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For the Calgary Herald

The talk of the day is the finding of the Royalty Report that Albertans are being ripped off to the tune of billions of dollars, since the province is selling our oil wealth off at below market value. And where will that go politically? But in case you haven't heard, across rural Alberta, there's a second big issue creating a groundswell of unease. It's called Bill 46. Many people feel it is a step in further removing Albertans' legal rights to defend their property and businesses against the power of big government and big business – in this case, to develop right over their land.

Since the Energy and Utilities Board (EUB) is now being split into two different bodies, Bill 46 will create the Alberta Utilities Commission, to oversee utilities - including the building of transmission lines across your land or business. The Bill emerges in a context of widespread public mistrust of the EUB, since they were recently caught illegally spying on the ranchers and farmers who were coming before their hearings. So what we need to do is to restore faith in the regulator, through an open, democratic process of public input that is listened to.

Unfortunately, we're going in the opposite direction, because under Bill 46, rights of public participation shrink still further. Already, at the first hearing to determine if there's a need for a transmission line at all, only "directly and adversely affected" landowners have the right to standing (to put their case forward directly to the regulator). However, at this stage, the route for the line has not even been chosen, so how could a landowner clearly prove their land would be affected? This has the effect of shutting down direct public input to the regulator. To remedy the public trust, we need to allow at least a degree of community and public interest groups the right to legal standing from the start.

By the second hearing, it is not a question of "if" a development will happen, but only "how". And even at this stage, Bill 46 includes several new get-out clauses to limit participation. Even if you and your land are "directly and adversely affected" (the current criteria to be allowed to speak at a hearing), the new Commission can refuse to hold a hearing anyway if, for example, it decides you are not "materially" affected.

The Commission may also refuse a hearing if the applicant (company building the line) convinces the Commission it has met the rules respecting landowners. Except that these rules are not currently available for review. And even if they were, why would the Commission take the applicant's word for it while refusing to even hear the other side of the story? To understand the seriousness of this, just remember that the EUB (and its successors) have quasi-judicial powers. What kind of a court takes one party's word for it and automatically refuses to hear the other side?

Bill 46 is also retroactive to June 1, 2003. This may well impact two court cases currently before the Alberta Court of Appeal where landowners are arguing that their legal rights have been violated. This is not good optics.

Restricting landowners' rights to speak up is certainly a quick fix if you just want to build transmission lines, faster, over their property. But it only creates bigger problems, later. Muzzling citizens who are objecting to the forcible development of their land is fundamentally wrong in a democratic society. It will not get rid of the conflict, because ultimately you can only solve conflict through creating venues for respectful dialogue. Bill 46 does the opposite.

We need to kill Bill 46 in its present form. Instead we need legislation designed to clearly encourage public participation in the decision-making process as early on as possible, to get the information necessary for good quality decisions. Albertans have the right (and the responsibility) to have comprehensive input on large-scale developments, and those running over their own property. In the current climate of regulatory distrust, Bill 46 only takes us further down the road of limiting democratic participation, and is cause for legitimate concern.