

Article

Regulatory reform: Unlocking opportunity

This article is part of a series that explores the most critical issues facing Canada's PU&R sector as it strives to meet Canada's net-zero ambition.

Canada's prosperity and ability to decarbonize its economy depends on getting the right major projects through the regulatory process and built now.

In the coming decades, trillions of dollars will be spent on projects to decarbonize and diversify the world's energy systems. Many industries have already established net-zero plans that hinge on cutting emissions in their energy use, buildings, and transportation. Their capacity to do so will determine the value preservation and future growth of many nations, Canada included.

Firstly, jurisdictions that can secure large investments will turbo-charge their economies, drive investment into their communities, and reach their decarbonization goals. This is especially pertinent as margins are shrinking in today's climate of higher interest rates and inflation. In these conditions, investments will go elsewhere if regulatory environments cause bottlenecks—especially as interest rates continue to rise or remain elevated.

Second, as of January 1, 2024, the International Sustainability Standards Board (ISSB)'s climate and sustainability reporting standards will be in effect. This means that Canadian businesses will need to start executing their plans now, so energy consumers can deliver the results that are expected by the turn of the year. If not, they'll fall behind their global competitors.

Finally, capital and talent will flow to other jurisdictions where timely projects—and governments' help to facilitate their regulatory approval—are being readily identified. For the most part, this isn't happening enough in Canada. The prioritization of projects—identifying what to build and when, in the proper sequence with the right risk profiles and at the right time—can be haphazard here. And once they're identified, the review and approval processes for many major projects take too long and often

result in significant duplication of effort and procedural uncertainty.

The result? Canada risks losing Canadian and international investments in its major net-zero projects and, in turn, failing to create good jobs and to decarbonize in line with its commitments to the climate emergency. This is evidenced by the emissions data in Canada's National Inventory Report (NIR), which demonstrates that while there are great ambitions for emissions reduction, the targets are consistently missed.¹

These risks are exacerbated in a period when, due in part to geopolitical and economic upheaval, the energy supply has become more precarious and prices have risen sharply.²

The good news is that not all project reviews fail regulatory tests for efficiency and predictability. Some recent examples of relatively smooth assessments that were concluded include the Cedar LNG project, the Trans Mountain Expansion Project, and the Milton Logistics Hub. There's a lot to be learned from these processes, although none involved the innovative technologies and techniques that are often integral for energy transition projects, which can add another layer of complexity to an already-complicated review process.

Governments and regulators recognize the imperative of assessing and approving projects promptly so that Canada can efficiently decarbonize the generation, transmission, and storage of energy. These projects include emerging technologies such as hydrogen, geothermal heating, and small modular reactors (SMRs). Existing systems can be decarbonized through investments in the direct air capture of carbon, technology improvements in carbon capture and storage (CCS), and by building and bolstering the country's electrical power grid.

The urgent issue is grasping these imperatives and translating it into action. How can governments work with industry to advance competitiveness and net-zero ambitions? How can they ensure that the projects essential for economic diversification and energy decarbonization are reviewed and receive regulatory approval in an efficient and predictable way? How can they achieve all this while preserving the highest degree of environmental protection? And how can they involve Indigenous leadership and communities in ways that fully respect their rights, inherent responsibilities to Earth, and interests?

This paper suggests some initial answers. It pays particular attention to reviews involving the Government of Canada because most major projects require federal approvals.

Get the sequencing right

Picking the right projects requires intentional prioritization. Electrical power consumption will increase as our hard-to-abate sectors seek to decarbonize. This will require an incredible investment into our electrical transmission and distribution network. Yet, predicting how the growing load will impact grids, both spatially and temporally, is incredibly difficult. Therefore, there is a risk that either too little may be done, in which case we don't decarbonize quickly enough, or that we do more than we need to do, which would inflate the transition costs and reduce the affordability of electrical power.

It's 2023. Canada has the capacity to develop a widescale digital twin of its power grids to bring government and industry together to help to identify and properly prioritize critical projects for urgent acceleration.

