Submission to Environment and Climate Change Canada on *Proposed Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations*

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Energy NL
Newfoundland and Labrador's Energy Network

Energy NL

Energy NL was founded in 1977 to represent the supply and service sector of the energy industry. Today Energy NL represents over 500 member organizations worldwide which are involved in, or benefit from, the energy industry of Newfoundland and Labrador. Energy NL members are a diverse representation of businesses involved in a range of activities related to both renewable and non-renewable energy development, construction, and operations. This includes, but is not limited to, areas such as direct offshore and onshore supply; health and safety equipment and training; engineering solutions and fabricators; law firms and human resource agencies.

Serious Impacts; Serious Concerns

The proposed Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations have serious impacts on the oil and gas sector which leaves Energy NL with such serious concerns that it does not and cannot support the proposed regulations. The approach taken by the Government of Canada will in practice function as a cap on production and also violates both the spirit and intent and the joint management requirement of the Atlantic Accord. The regulations also do not address previous concerns raised by Energy NL in submissions made September 30, 2022, and February 5, 2024.

More pointedly, the regulations establish a cap on production, resulting in a cap on jobs, a cap on revenue and royalties, and a cap on supplying lower-carbon oil to meet global demand. The cap is a targeted attack on the oil and gas industry which has given so much to Canada, especially Newfoundland and Labrador. The implementation of the Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations will erode the last shred of investment attraction left in Canada and leave not only valuable resources stranded, but significant financial benefits to all Canadians unrealized, while also leaving space for other jurisdictions to supply higher emitting and lower standard ESG oil to the world.

The Newfoundland and Labrador offshore oil and gas sector produces a lower-carbon oil which accounts for just 0.18% of Canada's total greenhouse gas emissions and is desired around the world. This has been acknowledged by senior members of the Government of Canada, including on June 6, 2024, when Jonathan Wilkinson, Minister of National Resources Canada, told the Standing Senate Committee on Social Affairs, Science and Technology, "We need to ensure Canada is providing the products that are the lowest carbon products in the world because that will be a source of comparative advantage in a market for oil in particular that will be a smaller one." Similarly, in June 2021, Prime Minister Justin Trudeau told the St. John's Board of Trade, "We're going to continue, as a world, to rely on oil and gas for a considerable time still, even as we look to transform to a lower and eventually a net zero economy." The Prime Minister also said the following to the gathering, "Newfoundland and Labrador have advantages because of the low carbon content in your average barrels of oil." And related, The Canadian Press on July 10, 2024, quoted Environment and Climate Change Canada Minister Steven Guilbeault as saying, "We will continue using fossil fuels in a carbon-neutral world in 2050. We will be using far less fossil fuels, whether it's oil or natural gas, than we're using today, but they will still play a part in our energy portfolio in a carbon-neutral world."

Given this recognized need by senior leaders of the Government of Canada, along with many reputable international organizations, Energy NL wanted to know if new, lower-carbon production offshore Newfoundland and Labrador would be possible under the national scheme created by the regulations. While ECCC officials and a senior federal cabinet minister said it is, Energy NL requested ECCC modeling to prove it is. As it was waiting for this information from the federal government, Energy NL commissioned an independent review of the implications of the regulations for offshore Newfoundland and Labrador by internationally respected energy consultancy firm Wood Mackenzie. The briefing from ECCC to explain how new facilities could come online offshore Newfoundland and Labrador never occurred as the department requested that Energy NL sign a non-disclosure agreement (NDA). Energy NL felt signing an NDA would limit its ability to respond and inform members of any impacts. Yet, the analysis by Wood Mackenzie illustrates that the emissions cap is in effect a production cap as it is a "complex, multi-layered" policy that will "create confusion, regulatory burden and investor fatigue…" where investors will be "trading project economics for cap compliance…" and "their degraded economics will have a chilling effect on investment decisions, along with precursory exploration efforts." It is clear to Energy NL that this is a poorly conceived piece of policy that will further dampen an already challenging investment climate.

