Québec Passes New Legislation Governing Clean Energy and Oil and Gas Exploration

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Introduction

On December 10, 2016, the Québec National Assembly passed *Bill 106: An Act to implement the 2030 Energy Policy and to amend various legislative provisions* ("Bill 106"). Bill 106 enacts or amends various pieces of legislation relating to clean energy and oil and gas exploration in the Province. Most notably, and most controversially, Bill 106 enacts the *Petroleum Resources Act* (Québec), which sets out a comprehensive new regime governing petroleum exploration and development in Québec. This represents a paradigm shift in Québec with respect to oil and gas development, setting out a modern regime that has significant implications for stakeholders.

Background

In the Spring of 2016, the Québec Government announced its 2030 Energy Policy with the stated goal of reducing the amount of fossil fuels consumed in the Province by 40% and increasing the use of renewable energy sources by 25%. Bill 106, which was initially introduced in June 2016, includes a number of legislative initiatives to accomplish this stated goal, including:

- The creation of *Transition énergétique Québec*, a Crown corporation tasked with implementing 2030 Energy Policy and creating a masterplan to achieve the Government's stated energy targets;
- The introduction of amendments to the *Act respecting the Régie de l'énergie* (Québec) to introduce new measures concerning the distribution of natural gas, including measures to increase gas pipeline capacity in Québec, and;
- The implementation of the *Petroleum Resources Act*, which sets out a comprehensive new regime governing petroleum exploration and development in Québec.

Petroleum Resources Act

The *Petroleum Resources Act* represents a significant shift in the legal framework governing petroleum exploration and development in Québec. Before Bill 106, Québec

did not have a modern regime dedicated to the development of oil and gas. Oil and gas licences were awarded using a "free-entry system" similar to how mining rights are awarded in Canada.

The enactment of the *Petroleum Resources Act* is the most significant aspect of Bill 106. It allows for the development of hydrocarbons in Québec using a licensing and authorization regime. The *Petroleum Resources Act* sets out a comprehensive regime to govern the issuance of exploration licences, production licences and underground reservoir licences, replacing the provisions governing petroleum and natural gas exploration, production and reservoir use in the *Mining Act* (Québec). It further provides for a special liability regime for licensees. It also intends to provide for the responsible exploration and development of hydrocarbons in Québec by providing means for community involvement, environmental quality approvals and remediation assurances. Details will become more apparent once the regulations are passed.

a) Exploration Licences

Under the new legislation, exploration licences will be awarded using a regulated auction process. An exploration licence will be valid for an initial term of 5 years, with the opportunity to renew the licence, subject to the regulations. An exploration licence allows a licensee (i) to explore for petroleum resources or an underground reservoir in the territory covered by the licence; and (ii) to extract petroleum resources and to dispose of it (extraction tests) or to use underground reservoirs for a trial period. The licence holder will be expected to perform, and report on, the minimum work prescribed by the regulations, and may be liable for payment of twice the minimum amount to be expended if it fails to do so.

The holder of an exploration licence will also be required to establish, within 30 days of the issuance of the licence, a monitoring committee composed of a majority of independent members. This is intended to foster the involvement of local communities. This committee will be composed of at least one local member of the municipal sector; a local member of the economic sector; a local member of the public; and, if applicable, a local member representing the aboriginal community consulted by the Government in respect of the project. The committee must be maintained through the term of the licence, and if drilling is conducted, until all permanent well closure and site restoration activities have been completed. Government regulations will further determine the details of the committee processes. While such committees are already required for the production phase in the *Mining Act* (Québec), compared with other jurisdictions in Canada, this will introduce significant local stakeholder involvement in the petroleum sector.

b) Production and Storage Licences

Once an exploration licensee makes a "commercial discovery," it must apply to the Minister for a production or storage licence, and submit a petroleum production project to the *Régie de l'énergie* within 8 years. If applicable, the exploration licensee must also obtain authorization from the *Commission de protection du territoire agricole du Québec*. In addition, any hydrocarbon production project is subject to the environmental impact assessment and review process under the *Environment Quality Act* (Québec). The period of validity of the production or storage licence is 20 years, and it is eligible for renewal on terms and conditions to be set out in the forthcoming regulations.

c) Other Approvals

The *Petroleum Resources Act* also requires authorizations or approvals for other activities related to petroleum resource extraction and production, including geophysical and geochemical surveying, stratigraphic surveying, well drilling, re-entry and completion activities, and workover and reconditioning work.

d) Abandonment, Reclamation and Remediation

The *Petroleum Resources Act* creates a duty on the part of a licensee to obtain an authorization for temporary or permanent well closure at the end of the life of a project. A permanent closure authorization requires compliance with a permanent well closure and site restoration plan. If a temporary closure lasts longer than 4 years, the well is deemed to be permanently closed and site restoration activities must be completed.

Interestingly, a licencee that applies for a drilling authorization must concurrently submit a permanent well closure and site restoration plan, setting out the work to be performed upon closure of the well, and must also post a guarantee (in a form designated by regulations) covering the anticipated cost of completing that work. The Minister can also require the licence holder to provide additional guarantees or pre-pay all or part of the guaranteed amount. The Minister can release the licence holder if a third person assumes these obligations. This concept is distinct from programs in western provinces because it provides dedicated financial security for abandonment costs, posted by the original licensee, at the time of commencement of the well.

e) Liability

The legislation establishes a no-fault liability regime for the licensee up to an amount prescribed by regulation. A licensee's liability is not dependent on the establishment of any fault but is rather determined per event based on any damage caused by the project up to a prescribed limit. The licensee also continues to remain liable, beyond the prescribed amount for damages, caused by their fault. Notably, the Act provides that force majeure will not absolve any liability. It also provides for liability to the Government for any loss of use of the public resource.

Implications

The *Petroleum Resources Act* sets out a new legislative regime in Québec and will significantly alter how petroleum exploration and development occurs. While many of the details of the regime will be implemented through regulations that have yet to be introduced, Québec is signaling that it is open for increasing exploration and production while striving for responsible hydrocarbon development by involving community stakeholders, providing for environmental impact reviews, and requiring financial assurances for well closure and site restoration.

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