

REGULATORY ROULETTE: HIGH STAKES AND UNPREDICTABLE OUTCOMES FOR ALBERTA'S ENERGY INDUSTRY

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Recent geopolitical developments, in particular the evolving Canada-US trade relationship and the aftermath of the 2025 Canadian federal election, have created both challenges and opportunities for Canadian energy lawyers. This article critically examines the pervasive regulatory uncertainty facing Alberta's energy sector, situating these challenges within both domestic and international contexts. Conventional oil and gas, potash, carbon capture and storage, liquified natural gas, and battery storage are sub-sector case studies that highlight the unique regulatory hurdles and opportunities in the industry. This article analyzes each area in turn and concludes by offering practical strategies for legal practitioners and industry participants to manage risk and adapt to ongoing change.

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INTRODUCTION

The past five years have included little respite from the “unprecedented times” initially wrought by the COVID-19 pandemic. Hitherto unimaginable circumstances have become the status quo of the “new normal” in a post-pandemic world. Lightning-fast news cycles and polarized perspectives threaten to overwhelm anyone trying to make sense of it all — from a raging trade war, artificial intelligence (AI), political changes at home and abroad, and pivoting plans on how future generations will power their lives — it can feel like we are living in a cosmic game of chance, with no way of knowing what comes next.

Lawyers may find themselves in a uniquely challenging position these days. In our capacity as advisors and advocates, we might feel increased hesitancy to opine as changes are happening in real time. This article critically examines the pervasive regulatory uncertainty facing Alberta’s energy sector, situating these challenges within both domestic and international contexts. We begin by defining the concept of regulatory uncertainty and its implications for investment, project development, and industry competitiveness. The article then explores the impact of recent geopolitical developments — particularly the evolving Canada-US trade relationship and the aftermath of the 2025 Canadian federal election — on regulatory frameworks and market confidence. Through a series of sub-sector case studies,¹ including conventional oil and gas, potash, carbon capture and storage, liquefied natural gas, and battery storage, we analyze the unique regulatory hurdles and opportunities present in each area. Finally, we offer practical strategies for legal practitioners and industry participants to manage risk and adapt to ongoing change, concluding with recommendations aimed at fostering greater regulatory certainty and supporting the long-term prosperity of Alberta’s energy industry. While this article reflects the state of play as of the time of writing in Spring 2025, we recognize that the regulatory and geopolitical environment will continue to evolve.² We remain optimistic that ongoing dialogue, adaptability, and proactive engagement will help

¹ We acknowledge there are additional sectors we could have discussed, such as hydrogen and critical minerals, but kept to a limited list in the interest of space.

² In particular, we note that this article was written before the introduction of Bill C-5, the *One Canadian Economy Act* and does not address any of the effects that legislation may have upon Canadian energy projects going forward.

Alberta's energy sector — and those who advise it — navigate future changes with resilience and confidence.

As a starting point, we should clarify what we mean by *regulatory uncertainty* as a concept, and the situation it represents. Regulating the Canadian energy industry requires a careful balance: expert oversight and robust processes are essential to ensuring safety and environmental protection, and these high standards are a key competitive advantage for Canadian energy on the world stage. However, the benefits of such oversight are only realized when they are matched by *regulatory certainty* — clear, predictable rules and timely decision-making that allow stakeholders to plan and invest with confidence. The trade-off must be reasonable: while rigorous regulation is necessary, it cannot come at the expense of excessive delay, unpredictability, or administrative burden. When the balance tips too far — resulting in shifting requirements, overlapping jurisdictions, and prolonged approval timelines — the regulatory process itself becomes a barrier to investment and innovation. Achieving the right equilibrium between strong oversight and process certainty is therefore critical; without it, the industry risks losing both its competitive edge and the investment needed for future growth.

International comparisons show that Canada ranks among the least favourable economies in the Organisation for Economic Co-operation and Development (OECD) in terms of administrative burden, regulatory efficiency, and licensing processes.³ A joint analysis from Transport Canada, KPMG, and Statistics Canada found there was a 37 percent increase in federal regulatory requirements generally between 2006 to 2021.⁴ This trend has negatively impacted both output and productivity growth: Canada's average annual labour productivity growth from 1981 to 2022 trailed behind most OECD countries, and the OECD predicts that Canada will have the lowest growth in Gross Domestic Product (GDP) per capita of all advanced economies from 2020 to 2060.⁵

What follows below provides a state-of-the-union on regulatory uncertainty amid the current geopolitical situation, and the challenges and opportunities this creates for energy lawyers serving the sub-sectors we explore. While the unprecedented times persist — so must we!

