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A Bill to Restrict the Interprovincial Movement of Hydrocarbons: a.k.a. Preserving Canada's Economic Prosperity [Act]

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Bill Commented On: *Preserving Canada's Economic Prosperity Act*, Bill 12 [Alberta], First Reading, April 16, 2018

This post examines two key questions: (1) What does Bill 12 do? and (2) What are the constitutional underpinnings of the Bill? The post does not examine whether or not the Bill is consistent with Alberta's obligations under internal trade agreements or Canada's obligations under the North American Free Trade Agreement. But first, some brief background to provide context for this unusual (and unusually titled) Bill.

Background

The general background to this Bill is well known. Alberta producers seek additional takeaway pipeline capacity from the province to accommodate increased oil sands production. Several projects to achieve this goal have been developed including Enbridge's Northern Gateway project (now withdrawn) and Kinder Morgan's TransMountain expansion project (TMX). The TMX project has been approved under the *National Energy Board Act*, RSC 1985, c N-7 and TMX has a certificate of public convenience and necessity for its project.

However, TMX faces continuing opposition from certain quarters in proceeding with its project. In particular, TMX faces what it regards as stone-walling from authorities in British Columbia with respect to municipal permitting requirements (see post here) and the province of British Columbia has also announced its intention to study a number of issues relating to the environmental implications of the project and, in light of those studies, potentially to introduce additional regulations. While BC has now committed to have the validity of the proposed new rules subject to judicial scrutiny through a reference to the BC Courts, the timetable for that reference and the particular questions that will be posed remain uncertain now and likely for a good number of months.

This has created uncertainty for the TMX project, leading Kinder Morgan (KML) most recently to announce (April 8, 2018) that "it is suspending all non-essential activities and related spending" on TMX and that:

> under current circumstances, specifically including the continued actions in opposition to the Project by the Province of British Columbia, it will not commit additional shareholder resources to the Project. However, KML will consult with various stakeholders in an effort to reach agreements by May 31st that may allow the Project to proceed. The focus in those consultations will be on two principles: clarity on the path forward, particularly

> with respect to the ability to construct through BC; and, adequate protection of KML shareholders.

This announcement seems to have triggered the Government of Alberta to introduce Bill 12 with a view to increasing the pressure on British Columbia to have it withdraw its opposition to the pipeline. The Press Release announcing the Bill contains the following statements:

> Roadblocks put in place by the British Columbia government have caused uncertainty and hurt investor confidence, resulting in pipeline delays that have caused the Canadian economy to lose out on millions of dollars in revenue every day….
>
> If passed, the legislation would give the government authority to, if necessary, require any company exporting energy products from Alberta to obtain a licence. These products include natural gas, crude oil and refined fuels, such as gasoline, diesel and jet fuel**.** Export restrictions could be imposed on pipelines, as well as transport via rail or truck.

1. What Does the Bill Do?

The Bill comprises a preamble, a set of licensing provisions, a set of enforcement provisions, important regulation making powers and some miscellaneous provisions dealing with immunity and transitional issues. The entire scheme is contingent in two particular ways. First, the Bill, once passed, will only come into force on proclamation (i.e. by Order in Council). Second, the crucial licensing provisions of the Bill will only be triggered "where the Minister by order requires a person or class or persons to obtain a licence" (s 2(2)). The Bill also needs to be supplemented by regulations before it can be effectively implemented.

The Bill does not repeal the existing *Gas Resources Preservation Act*, RSA 2000, c G-4 (*GRPA*) (which requires a person seeking to remove natural gas or propane from the province to obtain a permit from the Alberta Energy Regulator (AER)); neither does the Bill repeal or amend the existing provision in the *Mines and Minerals Act*, RSA 2000 c M-17 that allows the Lieutenant Governor in Council (LGiC) (s 85) to "make regulations fixing the maximum amount of petroleum that may be produced under Crown agreements during any month specified in the regulations."

