

OVERCOMING REGULATORY HURDLES TO EXPAND AND ENCOURAGE OFFSHORE EXPLORATION AND DEVELOPMENT

I first would like to thank the Canadian Institute for this invitation to speak today. I believe it is extremely important that there are many opportunities to discuss the issues which face us in the energy sector. This world is changing so quickly and technology presents us with new ways of doing things on a daily basis. Who would have thought 10 years ago that a drilling rig can sit 12 miles away from the source of gas or oil and drill into and produce it? I also believe that the energy sector presents us with some of the greatest challenges with which our society will be faced in the next decades to come. So occasions such as this add to that dialogue which will help inform both the decision-makers and the public.

The subject of this talk is very wide-ranging and I will not, in these next few minutes, have the opportunity to thoroughly give you a full picture of the topic. I hope however, that I can explain how our Board addresses the very pertinent topics of health and safety, environment, industrial benefits and the optimization of resource management in our offshore.

To begin I think it is important to explain exactly what the Canada-Nova Scotia Offshore Petroleum Board is and what its responsibilities are.

The Board is an independent agency formed by the governments of Canada and Nova Scotia and is responsible for the regulation of petroleum activities in the Nova Scotia offshore. Its mandate and core regulatory responsibilities are set out in the Offshore Accord Acts and regulations under that legislation. Specifically the Board is responsible for:

- health and safety for offshore workers including the infrastructure on which they work
- protection of the environment during petroleum activities
- management and conservation of offshore petroleum resources
- compliance with the provisions of the Accord Acts pertaining to industrial benefits
- issuance of licences for exploration and development
- resource evaluation, data collection, curation and distribution of geological information.

We are not responsible for petroleum policy – that is the responsibility of the governments. The Board is the manager of the resource and is bound by the policy and legislative framework that is established by those governments.

In the management of any non-renewable resource, it is imperative that there must be balance between what is required by society as a whole, the industry which wants to explore and develop that resource, and the local populations which are impacted. That includes just about everyone!

With regard to our offshore resources, the Governments of Canada and Nova Scotia decided through the Offshore Agreement that our offshore resources should be developed and decided on the management mechanism to assist them in accomplishing that objective. This decision addresses the public policy part of the balance. It has resulted in billions of tax dollars, through corporate income tax and royalties, for the two levels of government.

How and when that resource is developed and how it is utilized to maximize benefit to those who own it is the questions which followed that initial public policy decision. For governments around the world there are constant challenges to decisions made in these areas and changes made when and if warranted.

The Accord Acts lay out a very transparent path as to how exploration and production must proceed. Licences are required to give rights to those exploring and producing. Work authorizations are required for any activities which take place either in the exploration, development or production stages.

During the process from exploration to production there is a requirement for both project approval and environmental approvals. This takes place through public hearings chaired by an independent commissioner who reports to the Board. The hearing process gives the public the opportunity to get information on the project and participate in the hearing process. The Board considers this public hearing process to be one of the key elements in making its decision on whether a project is approved and more importantly, if approved, what conditions will be attached to that approval. We also understand that this process must be timely so that industry can proceed without unwarranted costs. It is also because as a country, we keep a competitive edge in the timeliness of decision-making. The approval process, including the public hearings,

for Deep Penuche took 10 months from the filing of the development application until the recommendation from the Board was sent to the federal Ministers of Natural Resources and Environment and the provincial Minister of Energy.

For the environmental process, which involved numerous federal Departments, the federal Minister had agreed to a process that would be used for Deep Panuke. This involved officials from those departments who would be part of the review. It is common knowledge that the environmental approval process under the Canadian Environmental Assessment Act (CEAA) is often where many delays occur when major projects are being developed. The Deep Panuke process was very successful in ensuring those delays did not occur. Since then, the Department of Natural Resources Canada has set up the Major Projects Office which exists to address bottlenecks in the approval process. The feedback demonstrates that this office has been particularly successful in ensuring timelines are met in major resource projects.

