes), resulting in a less predictable process.[151]

The timing issues associated with review panels, the MPMO noted, tended to get even worse when they were joint review panels appointed by both federal and effected provincial governments. In these circumstances, the MPMO noted that "[w]hile these [joint review] panels ensure that both federal and provincial requirements are met … the need to align and co-ordinate with provincial processes … are often associated with delayed timelines, low process predictability, and the negatively impacted satisfaction of external stakeholders [to a panel review]."[152]

It is noteworthy that one of the principal effects of the *CEAA* 2012 is to potentially reduce the role of review panels in the federal environmental assessment process.[153] In the first place, pipelines and transmission lines under NEB jurisdiction can now only be subject to an environmental assessment led by the NEB itself.[154] Similarly, nuclear facilities under CNSC jurisdiction can only be subject to a CNSC environmental assessment and related licensing process.[155] In neither case is referral to a review panel permitted. For those federal environmental assessments which are potentially subject to a review panel, they are all subject to pre-emption by the rights of a province to demand the substitution of their own process for a federal one and avoid the appointment of independent panels in that manner.[156] These are all important outcomes and should continue to be applied with rigour.

C. THE ROLE OF QUASI-JUDICIAL PROCESS

The project approvals process appears to be heading to more final decisions being made at the political level: to increased flexibility in structuring public participation on a notice and comment basis as opposed to a traditional full set of public hearings with the right of cross-examination. Similarly, rules on standing are being re-examined — with a broad welcome extended to those who seek to comment and furnish information, while restricting the recognition of formal interveners to those who may be directly effected by the proposed

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151 NRC, *Evaluation of MPMOI*, *supra* note 22 [footnotes omitted].
152 *Ibid*.
153 Carpenter, *supra* note 27 at 248–49. See also *CEAA* 2012, *supra* note 1, s 38(6).
154 *CEAA 2012*, *ibid*, s 18(15)(b).
155 *Ibid*, s 18(15)(a).
156 Carpenter, *supra* note 27 ("it appears that a province may be able to avoid the risk of a project being referred to a review panel by requesting that its own provincial environmental assessment process be substituted for the federal process before the Minister makes this decision" at 242).

project and those who, while not themselves injured or effected, have a degree of expertise and background knowledge that can be useful to the process.

Project approvals are necessarily complex, time consuming, and, increasingly, controversial. They involve mixed questions of fact, law, and public policy. If they were ever regarded as value-free and capable of being decided on a judicial, quasi-judicial, or purely technical basis, that is less and less clearly the case. Each project approval involves value choices of the most profound and far reaching kind, all of which involve the weighing and balancing of values that are the kind we feel most comfortable and legitimate leaving in the hands of accountable political authorities, and that are generally incapable of a purely judicial resolution.

As these project approval decisions are increasingly seen as consequential at the political level, the suitability of the quasi-judicial model for conducting environmental assessments is increasingly questioned.[157] While federally appointed or mandated review panels and the NEB have virtually all conducted comprehensive and lengthy public hearings — many involving the right to cross-examine witnesses — many of the provinces have adopted a procedurally simpler and more predictable "notice and comment" process or at least where notice and comment procedures assume a relatively greater role than quasi-judicial hearings.[158]

As for due process in project approvals for those seeking to participate, the adoption of rules not dissimilar to those under *NEPA* seems entirely fair and reasonable. Under *NEPA* public comment is encouraged and broadly solicited; copies of documentation and relevant information are widely available; public information sessions are widely available where circumstances are warranted. Moreover, public hearings — and the rules for their conduct — are at the discretion of those administering the process. The time and process of any hearing is dictated by functionality, effectiveness, and by whether it can be useful to the process.[159] These more limited rights to intervene and to participate have been implemented in practice in the NEB's Enbridge Line 9 Reversal and Line 9 Capacity Expansion Project.[160]

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157 See e.g. Rowland J Harrison, "The Elusive Goal of Regulatory Independence and the National Energy Board: Is Regulatory Independence Achievable? What Does Regulatory 'Independence' Mean? Should We Pursue It?" (2013) 50:4 Alta L Rev 757; Harrison, Olthafer & Slipp, *supra* note 30 (noting that the thrust of *CEAA*, in particular with regard to the NEB, is increasing the level of government control not only of the final decision but of the steps and procedures governing the NEB's internal decision-making process at 257).