The Preamble

A preamble to an Act cannot creates rights and obligation for persons but it can and should be used in the interpretation of the Act, and especially open textured provisions of the Act such as the power of the Minister under s 2(3)(c) to consider any matter she considers relevant when making an order to require a person to obtain a licence for the export of natural gas, crude oil or refined fuels. The preamble has four paragraphs:

> WHEREAS the Government of Alberta is committed to maximizing the value of Alberta's natural energy resources for Canadians;

> WHEREAS the Government of Alberta recognizes the importance of natural gas, crude oil and refined fuels to the growing Canadian economy;
> WHEREAS the Government of Alberta is responsible for ensuring the interests of Albertans are optimized prior to authorizing the export from Alberta of natural gas, crude oil or refined fuels; and
> WHEREAS the Government of Alberta, in recognizing the valuable role industry plays in the Province, is committed to engaging with industry stakeholders prior to requiring licences under this Act…

The Licensing Provisions

Section 2(1) is the core of Bill 12. It provides that:

> No person shall, without a licence, export from Alberta any quantity of natural gas, crude oil or refined fuel.

Each of these commodities is defined. It is important to note that the definition of crude oil does not include crude bitumen. The necessary implication of this is that exports of crude bitumen cannot be subject to a licensing requirement. Neither can bitumen diluted with a diluent ("dilbit") (the most common form in which bitumen is exported) unless that dilbit falls within the definition of "refined fuels". This seems unlikely. The Bill defines "refined fuels" (s 1(g)) to mean either:

> (i) gasoline, diesel, aviation fuel and locomotive fuel, or
> (ii) any other fuel or component used to produce refined fuels specified under a regulation made under this Act.

Dilbit certainly cannot fall under paragraph (i) (since it is not like any of the other fuels listed there) and it seems unlikely that it could be made to fall under paragraph (ii) since it is not a fuel (it requires further refining to use as a fuel) and it is hardly a component used to produce a refined fuel. Furthermore, s 2(3) of the Bill – which deals with the matters to which the Minister must ghave regard before imposing a licence requirement – clearly recognizes crude oil and diluted bitumen as separate categories. It is true that the regulation-making power in the Bill (s 11(c)) permits the LGiC to make regulations "defining any term that is used but not defined in the Act", but this Bill already defines each of the three commodities subject to the licensing procedure.

The licensing provision is only triggered (as noted above) "where the Minister by order requires a person or class or persons to obtain a licence" (s 2(2)). The Minister may only make such an order when she has (s 2(3)) determined that "it is in the public interest of Alberta to do so" having regard to:

> (a) whether adequate pipeline capacity exists to maximize the return on crude oil and diluted bitumen produced in Alberta,
> (b) whether adequate supplies and reserves of natural gas, crude oil and refined fuels will be available for Alberta's present and future needs, and

(c) any other matters considered relevant by the Minister.

The "and" in this subsection would appear to be both conjunctive and disjunctive; that is to say, the Minister can make her decision based on one paragraph or some combination of the paragraphs. Paragraph (b) resembles the criterion that animated the *GRPA* and extends that criterion to crude oil and refined fuels. This paragraph is evidently concerned with the idea of energy security, albeit at a provincial rather than a national level. The trigger for paragraph (a) seems to be two fold. First, an assessment of the adequacy of pipeline capacity, and second some sort of causal connection between that assessment and "the return". The *Act* does not define "the return" but presumably this must mean the price received by producers. It is part of Alberta's case for TMX that Alberta producers are forced to sell into US markets at a discount as against world prices. The principal reason for the discount is that Alberta producers have no viable option other than to sell into US markets because TransMountain is currently running at capacity. In sum, it is not just the total take-away capacity that is important but also the geographical diversity of that capacity.

The third condition (para (c)) is the most general and, if the provisions can indeed be read in the alternative, affords the Minister the opportunity to make an order "having regard to … any other matters considered relevant by the Minister".

While the Bill thus subjects the exercise of the Minister's discretion to some conditions, it seems likely that a Court would be very deferential to the Minister's exercise of that discretion. The applicable standard of review would be reasonableness and not correctness (although it is perhaps surprising that the Bill does not contain even a soft privative clause to the effect, for example, that the Minister's determination is "final").

While deference will be the order of the day it is useful to consider whether the Minister could make an order with the calculated aim of exerting economic pressure on another province. The most obvious means to do this would be with respect to refined fuels. In this context it is material to note that the province's press release accompanying the announcement of the legislation reported that:

> As of December 2017, the existing Trans Mountain Pipeline shipped on average:
> - 258,000 barrels daily of crude oil and blended bitumen
> - 44,000 barrels daily of refined fuels (gasoline and diesel)
>
> Approximately 80,000 barrels a day of refined fuels goes to B.C. on all modes of transportation, based on internal government estimates.