One of the major issues that arises from resource development – especially non-renewables – is how the development of that resource will benefit the owners, i.e the Canadian and Nova Scotia public. Governments everywhere do their best to address the issue but the result is never perfect, always difficult and sometimes controversial. The Accord Acts require that a benefits plan be submitted and approved before any work authorization is granted.

Section 45 of the Accord Acts defines a benefits plan as “a plan for the employment of Canadians, and in particular members of the labour force of the Province and ... for providing manufacturers, consultants, contractors and service companies in the Province and other parts of Canada with ***full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity...***”

Section 45 also states the plan must:

- give residents in the Province shall be given first consideration for training and employment,
- promote “education and training and research and development in the province in relation to petroleum resource activities in the offshore area”,

- give first consideration to “services provided from within the Province and to goods manufactured in the Province, where those goods and services are competitive in terms of fair market price, quality and delivery”.

It also states that the Board may request provisions to ensure disadvantaged groups or individuals have access to training and employment opportunities and participate in the supply of goods and services.

The Board monitors the plan to ensure the operator meets its obligations. The data collected from this monitoring is passed to the two governments. The Board also checks to make certain that local companies have full and fair opportunity to bid. There are no enforcement provisions in the legislation – only cancellation of the licence which is considered quite draconian and open to challenge. To make certain there is compliance the Board must be diligent in its monitoring role and maintain continual dialogue with the companies as well as the governments. The Board chairs a Benefits Review Committee which includes the provincial Department of Energy, Natural Resources Canada, Industry Canada and the Atlantic Canada Opportunities Agency (ACOA), all of which provide significant input into the review process.

Ensuring that the process is fair to all who participate and to the companies is a constant effort. As I stated previously, the Board’s role is to monitor and report. In an area where the oil and gas industry is still new, it is really the governments which play the role of assisting industry to improve to ensure competitiveness, utilize research and development opportunities, keep companies apprised of the goods and services available locally and provide advice and assistance for companies on an ongoing basis. It is a long-term commitment and a gradual process to develop expertise in the local area which is competitive. Both governments are very engaged in these activities and are constantly providing mechanisms for the industry and supply services to improve local content.

Ensuring safety and best practices for both workers and the environment is paramount in all the decision-making and day-to-day operations of the Board.

Operators in the offshore must demonstrate that they have robust safety and environmental management systems. Any activities which the Board authorizes must have had a risk evaluation with mitigation.

A variety of reports must be submitted such as:

- status of work programs
- compliance with regulatory requirements
- operational status reports (drilling and production)
- accidents and hazardous incidents

The Board also reviews the minutes of Joint Occupational Health & Safety Committee (josh) held by the offshore workers to ensure operators address the issues raised by the workers. We also conduct regular health, safety, and environmental compliance audits and inspections at offshore work sites. Pre-inspection of vessels and installations occurs prior to their authorization to work offshore. The legislation and regulations allow the Board to issue, orders, directives or notices, suspend or revoke approvals and authorizations and to prosecute.

The Board is also a member of the International Regulator's Forum, an organization of nine regulators of health and safety in offshore upstream oil and gas industry. Its purpose is to make improvements in health and safety through collaboration in joint programs and by sharing information. The aim is to use similar standards to ensure that regulators are aware of the latest trends in the area, best regulatory practices and industry performance on an international scale. The lifting practices that have been adopted by these nine regulators, and in which our Board played a major role, are an example of the type of cooperation which is fostered by this organization.

Last year the same nine countries formed the International Offshore Petroleum Environmental Regulators Group. The purpose of the Group is to ensure mutual support and advice, information exchange and be aware of the lessons learned from environmental incidents.

The Board has also appointed a Fisheries Advisory Committee which is comprised of representatives from various fishing groups and we work closely with Environment Canada, the Department of Fisheries and Oceans and CEAA.

We are also in constant contact with our sister Boards – the Canada-Newfoundland and Labrador Offshore Petroleum Board and the National Energy Board – and we work in concert with them on health, safety, and environmental issues.