Canada stands at the precipice of abandoning a lower-carbon energy source that will help meet global demand, achieve net zero objectives, and provide well-paying jobs to Canadians from coast-to-coast-to-coast. As indicated in the November 2024 edition of Horizons published by Wood Mackenzie, new offshore oil fields are advantaged barrels – the type referred to by Minister Wilkinson and Prime Minister Trudeau and referenced above – and have the potential to reduce emissions by providing new, lower-carbon sources of oil and displacing older, higher emission intensity sources. The regulations will have the exact opposite impact of their supposed desired effect. The regulations do not incentivize new, lower-carbon oil production, and in fact, discourage new exploration and the development of our abundant lower-carbon sources.

The regulations may also be punitive to offshore Newfoundland and Labrador as while it has a lower-carbon product, it represents only a small percentage of Canada's overall production, and its allowances may be overly dependent upon the actions of facilities in other regions. More critically, allowances for Newfoundland and Labrador could be moved to other jurisdictions to lower their emissions profile against the national cap and leave fewer allowances for offshore Newfoundland and Labrador.

The regulations are so complex that experienced individuals in the area of emissions and production modelling and analysis have difficulty comprehending them, and there remains a significant lack of details about future allowances and baselines, including for new facilities. This complex and convoluted approach will send investment elsewhere, leaving stranded assets and lost opportunities, while providing no real or tangible action on emissions reduction.

With respect to the Atlantic Accord, by acting unilaterally regarding the operations of offshore development, the Government of Canada violated this foundational legislation which provides joint management of the offshore. The Government of Canada must have the concurrence of the Government of Newfoundland and Labrador for decisions related to the offshore and that was clearly not the case with respect to these regulations. The spirit and intent of the Atlantic Accord, and indeed our federation, have been overstepped by these targeted and harmful regulations.

Expert Independent Analysis

As referenced above, to assist Energy NL's analysis of the proposed emissions cap regulations, Energy NL enlisted the assistance of Wood Mackenzie, a world leading global data and analytics solutions provider for renewables, energy, and natural resources. Wood Mackenzie was chosen by Energy NL due to their extensive knowledge, experience, and expertise in the global offshore oil and gas industry, and particularly their insights into the Newfoundland and Labrador offshore industry and its position within a global context. They have an in-depth understanding of energy investments and markets with the necessary data to substantiate the findings of their research and analysis.

Due to the restricted timelines provided by the Government of Canada to respond to the regulations and the overly complex nature of the regulations, the complete analysis by Wood Mackenzie is ongoing. Yet, preliminary results confirm Energy NL's concerns regarding the impact of an emissions cap on Newfoundland and Labrador's offshore oil and gas industry. Specifically, the modelling undertaken so far indicates substantial negative impacts regarding future decision-making, particularly related to new projects and industry growth, which have a direct, drastic effect on future production and government royalties and revenue, and in turn, risk future employment and business opportunities for companies directly and indirectly engaged in the industry. Highlights of the analysis include:

- The regulations will cap production offshore Newfoundland and Labrador, even with the availability of allowances and acquisition of credits.
- The pace and scale of future production will be determined based on the implementation of the cap. As operators conform to the cap to avoid risk of exceeding the allowances for their facility and subsequent criminal prosecution, offshore development will be paced to reduce production per year, or even cease production.
- Investment decisions going forward will be under intense pressure with the uncertainty created as to the allowances available for new projects and resulting allowances for existing projects.
- For any proposed new offshore projects, the impacts of a possible delayed scale of production resulting from the cap would be financially substantial in terms of capital cost and loss of government revenue.
- Selling of credits created from production decreasing at a facility will not offset the lost revenue from the production decrease, and in fact will not remotely come close to offsetting the lost revenue from the production decrease. This counters any notion by proponents of the emissions cap as proposed of any potential windfall to any project, sector, or geographic region of the country stemming specifically from the implementation of the cap.