In my view, the Minister would not be able to rely on s 2(3)(b) to achieve this goal unless there was at least some evidence of a domestic (Alberta) shortage. I also think that it will be difficult for the Minister to rely on s 2(3)(a) for two reasons. First, it is at least arguable that there is no direct connection between the export of refined product exports and adequate pipeline capacity to maximize the return on crude oil and diluted bitumen. Second, if there is a connection it must be that the batched exports of refined products on the TransMountain system effectively displace exports of crude oil and diluted bitumen. Any order by the Minister that seems directed at

altering the combination of products shipped on the TransMountain system might raise constitutional questions: validity, operability and applicability (as explored in part 2 of this post).

If the Minister cannot rely on paragraphs (a) or (b) of s 2(3), she must rely on paragraph (c). And while paragraph (c) is very broadly framed, no power or consideration of public interest is unlimited (*Sincennes v Alberta (Energy and Utilities Board)*, 2009 ABCA 167 (CanLII)); in this case the Minister can only exercise her discretion to make an order to give effect to the purposes of this *Act*. Those purposes may be found most obviously in the preamble (in addition to the substantive criteria of s 2(3)(a) and (b) as already canvassed). The preambular paragraph that seems most applicable is paragraph 3 which references the responsibility of the Government of Alberta to ensure that "the interests of Albertans are optimized prior to authorizing the export from Alberta of natural gas, crude oil or refined fuels". This may be enough to justify a refined products order under the *Act* which is aimed at exerting economic pressure on another province but such an order (as discussed in part 2 of this post) may still face a constitutional challenge.

Once the Minister has made an order under s 2(2), any person or class of persons seeking to export natural gas, crude oil or refined fuels covered by the order must obtain a licence. The reference to a person or class of persons implies that the Minister may make an all-encompassing order or (as assumed above) a more discrete order or orders. An application for a licence is to be made to the Minister. Thus, the Bill does not contemplate any involvement of the AER or any other provincial regulatory authority.

In making a decision with respect to an application for an individual licence, the Minister is enjoined to apply the same criteria to that application as with respect to the decision to trigger the requirement for a licence. The specific language is as follows (s 4(1)):

> The Minister may issue, amend or renew a licence only if in the Minister's opinion it is in the public interest of Alberta to do so having regard to the matters referred to in section 2(3)(a) to (c).

It is not clear what this adds. In fact this provision may cause some confusion or be difficult to apply since it seems to suggest that in this case (the word "only" is very powerful) the matters referenced in s 2(3) are cumulative (i.e. that the "and" in this case must be conjunctive (which is counter intuitive given the parallel structure of the provisions)).

Section 4 goes on to address the terms and conditions that may be imposed through a licence (many of these provisions are drawn from the *GRPA*):

> (a) the point at which the licensee may export from Alberta any quantity of natural gas, crude oil or refined fuels;
> (b) the method by which natural gas, crude oil or refined fuels may be exported from Alberta;
> (c) the maximum quantities of natural gas, crude oil or refined fuels that may be exported from Alberta during the interval or intervals set out in the licence;
> (d) the maximum daily quantities of natural gas, crude oil or refined fuels that may be exported from Alberta;

(e) the conditions under which the export from Alberta of natural gas, crude oil or refined fuels by the licensee may be diverted, reduced or interrupted;
(f) the period for which the licence is operative.

Some of these conditions seem suited to the particular licence (e.g. (f) and perhaps (a) and (b)) while others seem more suited to licensed volumes generally (perhaps especially the case with respect to paragraphs (c) and (d)). For me this raises the question of whether these more general issues should be dealt with in the licence terms and conditions, or whether they should be dealt with (at least in the first instance) when the Minister first makes an order under s 2(2).

The prohibition on exporting without a licence is aimed at exporters. Who then is an exporter of a designated product? The Bill does not define the term although the regulations may rectify that omission. Absent clarification in the regulations it is possible that several parties may be an exporter in relation to the same product. For example, the owner of the product who makes arrangements to ship the product out of the province will likely be an exporter. But, in addition, the carrier with whom the owner makes shipping arrangements may also be an exporter. Relevant carriers would include pipeline companies, railway companies and trucking companies. The Minister may amend a licence once issued (s 5) and may reconsider any decision she has made (s 6).