158 See *AltaLink Management Ltd and EPCOR Distribution & Transmission Heartland Transmission Project* (1 November 2011), Decision 2011-436, online: AUC <www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2011/2011-436.pdf>; *ATCO Electric Ltd Eastern Alberta Transmission Line Project* (15 November 2012), Decision 2012-303, online: AUC <www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2012/2012-303.pdf>; *AltaLink Management Western Alberta Transmission Line Project* (6 December 2012), Decision 2012-327, online: AUC <www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2012/2012-327.pdf>. The public participation process in these cases involved notice and comment periods for key documents, public information meetings, and a limited number of public hearing days — without any time-consuming cross-examination.

159 *NEBA*, *supra* note 30, s 55.2; Harrison, Olthafer & Slipp, *supra* note 30 at 272. For an example of *NEPA* rules and notice on recognition of, and the rights of, interveners, see e.g. US, Federal Energy Regulatory Commission, *Corpus Christi LNG Project: Final Environmental Impact Statement* (Docket CP12-507-000 and CP12-508-000) (Washington, DC: FERC, 2014) at 1-10, online: <energy.gov/sites/prod/files/2014/10/f18/EIS-0493-FEIS-2014.pdf>.

160 See Harrison, Olthafer & Slipp, *ibid* at 266–67. We see recognition of similar, more circumscribed, rights to intervene in NEB proceedings after the *CEAA* 2012. See Canada, National Energy Board, "Participating in NEB Hearings," online: <www.neb-one.gc.ca/prtcptn/hrng/pplngprtcpt-eng.html>.

As we increasingly recognize that project approval processes are not purely judicial or quasi-judicial processes but rather involve the public weighing of values and interests of the most profound importance, the rules governing appropriate process are gradually changing. They must continue to ensure that parties are able to express their views, but the process must still enable a timely resolution of the matter.

The *CEAA* 2012 provides a strong platform from which Canadians can work in order to balance the many interests with respect to the project assessment process. If provinces are allowed to continue taking a lead role on environmental assessments and independent review panels are avoided whenever reasonable, the review process can be standardized to grant a greater potential for projects to be brought to developmental implementation. If carefully and thoughtfully implemented, these reforms can all be achieved without sacrificing environmental, First Nations, community, and other interests.