Due to the complex nature of the regulation scheme there are a number of factors which may cause potential investors to make their investment elsewhere. The uncertainty of available allowances, specifically the inability of investors to determine or predict allowance availability when their project would be scheduled to commence operation, will send investment to jurisdictions with more clear and consistent regulations.

Modelling by Wood Mackenzie suggests that to meet post-exemption emissions cap targets, operators would need to consider deferring start-ups or developing smaller projects phases (i.e. develop with less robust economics). In an already volatile commodity business, this places development potential at serious risk by creating investment decision paralysis and freezing out investment.

These anticipated outcomes of the Wood Mackenize model cannot be supported by Energy NL and the association vehemently opposes the proposed emissions cap for these reasons. Any action undertaken to curtail existing production, and/or prevent or limit future production, is not acceptable to Energy NL.

Further, while the 2019 benchmark of the regulations is portrayed as positive for the industry, this timeframe does not consider the potential for growth offshore Newfoundland and Labrador in both oil and gas, while also not considering the substantial growth of Western Canadian oil, along with liquified natural gas facilities that have already occurred in British Columbia, the significant potential of that sector, and the impact it will have on the national cap-and-trade system, including for Newfoundland and Labrador.

The Wood Mackenzie analysis at this time leaves Energy NL with no conclusion other than the proposed emissions cap regulations are a poorly conceived government policy that will have a severely adverse effect on the Newfoundland and Labrador offshore oil and gas industry, and the Canadian oil and gas sector broadly. As such, the regulations should be abandoned and serious consultation be undertaken with industry and provincial governments to find a more productive path forward to abate emissions while providing world-class oil and gas to the world. Energy NL cannot support the regulations as presented and advises the Government of Canada to reevaluate its approach to this critically important topic.

Energy NL's Specific Comments on the Draft Regulations

Joint Management & Role of the Canada-Newfoundland and Labrador Offshore Petroleum Board

With the Atlantic Accord and the Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, the Government of Canada agreed to joint federal-provincial management of Newfoundland and Labrador's offshore oil and gas activities. With that was the creation of the Canada-Newfoundland and Labrador Offshore Petroleum Board as regulator, which reports to both Natural Resources Canada and the Government of Newfoundland and Labrador Department of Industry, Energy and Technology. Furthermore, the Act stipulates that, in the case of inconsistency or conflict with any other Act of Parliament or associated regulations that apply to the offshore area, the Atlantic Accord Implementation Act has precedence.

The approach taken with the development of the emissions cap regulations is offside with the principles of the Atlantic Accord. The unilateral approach taken by Environment and Climate Change Canada with the establishment of these emissions cap regulations does not meet the spirit, intent, and requirements for joint management of the Atlantic Accord, nor does it recognize the role of the Canada-Newfoundland

and Labrador Offshore Petroleum Board. Energy NL believes that emissions management is a critical aspect of the overall management of the offshore oil and gas industry for which the Atlantic Accord and joint management apply.

Accommodation for New Projects and Entrants

A major concern for Energy NL with respect to the regulatory framework relates to the approach to allow for new, low-emitting projects, and lower-carbon oil production increases. While the draft regulations provide information regarding the timeframe for reporting and compliance for new projects, including a four-year window for reporting post commencement of production and compliance beginning in the fifth year, there is no certainty for new projects or details as to how a new project would obtain allowances.

In addition, new entrants with just one facility are at a disadvantage as they would not have the same flexibility to move allowances/credits within their own corporate structure the same as operators who have multiple facilities in Canada. This would be a deterrent to new entrants into Canada's offshore oil and gas industry.

As well, should a new production facility begin and be allocated allowances under the national system, there is no clarity as to how this will impact existing facilities and their allowances. It is understood that a new facility would likely result in less allowances available to all other facilities in Canada and thus there may be a shortage of allowances. In such a circumstance, an existing facility could be non-compliant and be forced to cease production and operation or face criminal prosecution under the Canadian Environmental Protection Act, 1999. There is no clarity on how such circumstances are to be managed/regulated on a national scale.