Enforcement Provisions

The Bill contemplates two principal enforcement mechanisms: an offence provision and an "order to cease transporting".

Any person who breaches the *Act*, the regulations, a term or condition of a licence, or an order or direction of the Minister, is guilty of an offence (s 7) subject to a penalty of not more than $10 million (in the case of a corporation) or $1 million (in the case of an individual), for each day or part thereof that the offence is committed.

The order to cease transporting (s 8) is more complex. Such an order may be issued by the Minister where the Minister determines that a person is not complying with the *Act* ("the non-compliant person"), the regulations, a term or condition of a licence, or an order or direction of the Minister. The order is not issued to the non-compliant person but as a direction to an "operator" (s 8(2)) "to cease transporting natural gas, crude oil or refined fuels in the operator's provincial pipeline, or by the operator's railway or commercial vehicle, for the account of or on behalf of that person ...". "Operator" is a defined term and the drafter has been at pains to explicitly confine the persons targeted to *intra*provincial carriers. Thus "operator" (s 8(1)(a)(i)) means:

(i) the holder of a licence for a pipeline under the *Pipeline Act*,
(ii) the operator of a railway under the *Railway (Alberta) Act*, or
(iii) the registered owner of a commercial vehicle under the *Traffic Safety Act*

Similarly, "provincial pipeline" is defined in s X to mean "a pipeline or pipeline system for the transmission of natural gas, crude oil or refined fuels that is operated under the authority of a licence under the *Pipeline Act* and that delivers natural gas, crude oil or refined fuels into an extra-provincial pipeline."

Section 8 goes on to provide that the order to cease transporting does not itself frustrate or render ineffective any agreement between the operator and the non-compliant person or between the non-compliant person and any other person if that agreement "relates to the transportation of natural gas, crude oil or refined fuels by pipeline, railway or commercial vehicle within Alberta". Neither does such an order relieve the non-compliant person of any liability to the operator or "any other person" with respect to the payment of any amounts otherwise payable. This provision only deals with the effect of the order to cease transporting. Since the underlying premise of the order is that "a person" (an exporter) is not complying with the *Act*, it may well be that the prohibition that the *Act* itself creates will serve to frustrate or render ineffective any agreement between the relevant parties. In any event, much may depend upon the terms of the specific agreement between the parties and in particular any force majeure clause in the relevant agreement.

Regulation Making Powers

Section 11 is the regulation making power of the *Act*. In addition to some more specific provisions it contains two broad "basket clauses" allowing the LGiC to make regulations "granting the Minister any authority and powers considered necessary to enable the Minister to conduct and perform the Minister's duties under this Act" and "respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act." One other paragraph that attracted my attention was paragraph (g) which authorizes the LGiC to make regulations with respect to "the assignment of licences". The significance of this is that to the extent that licences become an essential element of securing market access, they will have scarcity value and thus, if assignments are permitted, the assignor will be able to extract rents from the assignment. It is hard to identify any good public policy reason supporting such an activity. At present we have no idea what any regulations might say about the assignment of licences. Indeed, they might simply provide that any attempt to assign a licence renders the licence void.

Miscellaneous Provisions

Section 10 confers an immunity on "the Minister, the Crown or any employee or agent of either of them for anything done or omitted to be done in good faith while carrying out any duties or exercising any powers under this Act or the regulations." This would certainly seem to be effective to confer an immunity on the listed parties for losses that are incurred in the province; but what if a party outside the province suffers losses (see *Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 SCR 297, 1984 CanLII 17 (SCC)), or what if the exercise of authority under the *Act* rests upon a reckless understanding as to the constitutional underpinnings of a particular provision?

2. The Constitutional Underpinnings of the Bill

In considering the constitutional underpinnings of the Bill it is useful to keep in mind three separate questions: (1) the validity of the Bill, (2) the operability of the Bill and (3) the applicability of the Bill.

