

REGULATORY CONTROL THE ALASKA HIGHWAY GAS PIPELINE PROJECT

by Carl H. D. von Einsiedel

Before commenting on the specifics of the regulatory involvement affecting the Alaska Highway Gas Pipeline Project, I would like to philosophize briefly on regulatory control in general.

Regulatory control imposed by any government is often found to be irritating because it imposes restrictions on industry and the general public. Many tend to reject it and to justify its demise by argument.

However, we cannot completely 'argue away' the reason for its existence. There is no doubt that the interests of the public must not be overridden by private considerations of economic gain and that the use of natural resources must be monitored and controlled.

Regulatory agencies have been subjected to sharp criticism. Let us examine one of the several complaints regarding regulatory control. That most frequently heard is that regulatory agencies cause loss of time, require a lot of seemingly unnecessary information, and add to the costs of the products.

I think we must acknowledge that Canada, as compared to many other countries in the world, is subject to only limited regulatory control. As citizens of a true participatory democracy, who must necessarily acknowledge certain merits of regulatory control, we should direct our efforts to improving and updating existing methods. The improving and updating thus becomes the responsibility of both the regulator and the regulated.

One of the most important prerequisites in respect of regulatory authorities is that not only the policy and decision makers, but also the staff of such authorities, be fully conversant with and knowledgeable of the specific fields and the resultant problems which may

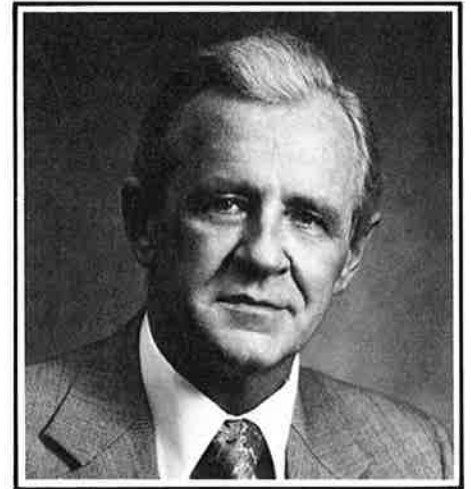
arise from the controls proposed to be imposed. At the same time, it is imperative that those empowered to regulate by administrative action, allow for and are willing to listen to claims of the rights of individuals and groups affected by the imposition of regulatory control. Agencies must not only be increasingly responsive to such demands, but must also realize that they are required to act as judges, not mediators, and must be prepared, difficult as it may be, to make sound decisions on the basis of the fullest available information and be willing to defend, **not negotiate**, such decisions.

In recent years individuals and groups, who seemingly have been silent for so long, are now raising their voices to express concerns over and objections to the construction of such projects as pipelines, power transmission lines and other facilities, which may be required for the general benefit of our nations.

If no authorization process and its regulatory contingent existed, many such construction proposals might be tied up in the courts for years, as is often the case in the American system.

While advocates of industry have proclaimed that in many areas existing "over-regulation" stifles industrial progress, they might perhaps reflect on the thought that through litigation, as an alternative, greater loss of time and money, as well as far less certainty that a specific project would materialize, could be experienced.

Let us examine the work that involves most of. During the performance of our duties do we not quite often find that, because no particular regulation exists, shortcuts are being taken which, since
(see *Regulatory*, pg. 42)



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Von Einsiedel arrived in Canada in 1951 and after a short exposure to the logging industry, was engaged until 1960 on many major pipeline projects relating to line location, engineering inspection and right-of-way, including the Trans Mountain and Interprovincial oil pipeline, Westcoast and TransCanada gas pipeline projects.

He joined the National Energy Board in May, 1960 as Technical Officer in the Engineering Branch, in 1967 he became Chief of the Right-of-Way Division and in 1975 von Einsiedel was promoted to Assistant Director, Right-of-Way. His responsibilities included supervision of the preparation of all pipeline orders and the technical portion of pipeline certificates; supervision of the examination of all submitted drawings of pipelines, including plans, profiles and books of reference; investigation and reporting on pipeline crossing problems and land owner concerns; liaison with government agencies, pipeline companies and the general public in regard to right-of-way and associated matters.

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Regulatory (cont. from pg. 41)

they are not forbidden, are considered to be justifiable? But are they—or in whose judgment are they?

Do we not also find that, when major interests compete either for or against a particular project, the negative proponent tries to restrict or superimpose demands on the proposer? Such demands are sometimes wholly unreasonable, but cannot be rebutted because no regulatory control authority exists which could rule on the need for certain actions.

By gearing planning towards accurate submissions to regulatory authorities, industry benefits considerably from the process and, additionally, saves time and expense by being fully conversant with the requisite regulatory requirements. Moreover, it permits more rapid consideration and, if in the

public interest, more rapid approval.

By co-operation much is to be gained. As a staff member of the National Energy Board of Canada for over 18 years and now as Executive Secretary, Operations, of the Northern Pipeline Agency, I have observed and participated in many public hearings held and in decisions made by the Board and the Agency within the triangle of industry, general public and regulatory body.

My experience working with the Northern Pipeline Agency and the National Energy Board, has convinced me that industry, regulatory agencies and the public through a concentrated effort and improved communication and co-operation do achieve objectives beneficial to all. Regulatory control is successful when groups work together.

Let me turn now to the Alaska Highway Gas Pipeline Project. It will be recalled that the National Energy Board

made its recommendation to the Government of Canada in June 1977 for the approval of the Alaska Highway Gas Pipeline Project (see map).

On April 13, 1978, **Bill C-25**, known as the **Northern Pipeline Act**, was proclaimed and became law. This Act established the Northern Pipeline Agency to facilitate the planning and to oversee the design and construction of a pipeline for the transmission of natural gas from Alaska.

This Act also gave effect to an agreement between Canada and the United States of America on principles applicable to such a pipeline. **The Northern Pipeline Act** also amended certain other existing Canadian legislation.

The Northern Pipeline Agency is charged with the responsibility of consulting with the governments of the provinces and territories affected by the pipeline, in order to carry out federal responsibilities in relation to the pipeline and to facilitate the efficient and expeditious planning and overseeing of its construction.

The Act is also intended to support Canadian economic and energy interests and to maximize related industrial benefits by ensuring the highest possible degree of Canadian content and participation in all aspects of the planning, construction, procurement of goods and services, as well as the protection of Canadian employment opportunities. Provision has been made for assurance of the lifestyle and well-being and aspirations of the native peoples of Canada. Provision has also been made for possible extension of the Act to cover the Dempster Highway Pipeline Lateral, which could make gas from the Mackenzie Delta in the Northwest Territories available to Canadian consumers.

While ensuring the protection of Canadian interests, the Government of Canada has not lost sight of American interests. The pipeline agreement testifies to this fact. Negotiating teams from our two countries sat down to hammer out an agreement that would maximize related industrial benefits for both countries. Many hours were spent by the teams to make our mutual interests compatible and complementary. These meetings were attended

(see *Benefits*, pg. 43)