The Board diligently pursues its oversight in the area of health, safety and environment. Through our national and international contacts we believe we are at the leading edge of practices and legislation which exists worldwide and are able to insist on the very highest standards.

With regard to regulatory improvement we are participating with the governments and our sister Boards in the Frontier and Offshore Regulatory Renewal Initiative (FORRI) to modernize the regulatory environment. The regulations will be goal-oriented rather than prescriptive thus allowing for technological innovation and changes to be addressed on an ongoing basis. Part and parcel of the change to goal-oriented regulation will be stringent management systems to ensure compliance. The implementation of the new Drilling and Production Regulations is now in effect in 2010. The next effort will be an omnibus regulation which will incorporate and update all the other regulations pertaining to the offshore.

Part of the request today has been to address “responsible growth” of the industry and incentives and support for the industry to promote offshore development.

It is no secret that Nova Scotia has been suffering the lack of exploration in the last ten years. It should also be noted that since 1967 we have had only 200 wells drilled in our offshore, 140 of those are exploration wells. In the same period Norway has had over 10,000 wells drilled and in the Gulf of Mexico 50,000. We have had little exploration. The most robust period of exploration was during the 80s when PIP grants were available under the now defunct, National Energy Policy, to exploration companies.

Two years ago our Board undertook a study to see what we could do to enhance our resource optimization and as a result we made a number of changes, with the assistance and agreement of the two governments:

- lowered the licence deposit to \$50,000 or 1% of the work expenditure bid whichever is greater
- lowered the work expenditure bid to \$500,000
- given 150% credit for approved allowable expenditures
- allowed a 3 year period to do initial work, find partners, and raise financing. At the end of the three years the licence holder must proceed with drilling or can surrender the licence

- conducted our interpretation of geological data and issued our own Calls for Bid
- set up a Data Management Centre where geological data is available on the internet – the first in Canada.

While it is still early days with regard to these changes, it has resulted in six new exploration licences based on two Board-led Calls for Bids and one industry Call for Bids. In late 2009, we issued a new Call for Bids based upon an industry nomination of lands.

Many have asked why so little exploration in our offshore over the past 15 years has been the case. I think there are two reasons: lack of promotion of the area and lack of geological information. It is difficult to promote something you don't have. So it all boils down to geological data. It is not a chicken and egg situation – geology comes first.

Most people would say that high cost is the real reason for the lack of exploration. I disagree. I believe if you have the data which demonstrates potential the money and activity will come. You need only look at Newfoundland and Labrador.

Geological data is like gold – it never loses its worth or importance. That is why we set up the Data Management Centre to ensure easy access to the data. We also take old and new data and do our own geological interpretations to share with anyone who is interested and on which we base our Board-led Calls for Bids. The Nova Scotia Department of Energy is now at the final stages of a study to find the areas where we lack good geological information. The Geological Survey of Canada has just completed a new review of the East Coast data. We are starting to work at this – becoming activists in collecting the data and interpreting the geology off our shores.

When I first became Chair of the Board, industry was saying things like “your geology is too complicated”, “there isn't any potential”. Now with the new modeling and interpretations, these arguments have largely dissipated and there is now serious interest in what is off our coast and into deeper waters. We are not being written off. But we need a lot more exploration in order to define potential areas. The more data, the greater the likelihood of finding petroleum reserves.

The Accord legislation requires companies to submit all data they collect including interpretive data. It also defines confidentiality periods for the release by our Board of this data to other

interested parties. It is this disclosure after the confidentiality periods that has become a problem.

In the past, paper and mylar were the form in which data was submitted and with which we worked. Today it is digital data – SEGY. All companies collect and use the data they collect in SEGY. We want to disclose the information in SEGY. Industry has challenged our right to do this. We have come to an agreement with the oil and gas companies that we can release the data in pdf or tif images. We have not been able to reach agreement with the companies that shoot seismic on spec for sale to companies interested in exploring.