Limited Time to Use Allowance Particularly for Offshore Setting

Investment decisions in Newfoundland and Labrador's offshore industry take a long time, over many years and much longer than for onshore oil and gas operations. Having allowances expire after two compliance periods does not take this into consideration and does not provide sufficient time for operators to make investment decisions for the use of these credits in their offshore operations. This effectively leaves offshore operators that have allowances with only one option: to sell the allowances which results in less room for production growth in offshore Newfoundland and Labrador.

Uncertainty – Beyond 2036

While the draft regulations outline in detail how the emissions cap would be regulated for the first two compliance periods, no information is provided for stakeholders to ascertain the impact beyond those first two compliance periods. This creates significant uncertainty for current and future operators. This is another example of how these regulations will drive investment to international jurisdictions with clear and concise paths to development, and, unfortunately, likely with higher emitting products and less stringent environmental and safety practices.

Regulatory Burden

The approach outlined in the draft regulations is convoluted and adds another layer of uncertainty to what is already a complex regulatory process. Newfoundland and Labrador's offshore oil and gas industry emissions are already regulated by the Government of Newfoundland and Labrador's Management of Greenhouse Gas Act, which regulates greenhouse gas from industrial facilities via a carbon pricing system. Under the Government of Canada's Greenhouse Gas Pollution Pricing Act, a federal Output-based Pricing System (OBPS) applies to large industrial emitters.

The imposition of a cap-and-trade system for an emissions cap, an entirely new system, in addition to the established carbon pricing measures inherently adds significant administrative burden. This adds duplication in monitoring, verification, reporting and cost, not just for operators but also for government as Environment and Climate Change Canada implements and manages the new system. In addition, there is much uncertainty as to how this approach to an emissions cap would interact with existing carbon pricing mechanisms. Energy NL has long been concerned that regulatory uncertainty has hindered the growth of our national energy sector and this regulatory framework does not alleviate those concerns, but rather enhances them.

Underlying Assumptions for the Regulatory Impact Analysis Statement (RIAS)

The analysis undertaken and described in the Regulatory Impact Analysis Statement, which accompanies the regulations and is meant to provide some rationale to the proposed approach, displays an inherent lack of understanding as to how energy industry investment decisions and markets operate and does not consider the global nature of the industry. Canada's oil and gas industry does not operate in a vacuum. Decisions on investment and associated production are made on a global basis, largely by international companies, and consequently, decisions made stemming from the release of the draft regulations will be considered in a global context, and will not be viewed favourably. Energy NL is aware of a number of potential investors that are deeply concerned about the increasing uncertainty placed on the sector by these regulations.

The analysis as described in the RIAS is flawed by not having at least considered the possibility that Canadian production could decrease, specifically as a result of the implementation of the regulations. A possible, and quite likely, result of the implementation of the proposed regulations is that investment in oil and gas exploration, development, and production would contract in Canada, and shift towards regions which do not implement an emissions cap – which will essentially be all, or any other oil and gas producing jurisdiction as no other jurisdiction has implemented such a convoluted scheme as Canada. Such an investment shift would be accompanied by a commensurate shift in Canadian production to these other regions. Given the realities of global energy investment and markets, the scenario of reduced Canadian production leading up to and beyond 2032 should be considered and factored into any economic analysis. The fact that such a scenario is not even considered in the RIAS is a troubling and glaring omission which needs to be analyzed, and the results considered, prior to the Government of Canada implementing any emission cap regulations.

Furthermore, the notion of a 13MT reduction in global emissions and an associated estimate of nearly $4 billion in avoided climate change damages, appears predicated on an unsubstantiated premise that each tonne of reduction in emissions in Canada will translate directly into a tonne of global emissions reduction. Again, this analysis fails to consider the reality that the implementation of these regulations would have the immediate effect of shifting investment for all stages of oil and gas activities away from Canada, as contemplated above. Such a scenario would lead to increased investment in jurisdictions outside of Canada, likely to areas which have even higher emissions intensity. The RIAS considers no such scenario.