This is especially important given the economic and skills opportunities that capital projects can unlock. Currently, there is no clear, data-based and commonly accepted way of accurately describing where, when, and what needs to be built to support decarbonization and how best to prepare for the work that needs to be done—for example, by establishing a well-timed supply of skilled labour.

Integrate the review processes

Another success factor is ensuring a single, integrated process is used for collecting information on a proposed project. This allows regulators to hear from proponents, experts, and rightsholders, and to assess the impacts and mitigation strategies.

Most major projects require authorizations from multiple regulators and jurisdictions, including federal, provincial/territorial, and/or Indigenous governments. When proposals are reviewed in an uncoordinated way, the result can be duplicated effort, confused and erratic processes, and delays—which all have the potential to destroy the most promising energy transition projects and discourage the most enthusiastic investors.

There are different ways to apply these integrated processes, as shown in the Government of Canada's Impact Assessment Act, such as provinces reviewing certain issues under a federal process (while retaining a federal decision at the end) and appointing joint review panels to conduct assessments on behalf of all jurisdictions. In addition, the legislation is an agreement between the Government of Canada and other jurisdictions to coordinate and integrate assessments.

Currently, the Government of Canada only has an up-to-date impact assessment cooperation agreement with one province: British Columbia. This should change. Such agreements facilitate better-integrated processes and avoid the need to negotiate suboptimal, ad hoc arrangements on a case-by-case basis. The administrative components should be put into place to make sure that a single review is the default for every major project proposal in Canada.

Process integration may not just be needed across jurisdictions—it may also be necessary among various organizations within a single jurisdiction, to the extent that each has its own discrete review powers. Arrangements are in place to ensure this occurs between the Impact Assessment Agency of Canada (IAAC), the Canada Energy Regulator, and Canadian Nuclear Safety Commission. The same should be true for all such instances.

Regardless of the mix of players, the long-touted notion of “one project, one assessment” can't stay an aspiration; it must become reality for all proposed energy (and other) projects that have the potential to accelerate Canada's economic growth and transition to net-zero.

Ensure clear leadership, road maps, and timelines

Ironing out any duplicates from the review processes is just one step. Integrated reviews work best with determined leadership. Major projects are complex, and twists and turns in the assessment process—such as unexpected environmental and social issues, opposition from local communities and/or non-governmental groups, or significant data deficiencies—are inevitable.

It's important to have someone in charge who's comfortable dealing with sporadic demands and concerns, adapting to shifting circumstances, and finding ways to keep multifaceted processes on track without sacrificing fairness and rigour. This leader has to not only be responsive to these unexpected circumstances, but also be capable of balancing project needs and building strong community relationships with communities and rightsholders.

Creating a road map and timelines is beneficial for the review process. At a high level, key steps and time limits are outlined in the Impact Assessment Act, and IAAC-issued guidance material and project-specific decisions provide further detail. However, there remains little clarity about how reviews should unfold for proponents and rightsholders, including how to set time limits. Similarly, there is too much discretion about when the IAAC and review panels should “stop the clock” once a review has been initiated.

This may have something to do with incentives. On one hand, reviews are at a greater risk of being

overturned if a reviewer is perceived not to have fully addressed an issue when challenged in court. This can foster a predisposition to turn over every rock, which can introduce further delays. On the other hand, dragging a review for longer than originally planned will not penalize the reviewer. The price of detours and delays is caused directly by the reviewer, and it is not fair for Canadians to pay the price for a review that is taking too long.

It's tempting to think the solution would be to create mandatory timelines. That's likely a step too far, as it would leave no room for adjustment when considering major and unforeseeable issues. But the incentives could be rebalanced. For instance, the legislation could be amended to signal that the courts should show reasonable deference to administrative process and permitting new decisions that are made through reviews. The time limits included in the law could be made more prescriptive, with less scope for change.

Such action should help focus everyone involved in project reviews—proponents and investors—to have greater clarity, certainty, and confidence about how a review will unfold and when they can expect to cross the finishing line.

Establish genuine partnerships with Indigenous communities and peoples

Even the most integrated, well-run review will flounder if the rights, inherent responsibilities, and interests of Indigenous communities and peoples aren't fully respected.