The Validity of the Bill

The validity of the Bill turns on its "pith and substance". The Bill is evidently directed at the "export" from Alberta of natural gas, crude oil and refined fuels. In the case of most commodities this would lead us to conclude that the Bill was concerned with interprovincial and international trade and commerce. This is a federal head of power under the *Constitution Act, 1867*, 30 & 31 Vict, c 3: s 91(2). However, the *Constitution Act, 1867* was amended in 1982 to add s 92A and the accompanying Sixth Schedule. Section 92A(2) provides that:

> In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.

This *lex specialis* provision must allow the province the opportunity to characterize the subject matter of the Bill as a law in relation to export of the primary production of natural resources. Section 92A seems to establish three conditions as to validity. First, the law must relate to the export of covered goods from the province to another part of Canada; second, the goods must be (for present purposes) "the primary production from non-renewable natural resources"; and third, the law must not "authorize or provide for discrimination in prices or in supplies exported to another part of Canada".

As to the first condition, it appears that Bill 12 over-reaches the cover provided by s 92A. Section 92A(2) only provides cover for a provincial law directed at "the export from the province to another part of Canada" whereas s 2 of the Bill is directed more generally at exports from the province—whether to another part of Canada or directly to the United States. One wonders why the Bill's drafter did not elect to confine him or herself to the language of s 92A.

The second condition turns on the definition of "primary production from non-renewable natural resources". The Sixth Schedule of the *Constitution Act, 1982* provides that:

> ... production from a non-renewable natural resource is primary production therefrom if
> (i) it is in the form in which it exists upon its recovery or severance from its natural state, or
> (ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil…

The important part of this definition for present purposes is paragraph (ii). This is hardly a model of precise drafting and as a result there is at least a question as to whether "refined fuels" as used in the *Act* will qualify as primary production. The first part of paragraph (ii) *includes* products that result from processing or refining "the resource" as primary production. For me this certainly includes the pipeline quality gas that results from processing produced gas, as well as bitumen that has gone through processing to remove sand and water. The second part of paragraph (ii) serves to *exclude* certain products from the definition of primary production. These excluded products consisted of "manufactured products" (inapplicable in the present context) and products "resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil". The question is, where do we fit the refined fuels as defined in the Bill? Do they fall within the first part of the paragraph (and thus constitute primary production) or do they fall under the second part of the paragraph (in which case they do not fall within the definition)? Both the first and second part of paragraph (ii) refer to products that result from refining but the refined fuels referenced in the Bill cannot fall under both parts of the paragraph. We must choose. Which then is the best fit? My preliminary view is that the second part of paragraph (ii) provides the best fit because of its persistent references to the products of refining crude oil, heavy crude, synthetic crude and gases and liquids and this seems naturally to encompass such products as gasoline, diesel, aviation fuel and locomotive fuel.

If this is correct, then it follows that insofar as the province is relying on s 92A(2) as the primary means of support for Bill 12, the Bill again overreaches that authority because it applies to refined fuels as well as natural gas and crude oil. This is a point of considerable importance given that the most obvious means to put economic pressure on British Columbia will be to make an order with respect to refined fuels.

The third condition requires that the law "not authorize or provide for discrimination in prices or in supplies exported to another part of Canada". There is nothing on the face of the Bill that authorizes or provides for discrimination. But, that will not be the end of the matter for at least two reasons. First, there is considerable evidence on the record in which Alberta has signaled its intention to target BC. While that alone may not be sufficient to allow a court to conclude that the Bill itself is discriminatory it will allow a court to review subsequent implementing measures through a lens of colourability: see again *Churchill Falls*. Second, we will need to examine the implementation of the Bill.

To secure the cover of s 92A(2), any subsequent order under s 2(2) of the Bill and the terms and conditions of any licences must also neither authorize or provide for discrimination. This would mean, for example, that an order under s 2(2) that applied only to exports of products to British Columbia would not be entitled to the protection of s 92A. Again, this is significant. The data released in Alberta's press release indicate that Alberta/Western Canada currently exports about 200,000 barrels a day of refined fuels. We need more information about how much of this originates in Alberta but, in principle, Alberta will only be able to avoid a charge of discrimination if it prorates any exports of refined fuels from the province as between different provincial destinations.