I. DISCORD WITH A DIFFICULT NEIGHBOUR

Beyond the “home-grown” issues with regulatory uncertainty identified above, there is no ignoring the elephant south of the border, whose presence is frustratingly felt in almost every room. The current US administration is wreaking havoc on the global economy with its steady stream of sanctions, executive orders, and tariffs, and only time will tell who will

³ Organization for Economic Co-operation and Development, “Product Market Regulation” (2024), online: [perma.cc/X8VC-7VS5].

⁴ Statistics Canada, *Regulatory Accumulation, Business Dynamism and Economic Growth in Canada* (Research Paper), Catalogue No 11F0019M, No 481 (Ottawa: Statistics Canada, 10 February 2025), online: [perma.cc/B99W-PU7T].

⁵ David Williams, “OECD Predicts Canada Will be the Worst Performing Advanced Economy Over the Next Decade... and the Three Decades After That” (14 December 2021), online (blog): [perma.cc/CD2S-YF5K]; Yvan Guillemette & David Turner, *The Long Game: Fiscal Outlooks to 2060 Underline Need for Structural Reform*, Economic Policy Paper No 29 (Paris: OECD Publishing, 2021), online (report): [perma.cc/5K3V-GJCE].

benefit from it all. Even domestically, there is a growing unease with the President's actions and whether such policies will have positive impacts on the economy remains unknown.⁶

Canada has been in the grips of tariff threats since the US election in November of 2024, and trade relations with the US remain unpredictable and tumultuous. Protracted proselytizing and posturing reached a fever pitch in March 2025 as politicians and stakeholders grappled to mitigate a moving target. Canada appears to have been spared a worst-case tariff scenario, but damage may already be done. With North American markets seeing massive fluctuations and rattling investor confidence,⁷ it is not yet certain whether the tariffs implemented will result in a greater long-term slump for Canada than even the OECD has predicted. Some themes and potential consequences for the Canadian energy industry are identified below.

A. PRICING

The price for Canadian crude oil on the global market is closely tied to US policies and market pressures from other oil producing nations. Prices hitting their lowest point since 2021⁸ in the first week of April 2025 was not welcome news for Canada, both as an exporter and as a contributing factor to economic pessimism. On 6 April 2025, Goldman Sachs cut their oil price forecast "in the wake of economists' predicting a 'stagnating' US economy and higher risk of recession."⁹ Goldman Sachs expects Brent crude to trade at an average USD\$58 per barrel in 2026 and West Texas Intermediate at USD\$55 per barrel.¹⁰

Tariffs add further intricacy. Canada's fuel supply chain is complex and leverages domestic production, imports, and exports. The US is Canada's most important counterparty in this industry, and vice versa. In 2023, Canada provided 60 percent of the crude oil and close to 100 percent of the natural gas imported by the US, which represented 96 percent of Canadian exports that year.¹¹ US-imposed tariffs on Canadian oil are likely to raise costs for US refiners, leading to potentially higher fuel prices, including gasoline, and increases predicted to be in the range of 20 to 40 cents per gallon in the Midwest and Northeast.¹² The collateral implications of US tariffs on Canadian fuel costs remain ambiguous, hinging on shifts in local supply and demand, currency valuation changes, and the pursuit of other export opportunities.

⁶ Maria Aspan, "Why CEOs are Calm About Tariffs in Public – but 'Very Discouraged' in Private", *NPR* (14 March 2025), online: [perma.cc/ZW3E-DAYQ].

⁷ Brian Evans, John Melloy & Pia Singh, "Dow Nosedives 1600 points S&P 500 and Nasdaq Drop the Most Since 2020 after Trump's Tariff Onslaught", *CNBC* (3 April 2025), online: [perma.cc/7ZLW-W4AE].

⁸ Ed Ballard, "Oil Prices Slide to Lowest Since 2021", *The Wall Street Journal* (4 April 2025), online: [perma.cc/253B-YQU6].

⁹ Rachel Millard, "Oil Drops Further as Fears of Global Recession Rise", *Financial Times* (7 April 2025).

¹⁰ *Ibid.*

¹¹ Canada Energy Regulator, *Market Snapshot: Overview of Canada-U.S. Energy Trade* (Ottawa: CER, 2025), online: [perma.cc/EY7V-SAWF].

¹² Brian Donovan, "What the Tariff War May Mean for Gasoline Prices", *The Globe and Mail* (11 March 2025), online: [perma.cc/49G6-7GPH].

