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Reflections on the Alberta Energy Regulator's Best-In-Class Regulatory Initiative

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Initiative Commented On: Alberta Energy Regulator's Best-In-Class Regulatory Initiative

The University of Pennsylvania's Penn Program on Regulation (PennReg) has now completed its consultation of experts and stakeholders as part of its "Best-In-Class" Regulatory Initiative, which is funded by the Alberta Energy Regulator (AER). This post discusses the "Best-In-Class" Regulatory Initiative as well as one of PennReg's three consultations, entitled the "Alberta Dialogue."

The Setup

In November 2014, the AER announced that PennReg had won a 1.2 million dollar consultation contract. This contract requires PennReg to guide the AER on how to become a "Best-In-Class" regulator. Some environmental groups are ready to dismiss such "Best-In-Class" or "World Class" initiatives as ruses to dress up, and legitimate, particular practices in the energy sector. Others, like the Environmental Law Center, are optimistic participants. Still other observers, like our Nigel Bankes, are already starting to measure the AER against a "Best-In-Class" standard, finding that in some areas, its performance might be a little less-than-class.

The stakes are high for the AER; the regulatory field that it has to manage is a tough one. Implicit in the AER's mandate is the need to create and maintain difficult balances. On one side, it needs to give weight to efficient hydrocarbon development and the Alberta economy. On the other, it needs to protect the natural environment and Aboriginal rights (in a manner that, at least, considers the advice of the Aboriginal Consultation Office). These balances are not only central to the operation of the AER, but also are central concerns of our time. They are too big to be settled by the AER alone. There will be no grand solutions. The AER will not satisfy all interests all the time. There will be winners and losers.

The Best In-Class Regulatory Initiative

The "Best-In-Class" Regulatory Initiative has three aims: to identify the attributes of a top regulator, to understand how the AER can adopt such attributes, and to create metrics to measure the AER's success. PennReg has completed all three of its planned consultation dialogues: the "International Expert Dialogue" held in Philadelphia on March 19-20, the "Aboriginal Dialogue" held in Edmonton on March 26, and the "Alberta Dialogue" held in Calgary on April 12-14.

To date, PennReg has produced three outputs. The first is a number of short white papers, by an impressive collection of regulatory scholars, on what a "Best-in-Class" regulator might be. The second is an online knowledge platform, called the "Reading Room", which shares articles and other materials on regulatory excellence, performance management, and oil and gas regulation. The third is an interim report entitled "Listening and Learning: Toward a Framework of Regulatory Leadership."

Now that PennReg has finished collecting information, it will use it to advise the AER through direct consultations. It will also release a set of expanded white papers later this summer. The outcome of this process promises to help the AER set priorities, engage more meaningfully with the public, find better solutions to problems, and re-organize its operations. In other words, this process promises to transform the AER into a "Best-In-Class" regulator.

The Alberta Dialogue

The Alberta Dialogue, which I attended, brought together a varied group of about sixty stakeholders of the AER. The stakeholders included landowners, industry, environmental groups, Aboriginal peoples, municipal and provincial officials, Canadian academic experts, and other concerned citizens.

The event comprised four sessions. The topics of the sessions included priority setting, problem solving, public engagement, the attributes of a "Best-in-Class" regulator, and measuring success. Each session first divided the invited participants into breakout groups to discuss issues. In the breakout groups, a facilitator guided the interaction between participants, helping to ensure a respectful and targeted engagement. A diverse range of stakeholders populated each group, reflecting the diversity of demands that the AER has to balance. The facilitator encouraged full participation, including personal recollections and experiences. AER representatives floated between the rooms observing the process. The sessions were recorded. After this, the members of the breakout groups reconvened in a plenary panel discussion. In part, representative participants reported their group's insights. The large group discussion that followed was also recorded.

Cary Coglianese and Harris Sokoloff coordinated the three-day event, but Sokoloff was the driving force in the stakeholder engagement process. Sokoloff is the Faculty Director of the Penn Project on Civic Engagement. Since 1995, this project has worked within policy networks to build understanding between diverse groups of stakeholders. The project self-identifies as a "neutral, honest broker", which helps citizens, organizations and governments to create insights and solutions to their problems. It explains that it "structures civic engagement to have tangible impacts on civic life" by "turning talk into action".

What Coglianese and Sokoloff are doing, at a rudimentary level, is to inspire citizen involvement within governmental planning practices. This is not a new idea. It recognizes the political nature of planning, the need for meaningful citizen involvement, and the legitimacy of pluralism as a lens for viewing social conflicts (Lane 2005). The hope of such initiatives, generally speaking, is that collaborative engagement between stakeholders can achieve negotiated consensus (Brand and Gaffikin 2007).

A central idea of such collaborative processes is that the spectrum of viewpoints inspires creative thinking between stakeholders to achieve resolution. As Steven Johnson aptly puts it: "we are often better served by connecting ideas than we are by protecting them" (Johnson 2010, 22). Thus, a foundational presumption of such citizen involvement processes is that the knowledge generated will present resolutions, or roadmaps to resolutions, which all of the stakeholders may not love, but which they can all live with.

Ongoing Challenges for the Best In-Class Regulatory Initiative

Coglianese is a very well-regarded American regulatory theorist, who has recruited an all-star team of scholars to help him think about the AER, including Robert Baldwin, Daniel C. Esty, Neil Gunningham, Bridget Hutter, David Levi-Fair, Harris Sokoloff, and David Vogel. The challenge of such academic work is to make it practical—to ensure that the recommendations are detailed enough to provide meaningful guidance at the operational level.

Another challenge is that the sessions at the Alberta Dialogue engaged with few truly substantive issues; the lack of shared technical expertise between stakeholders led to a high level of generality in discussions. To some degree, this is a necessary evil of such civic engagement deliberations—it is the cost of inclusion. But what was lost, in this case, was a testing of the tensions and differences between stakeholders. Relations were surprisingly amicable; it was a feel good event. Hopefully, PennReg has an accurate gauge of just how difficult finding balances will be for the AER.

Concluding Thoughts

In an area as politically contentious as Canadian energy regulation, PennReg will not satisfy every interest with its recommendations, nor will the AER satisfy every interest when it implements them. Regardless of the quality of PennReg's guidance, the AER is unavoidably set up to disappoint some stakeholders. The fact is that there is very little, if any, middle ground on some issues.

The words of John Lydgate, or maybe they belong to Abraham Lincoln, come to mind: "You can please some of the people all of the time, you can please all of the people some of the time, but you can't please all of the people all of the time." Critics of the AER would say that the AER has done a very good job of pleasing some of the people all of the time, and that it must start pleasing more of the people more of the time. This is not to trivialize the matter: if AER is going to win the praise it desires, this is what it must do.

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