It seems reasonable to think that the onus would be on Alberta to establish that Bill 12 meets the first two conditions of s 92A(2) and that the onus would be an opposing party to establish that the law or an order or licence term or condition authorized or provided for discrimination.

Operability

If the law and any relevant regulations and orders made to give effect to the law are valid, Alberta may still have to establish that the provisions in any particular concrete case are operable and applicable. In other words, it may have to establish that the rules are not made inoperable under the doctrine of paramountcy or inapplicable under the doctrine of interjurisdictional immunity. These doctrines are standard parts of Canadian constitutional law and there is no reason to think that they are not equally applicable to a law that relies for its validity on s 92A(2). Indeed, s 92A(3) explicitly confirms the applicability of the doctrine of paramountcy to provincial law laws made in reliance on s 92A.

Alberta will not want to have to make these arguments since in doing so it will find itself making exactly the same arguments as British Columbia and the City of Burnaby have been making before the National Energy Board, the Federal Court of Appeal and the superior courts of British Columbia (see earlier posts here and here).

The doctrine of paramountcy holds that a provincial law will be inoperable if there is an operational conflict between a federal law and the provincial law, or if the application of the provincial law would frustrate the purpose of the federal enactment. It is impossible to reach any sort of final assessment of the application of the doctrine of paramountcy in the context of Bill 12 without seeing a set of concrete facts, including the particulars of any orders and any relevant practice in relation to the issuance or (non-issuance) of licences. But, as the discussion above suggests, if Bill 12 were applied in such a way as to change the rules with respect to the batching of product on the TransMountain pipeline it would be necessary to examine very carefully if this created one of the two forms of prohibited conflict between provincial legislation and the terms of the *National Energy Board Act* (see the common carrier rules of s 71(1)), and any applicable Board decisions relating to the prorating of capacity on the TransMountain pipeline.

The Doctrine of Interjurisdictional Immunity

The doctrine of interjurisdictional immunity (IJI) holds that a provincial law that impairs the core competence of a federal head of jurisdiction (in this case the TransMountain pipeline as a federally regulated interprovincial work or undertaking) will be inapplicable to the federal matter. Much as with the approach to paramountcy, we cannot answer this question in the abstract, but we can say that, in some circumstances, the application of Bill 12 may require an IJI analysis.

Conclusions

British Columbia has already announced that it will seek to question the constitutional validity of Bill 12 and its implementation. This post suggests that this is not an idle claim. If British Columbia litigates, Alberta can anticipate that BC will seek to rely on both administrative law

arguments and constitutional arguments. It is also possible that third parties affected by the implementation of the legislation will seek to join such an action or commence their own actions.

The provisions that will likely attract the most attention are those which will involve the application of the *Act* to refined fuels. This is so for two reasons. First, limiting exports of refined fuels to British Columbia is more likely to assert pressure on British Columbia than limiting exports of natural gas or crude oil. Second, Alberta's case is constitutionally the weakest with respect to refined fuels.

Alberta's constitutional position is weakest with respect to refined fuels for three reasons. First, the Bill purports to apply to exports of products not just to another province but internationally. Section 92A(2) does not cover such exports. Second, section 92A(2) only covers the province with respect to primary production from non-renewable resources. It is not clear that refined fuels fall within the definition of primary production. Third, section 92A(2) only covers the province to the extent that its laws and practices regulating exports are non-discriminatory as between provinces. It will be challenging for Alberta to demonstrate this, especially in light of comments on the record to the effect that Alberta is aiming its intervention against BC.

If Alberta cannot rely on s 92A(2) to limit exports of refined fuels for any of these three reasons then I think that the legislation will be invalid (as it pertains to refined fuels) as legislation in relation to a federal head of power: the regulation of trade and commerce.

This leads me to question whether this Bill is wise. Alberta has alleged that BC is not playing by the constitutional rule book. This legislation (depending on how it is implemented) opens Alberta to the same charge. Furthermore, the Bill increases the level of conflict between the two jurisdictions. As such it is hardly likely to provide the certainty that both the Government of Alberta and Kinder Morgan crave, and it is certainly unlikely to result in Canada, Alberta, BC and Kinder Morgan achieving anything resembling consensus by May 31st. It may prevent Jason Kenney from outflanking Premier Notley but it is hardly likely to deliver on the longer term interests of the Province and Albertans.

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