B. UNRELIABLE ALLY

The realization in Canada (most recently illuminated by the current trade war) of the energy industry's dependence on the US revived ideas of cross-country infrastructure that could lessen Canada's reliance on our neighbour to the south.¹³ Discussions resurfaced about the Energy East pipeline, aiming to transport crude from Alberta to eastern Canada, and the Northern Gateway pipeline, intended to connect Alberta's oil sands to the British Columbia coast.¹⁴ In addition to seeking new international markets, there has also been renewed interest in strengthening domestic energy connection and interprovincial trade. Ideas such as an "energy corridor," a cross-country right of way where infrastructure projects will be "pre-approved" and will purportedly include all levels of government, including Indigenous governments, have made their way back into the conversation as strategies to limit Canada's exposure to the whims of US foreign policy.¹⁵ We discuss opportunities to strengthen interprovincial trade in further sections of this article.

C. IMPACTS OF TARIFFS AND RETALIATION

While possible outcomes of retaliatory tariffs and their long-term effects are impossible to predict, the wide array of global factors influencing pricing will impact the actions taken by Canadian politicians and the industry's response.

At the domestic level, Canada has the ability to come to the table and play our hand when required. For example, Ontario's Premier Doug Ford announced on 10 March 2025 that Ontario was placing a 25 percent surcharge on electricity that the province sends to 1.5 million homes in three states as one retaliatory measure against tariffs imposed on Canadian goods.¹⁶ The surcharge was fleeting, and was suspended shortly after productive conversations occurred between Premier Ford and the US Secretary of Commerce.¹⁷ While notable that this policy, which caught the attention of US officials, netted CAD\$260,000 on 26,000 MWh of energy sold to the US on the single day it applied,¹⁸ Canadian power producers whose businesses include US exports may feel these types of retaliatory policies add additional strain and uncertainty.

Internationally, it is even more challenging to predict the impacts of potential measures and countermeasures, but we suggest that this unpredictability is what we might bank on other countries accounting for. An important example is the resurgence of protectionist defence spending in Europe. In March 2025, the head of the European Union's executive

¹³ Falice Chin, "Rebooting Canada's Backbone: Trump's Tariffs Put Megaprojects Back in Spotlight", *CBC News* (8 March 2025), online: [perma.cc/F7LZ-ZXYZ].

¹⁴ Meghan Potkins, "Enbridge CEO Says Revisiting Northern Gateway Would Require 'Real Changes' From Governments", *Financial Post* (14 February 2025), online: [perma.cc/MKB3-NXJF].

¹⁵ BOE Report Staff, "Pierre Poilievre Proposes 'Canada First' National Energy Corridor; A 'Pre-approved Right of Way' Ensuring That 'Approval is Guaranteed Before the Dollars are Even Spent'", *BOE Report* (31 March 2025), online: [perma.cc/4VZC-T7GD].

¹⁶ Allison Jones, "Ontario Collected \$260k From its 1-day Electricity Surcharge on US Exports", *CBC News* (11 April 2025), online: [perma.cc/29XE-NHCP].

¹⁷ Kinsey Crowley, "Electricity from Canada no Longer Under Surcharge: What to Know After Tariff Flip-Flopping", *USA Today* (11 March 2025), online: [perma.cc/8E6E-6MFU].

¹⁸ Isaac Callan & Colin D'Mello, "Ontario's 1-day Surcharge on US Energy Exports Raised \$260K", *Global News* (11 April 2025), online: [perma.cc/67T9-EKQM].

branch proposed an USD\$840 billion plan to quickly build up defense budgets in Europe, as the US has paused military aid to Ukraine and signaled the possibility of renegeing on the long-standing US commitment to protect allies on the continent.¹⁹ On the Canadian side, the new Minister of National Defence, David McGuinty, has affirmed Canada's intention to exceed the North Atlantic Treaty Organization (NATO) defence spending targets by 2030.²⁰ What the European Commission President Ursula von der Leyen describes as a new "era of rearmament" could have deeply felt impacts on government spending elsewhere, a challenge facing clean energy projects and decarbonization efforts generally, which rely heavily on government incentives — a theme discussed in greater detail below.²¹

D. KNOCK-ON POLICY EFFECTS

Domestic policies in the US that create regulatory uncertainty can create ripple effects in Canada. While the current US administration continues to take new stances on a breadth of issues, we have identified examples that may be worth monitoring by Canadian energy lawyers.