EXHIBIT A — TIMING OF CANADIAN PROJECT APPROVALS: A SURVEY OF MAJOR PROJECTS

Project Name	Proponent(s)	Description
Northern Gateway	Northern Gateway Pipelines Inc. (subsidiary of Enbridge Inc.)	Proposal to construct and operate oil pipelines, 1,177 km in length, between an inland terminal in Bruderheim, Alberta (near Edmonton) and a marine terminal near Kitimat, British Columbia.
Mackenzie Gas	Imperial Oil Resources Venture Limited	Proposal to build a 1,196-kilometre pipeline system along the Mackenzie Valley. It would link northern natural gas producing wells in the Mackenzie Delta to southern markets though an existing natural gas pipeline system in northwestern Alberta.
Energy East	Energy East Pipeline Ltd (wholly owned subsidiary of TransCanada Oil Pipelines (Canada) Ltd.)	Proposal to build a 4,500-kilometre pipeline that will transport approximately 1.1 million bbl/d of crude oil from Alberta and Saskatchewan to the refineries of Eastern Canada and a marine terminal in New Brunswick.
Trans-Mountain Expansion	Trans Mountain Pipeline ULC (wholly owned subsidiary of Kinder Morgan Energy Partners L.P.)	Proposal to expand the original 1,150-kilometre Trans Mountain Pipeline between Strathcona County (near Edmonton), Alberta and Burnaby, British Columbia. The proposed expansion would create a twinned pipeline that would increase the nominal capacity of the system from 300,000 bbl/d to 890,000 bbl/d.
Westcoast Connector Gas Transmission	Spectra Energy	Proposal to build a new 850-kilometre natural gas pipeline from northeast British Columbia to Prince Rupert to serve the proposed Prince Rupert LNG facility and export terminal.
Coastal GasLink	Coastal GasLink Pipeline Ltd. (wholly owned subsidiary of TransCanada PipeLines Ltd.)	Proposal to build an approximately 670-kilometre pipeline from the Dawson Creek area to the west coast of British Columbia. The pipeline will transport natural gas to the proposed LNG Canada facility near Kitimat.
Prince Rupert Gas Transmission	Prince Rupert Gas Transmission Ltd. (wholly owned subsidiary of TransCanada PipeLines Ltd.)	Proposal to construct and operate a 900-kilometre natural gas pipeline to deliver natural gas from a point near Hudson's Hope to the proposed Pacific NorthWest LNG facility at Lelu Island, off the coast of Port Edward, near Prince Rupert.
Jackpine Mine Expansion	Shell Canada Energy	Proposal to expand to the north of the current Jackpine Mine in northern Alberta. The project would involve a potential 100,000 bbl/d of oil sands mining expansion, including additional mining areas, associated processing facilities, utilities and infrastructure.
Joslyn North Mine	Total E&P Canada Ltd.	Proposal to develop an oil sands mine in northern Alberta which is expected to yield over 874 million barrels of bitumen over a 20-year lifespan at a production rate of approximately 160,000 bbl/d.

Project Name	Proponent(s)	Description
Grouse In Situ Oil Sands	Canadian Natural Resources Limited	Proposal to develop an oil sands operation in northern Alberta which would use Steam Assisted Gravity Drainage technology for the recovery of bitumen in the McMurray formation. The proposed project involves a Central Processing Facility with a bitumen processing capacity of 40,000 bbl/d, associated produced water treatment and steam generation facilities, and an estimated lifespan of 20 years.
Telephone Lake	Cenovus TL ULC	Proposal to develop an oil sands operation in northern Alberta which would use Steam Assisted Gravity Drainage technology for the recovery of oil from the Middle McMurray formation. The proposed project is expected to have an initial production capacity of 90,000 bbl/d and an estimated lifespan of 40 years.
Dover Commercial	Dover Operating Corp.	Proposal to develop an in situ oil sands operation in northern Alberta. The proposed project is expected to recover approximately 4 billion barrels of bitumen over a lifetime of +50 years.
Kirby In Situ Oil Sands Expansion	Canadian Natural Resources Limited	Proposal to expand two in situ oil sands projects in northern Alberta: Kirby South and Kirby North. The proposed project would increase output by 85,000 barrels per day to a total of 140,000 barrels per day of bitumen production.
Pelican Lake Grand Rapids	Cenovus Energy Inc.	Proposal for a thermal oil sands project in northern Alberta. The operation is expected to have a production capacity of 180,000 bbl/d and a lifespan of 40 years.
Taiga	Osum Oil Sands Corp.	Proposal to develop a 35,000 bbl/d thermal operation near Cold Lake, Alberta. The proposed project will be built in stages with an initial 10,000 bbl/d output and it will use Steam Assisted Gravity and Drainage technology as well as Cyclic Steam Stimulation to recover reserves in the reservoir.
Quest Carbon Capture and Storage	Shell Canada Limited	A carbon capture and storage operation which is designed to reduce CO_2 emissions from Shell Canada Limited's oil sands operation by +1 million tonnes per day by capturing CO_2 from its Scotford upgrader and permanently storing it deep underground.
Pacific NorthWest LNG	Progress Energy Canada Ltd.	Proposal to construct a natural gas liquefaction and export facility on Lelu Island within the District of Port Edward. The proposed facility would liquefy and export natural gas produced in northeast British Columbia.
Woodfibre LNG	Woodfibre LNG Limited	Proposal to construct a liquefied natural gas processing and export facility near Squamish, British Columbia. Woodfibre LNG is licensed to export approximately 2.1 million tonnes of LNG per year for 25 years.
LNG Canada	LNG Canada Development Inc.	Proposal to construct a liquefied natural gas and export facility near Kitimat, British Columbia.