The solution to this is twofold: - change the legislation to be clear that we can disclose data in the form in which it was submitted or have the courts decide if we have that right. It is most likely that a court decision will be the deciding factor in this debate.

Other countries do release SEGY – the UK subject to licencing agreements, Norway subject to a fee, New Zealand, Western Australia. In Canada we do need to find a solution to this issue.

The other impediment is the Coasting Trade Act. It was passed to protect the interests of owners and operators of Canadian registered vessels and to provide shippers/users of marine equipment temporary access to the international fleet when suitable ships are not available in Canada for a specific activity.

Coasting trade very broadly includes all commercial activities in Canadian waters, carriage of goods, carriage of passengers and marine activities of a commercial nature. This broad definition is interpreted to include seismic vessels/ It does not apply to foreign vessels engaged in certain activities, one of which is *“any ocean research activity commissioned by the Department of Fisheries and Oceans “ [Section 3(2)(b)].*

When a suitable Canadian vessel is not available for a specific task, such as a seismic survey (and there is only one company in Canada), the Act allows a foreign vessel to operate temporarily after it obtains a coasting trade licence from the Canadian Transportation Agency (CTA). Once they apply, owners of Canadian registered vessels are given the opportunity to object. If objections are filed the CTA determines whether the Canadian vessel is “suitable” and “available” to perform the activities. Even if the Canadian owned vessel is outside of the country,

as long as the Canadian owner states they can provide a suitable vessel and that it is available (usually if the Canadian owner leases a foreign vessel to the job), the application is denied.

It can be argued that the purpose of a seismic vessel is not “transportation” or “coasting trade” but is instead the collection of geoscientific data and thus these vessels should be exempt the same as DFO and oceans vessels are exempt. Seismic vessels are similar to fishing vessels, which are not subject to the Act, and it is possible to strongly argue that neither seismic nor fishing vessels is “transportation” – rather it is the collection of a product: data or fish.

Despite numerous studies which have all supported our argument, Transport Canada has advised a legislative amendment is not an option and that other solutions should be found. It is important to note that the only countries which have this restriction in the world are Canada and Nigeria. It is time this issue is dealt with to ensure that development of the offshore precedes.

What we need is a new attitude to geoscientific data collection – a real understanding that this is fundamental if we are to engage in real exploration activity. We need to compete with the other nations who are changing their regimes all the time to attract exploration. A digital data policy and an amendment to the Coasting Trade Act would be a real start to maintaining our competitiveness. It would support the industry and be an incentive in the promotion of our resources. It would get us the data we need to interpret and create new models of potential resource areas.

I should end by saying that the Government of Nova Scotia, ACOA and Natural Resources Canada have been extremely supportive of the Board’s Calls for Bids. They have developed a promotional program and funded it to ensure we are able to hold workshops in centres such as Houston and London to present our proposals. These type of promotional activities will continue. The province set up the Offshore Energy Technical Research Board (OETR) and the Offshore Energy Environmental Resource Association (OEER) funded with some \$25 million to foster research to enhance offshore exploration and development. These are good, solid ways to ensure offshore development occurs.

As I stated previously, other countries have change and continue to monitor change to ensure their competitiveness to attract exploration dollars. On the 27th of January 2010, the UK

announced that it is offering new areas for exploration that hitherto have never been explored. The Government recognizes that readily available resources are in decline and to continue producing within the UK continental shelf, more demanding environments need to be explored. They have introduced a new Frontier Licence for the West of Scotland and while similar to the existing Frontier Licence in that it has a 90% reduction in rental rates for the first 3 years, the licence will expire after three years if no well has been drilled. It also announced that it will extend its new field tax allowances worth up to £160 million per field to the West of Scotland fields.

While our Board is doing everything it can within the confines of its legislation to create a viable offshore regulatory environment, ongoing policy discussions between the governments are clearly what will make the difference in the future. Dialogue on what changes are required, knowledge of what other countries are doing, and different approaches to exploration incentives need to be discussed on an ongoing basis. That is why such conferences as this are important in both the short and long term.