Indigenous peoples have fought long and hard against the effects of colonialism, settler violence, and systemic racism. Through negotiation, litigation, and political action, they've secured recognition that their individual and collective rights, including treaties, are constitutionally protected. Among other things, this means that projects that can affect Indigenous rights and interests can only proceed if full and meaningful consultation is undertaken with the relevant Indigenous peoples and if acceptable accommodations are made to address the impacts on them.

In strict legal terms, this duty to consult and accommodate lies with the Crown; that is, governments. But in practice, project proponents have a critical role to play, given that they're best positioned to explain the proposed projects, answer questions, and respond to concerns. Public authorities today are far less likely to consider approving a project unless they're confident that Indigenous communities have been fully and appropriately engaged by some combination of government officials and the proponent's representatives. The Crown often delegates its consultation efforts to industry proponents that are seeking permits to perform land-based activities to advance the feasibility and investment appetite of a project. With the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) becoming law, the federal and British Columbia governments are creating regulatory frameworks together with Indigenous leaders to enforce consultations with Indigenous peoples in that province to gain their informed consent or the social licence to operate in their traditional territories.

Moreover, meeting the obligatory minimum of consultation and accommodation is no longer sufficient in many cases. A preferred model should be practised for initiating full partnerships with Indigenous peoples that give them direct participation in the project and the fruits of its success. Such partnerships can take different forms, but one good strategy is having relevant Indigenous parties take equity stakes and integrate Indigenous traditional knowledge systems into project designing, environmental monitoring, and decision-making.

Governments can facilitate this through capacity-building and the initial capitalization of Indigenous investment funds. The project's proponents can also enter into mutually beneficial commercial arrangements with Indigenous organizations and communities.

Shifting away from overly transactional discussions with Indigenous communities to early dialogue and

genuine, respectful partnerships can play a key role in achieving more efficient, predictable reviews in the spirit of economic reconciliation.

Assess issues in advance

A final approach that could advance the goals of timeliness and certainty is to deal with as many issues as possible before prospective projects are drafted and proposed.

This can be thought of as a large-scale zoning approach in which certain regions or corridors are pre-approved for particular types of projects. These projects must follow specific considerations related to environmental impacts, social effects, and the measures that are needed to maximize positive effects (such as emissions reductions) and minimize negative ones (such as habitat damage). These critical pre-approvals could be supported in part by a digital twin of power grids that would help governments assess and address infrastructure projects ahead of approvals, thereby facilitating an easier end-to-end process for project proponents.

This doesn't mean that there will be no need to review project proposals. Rather, this should result in more narrowly scoped project reviews, accelerated timelines, and a reduced risk of detours and delays.

Tools to enable such “zoning” exist in the Impact Assessment Act's strategic and regional assessments, but have been under-used. More could be accomplished with a hard push to use more broad-based assessments to clear up as many questions as possible before proponents develop and submit project proposals.

Effective interjurisdictional collaboration; robust Indigenous involvement; meaningful consultations with rights holders, stakeholders, and experts; and access to sound scientific evidence are all needed for a more forward-looking approach. Based on strategic and regional assessments, this could do a great deal to improve Canada's investment attractiveness and prepare the groundwork for major emission-reducing builds.

A little vision and determination

Canada's national interests—in prosperity, decarbonization, international credibility, and energy security—will be served by timely, predictable reviews and approvals of projects that support the transition to net-zero generation, storage, and transmission of energy.

Right now, these reviews are the exception, not the rule. That must change because complacency will be costly.

The imperative is well understood. The tools exist. What is needed is a concerted effort by governments at all levels—in cooperation with industry, Indigenous groups, and rightsholders—to draw on the lessons of past successes and implement strategies that produce fast, material improvements for energy project assessment processes. With some vision and determination, Canada can become an energy leader and an example for the world.

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¹Government of Canada, [Canada's National Greenhouse Gas Inventory \(1990–2021\)](#), Environment and Climate Change Canada, April 14, 2023.

²IEA, [Electricity Market Report 2023](#), February 2023.

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