Environment and Climate Change Canada has not substantiated their claims that Canadian production will increase under the threat of, and with the implementation of, the proposed emissions cap regulations and that implementation will directly result in any global emissions reduction. The potential impact on global emissions needs to be fully considered and factored into any emissions impact or economic impact analysis, and clearly outlined in the RIAS. If not, the Government of Canada will be making an extremely important policy decision with immediate, direct consequences on Canada's economic well-being without the necessary information.

Conclusion

As the proposed Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations will result in curtailed production of the Newfoundland and Labrador offshore oil and gas industry and violate the spirit and intent of the Atlantic Accord and the requirement of joint management enshrined in that legislation, Energy NL opposes the proposed regulations. The Canadian oil and gas industry has been a leader in providing well-paying jobs to Canadians, significant revenues and royalties to governments, funding and advancing research and development, and supporting communities. The proposed policy of the Government of Canada appears to be an attack on these benefits and places them all at risk.

If the policy objective of these regulations is to lower emissions, the proposed approach will not accomplish this. As outlined in this submission, the proposed policy instrument of the Government of Canada may actually have the opposite effect by discouraging exploration for, and development of new, lower-carbon fields, and increasing production in jurisdictions with lesser environmental, safety, and governance practices.

Energy NL has heard from industry members locally, nationally, and internationally, that the regulatory burden of Canada is substantial, and the proposed approach does nothing to alleviate, but rather exacerbates the burden and sends investment elsewhere. This has already begun as the signal sent to investors via these, and other policies, is they are not welcome or wanted in Canada. For example, since the discussion began about implementing this emissions cap, the Newfoundland and Labrador offshore bid round has received zero bids in three of the last four bid rounds.

Energy NL believes all sectors should work collaboratively to achieve this objective, without unduly targeting or punishing one or another. The Government of Canada should help bring sectors and industry leaders together and work to incentivize the lowering of emissions while also providing substantial benefits such as well-paying jobs to Canadians, revenue to governments to support social programs, and building strong communities. That will not happen through the Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations. Canada should look to international leaders such as Norway who continues to support substantial investment in its offshore oil and gas sector while also supporting the evolution to renewable energy sources. Such an approach will provide longer-term benefits to Canadians and allow our country to be a global leader in providing lower-carbon oil, produced with internationally leading ESG practices, to a global population in need of cleaner energy.

Energy NL fully supports efforts to lower emissions and achieve a net zero economy. Offshore projects have already implemented emissions reduction measures with significant reductions achieved. The SeaRose FPSO has reduced emissions from 2007 to 2021 by almost 50% through the use of a product called "emissions.AI" that monitors energy consumption, as well as using a real-time dashboard that monitors emissions, along with a focus on emissions reduction in flaring. The Hebron offshore platform has reduced emissions by 33% through implementation of a gas management strategy and between 2019 and 2021 reduced emissions from flaring by an estimated 77%. Hibernia has reduced GHG emissions by 29% from 2005 to 2021 through initiatives such as reducing flare emissions by about 50% and replacing diesel-power cranes with electric cranes. The Terra Nova FPSO has undergone an asset life extension with upgrades leading to potential reductions in emissions including through increased reliability and corrosion mitigation, while the proposed Bay du Nord project is expected to be the lowest emitting project in Canada.

While Energy NL has been frustrated and disappointed with the approach of Environment and Climate Change Canada so far as it attempts to address the lowering of emissions, the association remains open to continuing to work with the department in developing an approach that works for the Newfoundland and Labrador offshore oil and gas industry, and the entire Canadian oil and gas industry to continue to provide significant benefits to our communities. Every Canadian deserves nothing less.