Project Name	Proponent(s)	Description
Darlington New Nuclear Power Plant	Ontario Power Generation Inc.	Proposal to construct and operate up to four new nuclear reactors at the Darlington nuclear site for the production of approximately 4,800 megawatts of electrical generating capacity to supply to the Ontario power grid.
Site C Clean Energy	British Columbia Hydro and Power Authority	Proposal to develop a dam and hydroelectric generating station on the Peace River in northeast British Columbia. The proposed operation will provide 1,100 megawatts of capacity and produce approximately 5,100 gigawatt hours of electricity per year.
Lower Churchill Muskrat Falls	Nalcor Energy	Proposal to construct and operate two hydroelectric power generating facilities on the lower section of the Churchill River at Gull Island and Muskrat Falls in Labrador. The two facilities will have a combined power generation capacity of approximately 2,800 megawatts.
Darlington Refurbishment	Ontario Power Generation Inc.	Proposal to refurbish the first four nuclear reactors at the Darlington Nuclear Generating Station.
Keeyask Hydroelectric Generation	Keeyask Hydropower Limited Partnership	Proposal to construct a dam on the lower Nelson River in northern Manitoba. The Keeyask Generating Station is expected to provide approximately 695 megawatts of capacity and produce an average of 4,400 gigawatt hours of electricity every year.
HR Milner Power Plant Expansion	Maxim Power Corp.	Proposal to construct and operate a new coal-fired 500 megawatt power generating unit at the existing HR Milner Generating Station in West-Central Alberta.
Mica Units 5 & 6	British Columbia Hydro and Power Authority	Expansion and upgrade of the Mica Generating Station involving two new generating units at the Mica Dam powerhouse on the Columbia River system. Each additional unit will provide approximately 500 megawatts of capacity. The fifth generating unit is in operation and the sixth is under construction.
Shepard Energy Centre	ENMAX Shepard Inc.	Natural gas-fuelled power facility in Alberta with the capacity of adding more than 800 megawatts of electricity to the province's grid.
Sundance 7	TransAlta MidAmerican Partnership	Construction of an 856 megawatt high-efficiency natural gas-fired electricity generating plant in Alberta. The plant will be located west of Edmonton and will be a combined-cycle natural gas generation facility with a gross generation capacity of 856 megawatts.
Labrador-Island Link	Nalcor Energy	Construction of a 1,100-kilometre transmission line right of way across Newfoundland and Labrador from Muskrat Falls to Soldiers Pond.
Western Alberta Transmission Line	AltaLink Management Ltd.	An approximately 350-kilometre long, 500 kilovolt transmission line between the Genesee and the Langdon areas of Alberta. The line includes a converter station on each end of the line that will allow the direct current line to connect with the province's alternating current system.

Project Name	Proponent(s)	Description
Maritime Transmission Link	ENL Maritime Link Inc.	Construction of a 170-kilometre long subsea high-voltage direct current transmission line under the Cabot Strait. The transmission line has a capacity of 500 megawatts and connects Newfoundland to the North American grid.
Eastern Alberta Transmission Line	ATCO Electric Ltd.	A 485-kilometre long, 500 kilovolt direct current transmission line between the Gibbons-Redwater and the Brooks areas of Alberta. The line includes converter stations at either end to convert the power from alternating current, to direct current, and back to alternating current.
Heartland Transmission	AltaLink Management Ltd.; EPCOR Distribution & Transmission Inc.	A 22-kilometre long, 240 kilovolt transmission line from the new Heartland Substation to an existing transmission line. The transmission line connects the northeast of Fort Saskatchewan to existing transmission facilities around Edmonton, Alberta.