

Newfoundland, take a lesson from Alberta!

Governments should not have unfair advantage over private enterprise.

By Guest Columnist Greg Bohnert Monday July 8th, 2013

A Calgary based seismic company is continuing its challenge of the confiscation of its intellectual property by the government of Newfoundland and Labrador even as that province continues to use the company's data to promote economic development.

In early February of this year Nalcor, Newfoundland's crown-owned energy company released what it called "attractive" seismic results hoping to generate new exploration activity offshore Labrador.

Geophysical Service Incorporated suspects data it owns has been used by Nalcor and foreign competitors without permission or payment. The company is appealing in the Supreme Court of Newfoundland after two Nalcor refusals of Access to Information requests to verify whether Nalcor has had access to, or possession of, any of its confidential data.

Premier Kathy Dunderdale told the St John's Board of Trade in late May of this year that Newfoundland and Labrador has already recouped about 30 million dollars the province has already spent on offshore data collection by licensing that data, and selling it to companies "to have a peek at," as she put it. However, the apparently remarkable turnaround in data sales the premier talked about were not confirmed by Nalcor, saying in a statement that they couldn't provide details on the licensing since it was commercially sensitive information.

Geophysical Service Incorporated Chief Operating Officer and Chairman Paul Einarrson says it is very unrealistic to get that kind of a profit back in four months, without what he calls the unfair, totalitarian leverage the government has.

“We’re normally talking in the commercial world, years before we even break even.”

But what Dunderdale is not talking about is using that same unfair advantage to give away the data that Geophysical Service Incorporated has collected for years in expensive seismic surveys offshore in Atlantic Canada for free to promote the province, while it is selling its own data.

It is an unfair advantage that has threatened the financial viability of the company. Due to the policies of the Newfoundland offshore regulators sales of GSI Canadian data have fallen to zero for the last three years.

Einarsson says this seismic data is protected in other provinces and territories, including his home province of Alberta.

But in Newfoundland GSI copyrighted and confidential data is being given away freely into the public domain, which amounts to expropriation without any form of compensation.

GSI has launched lawsuits against the government and various agencies including the Canada Newfoundland Offshore Petroleum Board contesting the release of its intellectual property.

Numerous discussion papers in the past have cited the ill-conceived government development policies of Newfoundland and Labrador that discourage oil and gas companies from investing in the offshore.

It wasn’t that long ago questions were being asked aloud, even by provincial government Ministers, as to why no new significant offshore oil fields have been discovered in decades in the Newfoundland area.

In a 2011 blog Nalcor Oil and Gas VP Jim Keating talked about the distinct disadvantage of the region in attracting offshore exploration investment due to the lack of high quality seismic data and the lack of activity by the seismic industry.

If you change the rules people won’t want to play.

Governments can write laws, impose rules, regulate and confiscate which is the path Newfoundland and Labrador has taken, causing ill-will, turmoil and major discontent in the domestic seismic industry over ownership of data. This is especially the case for GSI.

In 2010, GSI's Paul Einarsson cancelled a planned \$10 million dollar seismic survey off Newfoundland after hearing then provincial Natural Resources Minister Kathy Dunderdale announce that the province was seeking to change the way speculative data was being released after a ten year confidentiality period, moving from paper to digital files. The province intended to release that data into the public domain, to anyone who wanted it and misleadingly called the planned release "modernizing".

That change runs completely counter to how business is done in Alberta.

You have to ask yourself, why is GSI forced to go head to head with the government of Newfoundland and Labrador but not so in Alberta?

Let's keep it simple and compare the policies of the two Progressive Conservative governments when it comes to seismic data.

In Alberta under section 50 of the Mines and Minerals Act seismic data is completely confidential under provincial legislation. There are no time limits as to how long the data remains confidential.

There is no requirement for companies to submit seismic data to the provincial government in order to obtain permits or licenses to do the geological or geophysical work the company plans.

In Alberta there is a robust trade in seismic data by large brokerage companies, which creates wealth, provides jobs and contributes to the provincial economy. It's in the hands of the private sector. There are brokers that manage seismic data for other people, companies that have become big-box providers of seismic data, there are large firms that specialize in the storage and retrieval of seismic data, and of course oil companies that hold their own proprietary data they can wheel

and deal with. With unchallenged and free and fair ownership there is an incentive to reinvest, reprocess, and take care of the asset.

In Newfoundland and Labrador it's the exact opposite where all the commerce and benefits are lost, and value is undermined or destroyed. Pursuant to the Newfoundland Geophysical Operations Regulations GSI was required to provide the Canada- Newfoundland and Labrador Offshore Petroleum Board with the non-exclusive data from surveys GSI has conducted offshore in the board's jurisdiction. GSI was forced to comply in order to get their permits, but did so under protest and on notice that their disclosure was done in confidence. GSI has consistently maintained its position that the transfer of data was only on the condition that GSI kept ownership and rights to the data.

For some reason regulators in Newfoundland and Nova Scotia seem to think that geophysical data acquired in the Canadian offshore should sooner or later become the property of the provincial government.

Moving to a system of a centralized government monopoly Data Management Centers, results in data made available by the offshore boards to companies willing to explore. This is because the boards confuse exclusive data (oil company data) with non-exclusive data (GSI's data). Oil companies bid a work commitment of a certain amount of expenditures, rather than a cash payment like Alberta gets. This gives the government an entitlement to the work products the oil companies create as it is the compensation being paid for the lease. But for GSI there is no such trade, whereby the company receives something for the data that it provided as the oil companies do. The Newfoundland boards try to say, that because we gave them a permit we are entitled to the data. GSI's position is, if you want to use our data to promote your resource, you should pay for it.

In both Alberta and Newfoundland permits are required and are paid for by the seismic company. There is no compensation offered by the crown to seismic companies to explore and gather seismic data in Newfoundland, just as there is none in Alberta. But Newfoundland feels entitled to just take it for nothing, using

it to promote the province so it can later rake in hundreds of millions of dollars in royalties, and taxes

The policies of the Newfoundland and Labrador provincial government have created a “seismic socialism” at the expense of taxpayers and at the expense of companies who would have done a much better job of promoting the offshore. The policies and language of Newfoundland officials and government bureaucrats resonates back to the notoriously failed policies of the Trudeau Liberals National Energy Program which held back Canada’s offshore development for 20 years, due to the damage done.

GSI’s Paul Einarsson terms it nothing less than, “biting the hands that feed them.” GSI explored and promoted the offshore for free, it ensured competitive bids, provided a consistent annual service of seismic operations, was the low cost producer and the only Canadian company active in the East.

What is the solution? The province, and the offshore board, of Newfoundland and Labrador should simply look to the Alberta model of dealing with seismic data. Alberta has fostered a system which benefits the government and taxpayers, thus avoiding litigation, controversy and interference with legitimate businesses. Most importantly Alberta understands it’s wrong and illegal to improperly expropriate property without compensation, from an industry it wants to support and see expand and prosper. Newfoundland on the other hand talks about growth, promotion, and being “open for business” while its policies stifle business and lack respect for private industry.

Isn’t the better choice *free enterprise*, instead of the “*reverse Robin Hood plan*” in Newfoundland which takes from a small independent Canadian entrepreneur and gives free handouts to wealthy oil companies that don’t need welfare?