

Background Paper

ATLANTIC ACCORDS REGULATORY FRAMEWORK

The following information is meant to provide a brief introduction to the topic. It is not intended to be exhaustive. For further information see the websites referred to in the paper.

Introduction

The Atlantic Accord (entered into by Canada and Newfoundland on February 11, 1985) and the Canada-Nova Scotia Accord (entered into on August 26, 1986) (the "Accords") attempt to resolve the uncertainty created by different federal and provincial legal and regulatory regimes applying to different parts of Canada's East Coast offshore. This has been done by a federal-provincial agreement to pass what has come to be known as "mirror image" legislation. The federal and provincial governments each agreed to pass oil and gas legislation that is substantially the same (i.e. the federal and provincial legislation "mirror" each other). This approach allows for consistency of regulation throughout the entire offshore area.

This mirror image legislative approach to regulation is consolidated by the creation of joint federal-provincial boards (the Canada –Newfoundland Offshore Petroleum Board or C-NOPB in the case of Newfoundland and the Canada – Nova Scotia Onshore Petroleum Board or C-NSOPB in the case of Nova Scotia) to administer the federal and provincial accord implementation legislation.

While the jurisdiction of these boards is relatively comprehensive, their jurisdiction in relation to oil and gas operations is not exclusive. For example, the Department of Fisheries and Oceans, the Canadian Environmental Assessment Agency and the Canadian Coast Guard still retain their respective jurisdictions.

The fundamental features of the Accords include:

- (a) an agreement by the federal and provincial governments to legislate in tandem to create an integrated and uniform oil and gas legal regime applicable throughout the entire offshore area to which the Accords apply;
- (b) the creation of joint federal-provincial boards to administer the core, "mirror image" oil and gas legislation contemplated by the Accords;
- (c) an agreement to share governmental revenues (i.e. taxes, royalties, fees, bonuses and so forth) generated by offshore oil and gas as if the resources were onshore; (the Province is the principal beneficiary)
- (d) the establishment of, and contribution to, development funds, by both levels of government; and

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- (e) agreement by the federal and provincial governments as to how the impact of increased governmental revenues will be treated for transfer payment purposes under federal-provincial fiscal arrangements.

C-NOPB

Under the Atlantic Accord implementation legislation, the C-NOPB is established as a joint federal-provincial board, with seven members, with three members appointed by each of the federal and provincial governments and a chairman appointed by both governments. No qualifications for the members or the chairman are prescribed, but no member of the Board shall be either a federal or a Newfoundland civil servant. Members are appointed for six-year terms. They are subject to conflict of interest guidelines established jointly by the responsible federal and provincial Ministers.

Four members constitute a quorum of the Board and decisions are to be taken by a simple majority vote. A meeting is to be held every month, unless the members unanimously agree to defer such a meeting, and at any other time at the call of the chairman, on the request of any two members, or on the request of either the federal or provincial Minister to review any matter referred to the Board by that Minister.

The operating costs of the Board are shared equally by the federal and Newfoundland governments.

C-NSOPB

Under the Canada-Nova Scotia implementation legislation, the C-NSOPB is established as a joint federal-provincial board, with five members. Two members are to be appointed by the federal government, two by the Nova Scotia government and the chairman jointly by the two governments. No qualifications for membership of the board are prescribed, but not more than two members may be public servants and of those, not more than one public servant may be appointed by each government. The chairman may not be a public servant. Members, including the chairman, are appointed for terms of six years. They are subject to conflict of interest guidelines established jointly by the responsible federal and provincial Ministers.

Three members constitute a quorum and decisions are to be taken by a simple majority vote. The Board is to meet every two months, unless the members unanimously agree to defer such a meeting, and at any other time at the call of the chairman, on the request of any two members, or on the request of either the federal or provincial Minister to review any matter referred to the Board by that Minister.

The operating costs of the Board are shared equally by the federal and Nova Scotia governments.

Role of Boards

The establishment and operation of the C-NOPB and the C-NSOPB under the Accord implementation legislation are substantially the same. With the exception of the National Energy Board which has jurisdiction over offshore pipelines, the Boards are the principle regulatory bodies having jurisdiction in respect of offshore oil and gas operations on the East Coast. The role of the Boards can be summarized as follows:

- (a) the day to day administration of the offshore oil and gas regulatory scheme;
- (b) the issuance of oil and gas rights (i.e. exploration licences, significant discovery licences and production licences);
- (c) the making of significant discovery declarations and commercial discovery declarations;
- (d) the issuance of operating licences and authorizations for specific work and activities in the offshore (e.g. geophysical operations, drilling operations and the like);
- (e) the approval of development plans and benefits plans and the conduct of public hearings in that regard;
- (a) the issuance of drilling and production orders;
- (b) the enforcement of regulations in relation to environmental protection, safety and conservation; and
- (c) the provision, generally, of policy advice to the federal and provincial governments.

Fundamental Decisions

While the Board handles the day to day administration of the offshore regulatory regime, there are other decisions “fundamental decisions”, which are subject to political oversight and required Ministerial approval by both Ministers. Fundamental decisions include things such as:

- (a) requiring an interest owner to cease activities,
- (b) issuing calls for bids
- (c) setting terms and conditions in the call for bids for exploration licences, Significant Discovery Licenses and Production Licenses
- (d) Respecting Drilling Orders (requiring an operator to drill a well

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- (e) setting terms and conditions of Production Licences, extending the terms or consolidating those licences
- (f) cancelling rights,
- (g) approving a Development Plan,
- (h) approving a Benefits Plan, and
- (i) prohibiting the issuance of certain interests.

Given the need for Ministerial approval of a fundamental decision, a fundamental decision can be suspended or vetoed. The ultimate decision making authority with respect to a fundamental decision rests with either the federal provincial Minister, depending on the nature of the decision. If a decision relates to issues of Canadian energy self sufficiency or security of supply, then the federal Minister has the final say. If the decision relates to a development plan, the provincial has the final say.

Ministerial Directives

The federal and provincial Ministers can jointly issues directives to the Board with respect to: fundamental decisions, holding a public review, industrial and employment benefits or studies and provision of policy advice

Atlantic Energy Roundtable

The federal government, Nova Scotia, Newfoundland and Labrador and the offshore industry established the Atlantic Energy Roundtable (the "AER") in 2002 to review the regulatory process and local benefits matters in the Atlantic offshore industry. The AER examined ways to make the regulatory approval process, and the regulation of the offshore in general, more efficient, as well as identifying areas of opportunity to increase local benefits. Two major working groups were established, the Industrial Opportunities Working Group and the Regulatory Issues Working Group. British Columbia was an observer at the AER. A number of deliverables were achieved including a federal/provincial MOU on coordinating the review of major projects.

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