The depth of cuts to federal agencies and funding by the US Department of Governmental Efficiency is expected to have significant impacts on regulatory processes in the US.²² Notably, the Environmental Protection Agency has experienced a 65 percent reduction in its workforce. These changes have led to concerns of the capacity of federal agencies to provide the timely regulatory oversight that is instrumental in creating the regulatory certainty that we suggest is critical to a stable and thriving energy industry.²³

Moreover, capital expenditures (which require inputs of tariffed steel and aluminium) required by the US Government's pro-drilling policy stance could be at odds with the existing and forecasted lower price of oil.²⁴ Energy executives critical of the "drill, baby, drill" agenda point out that "[t]he threat of \$50 oil prices by the administration has caused [industry participants] to reduce 2025 and 2026 capital expenditures," one executive said, "[the 'drill, baby drill' policy approach] does not work with \$50 per barrel oil. Rigs will get dropped, employment in the oil industry will decrease, and U.S. oil production will decline as it did during COVID-19."²⁵ All of this could materially impact the US drive for greater energy security.

¹⁹ Rob Schmitz, "Europe Considers a Major Defense Package as Trump Signals Disengagement", *NPR* (4 March 2025), online: [perma.cc/R9QN-MTV9].

²⁰ Government of Canada, "Message From the New Minister of National Defence" (16 May 2025), online: [perma.cc/9F9W-HWZE].

²¹ European Commission, *Press Statement by President von der Leyen on the Defence Package*, Statement 25/673 (Brussels: EC, 4 March 2025), online (pdf): [perma.cc/3W3C-3AHR].

²² Jarrett Renshaw, "Trump Seeks to Fast-Track New Nuclear Licenses, Overhaul Regulatory Agency", *Reuters* (23 May 2025), online: [perma.cc/5VQK-4VJQ].

²³ Derek Saul, "DOGE Layoffs Pose 'Growing' Risk to U.S. Economy and Markets, Says Apollo Economist", *Forbes* (24 February 2025), online: [perma.cc/N6ZQ-FXKA].

²⁴ Spencer Kimball, "Oil Executives Bluntly Criticize Trump Tariffs and 'Drill, Baby, Drill' in Anonymous Survey", *CNBC* (27 March 2025), online: [perma.cc/ZY7G-PMH6].

²⁵ *Ibid.*

II. PLACING BETS AT THE BALLOT BOX

Disagreements around the path forward for Canada amid US tariff threats may have contributed to the resignation of Canadian Deputy Prime Minister and Finance Minister Chrystia Freeland on 16 December 2024.²⁶ Ms. Freeland's departure signaled a lack of unity in the Liberal caucus, and was a catalyst for Justin Trudeau's resignation as Liberal leader and Prime Minister on 6 January 2025,²⁷ the prorogation of Parliament,²⁸ and Mark Carney's election as Liberal Party leader and his swearing in as Prime Minister on 14 March 2025.²⁹

Prime Minister Carney called an election on 23 March 2025, ahead of the scheduled resumption of Parliament on 24 March 2025. Canadians elected a minority Liberal government on 28 April 2025.³⁰ For some stakeholders in the Canadian energy industry, a deciding factor at the polls was each of the leading candidates' perceived ability to create regulatory certainty, diversify our trading partners, and increase Canada's energy sovereignty.³¹ Further, the way that Canadians voted on 28 April 2025 may change the course of certain previously announced policies and programs, some of which are described in further detail below.

A. CONSUMER CARBON TAX

On 14 March 2025, in his first act as Prime Minister, Carney announced the end of the consumer carbon tax with a public signing ceremony, removing fuel charge rates on fuel and combustible waste. The removal of the consumer carbon tax took effect on 1 April 2025. However, Carney's decision only affects household and small business carbon pricing. The federal Output-Based Pricing System (OBPS) remains in effect, which either applies as a backstop in provinces without equivalent carbon pricing systems or drives the requirements for provincially-equivalent large emitter programs.³² Since announcing the removal of the consumer carbon tax, the current federal government has indicated an upcoming review of the OBPS and federal benchmark with the goal of ensuring industrial pricing systems remain "stringent, fair and effective" while considering "opportunities to strengthen industrial carbon markets so that they deliver the incentives needed for major decarbonization projects across industry."³³ In the meantime, unless and until changes are made to the OBPS, existing systems that are currently considered to align with the OBPS are expected to continue to be deemed sufficient. Alberta and Saskatchewan were quick to respond to possible changes to

²⁶ Olivia Bowden, "Canada's Deputy PM Resigns From Cabinet as Tensions with Trudeau Rise Over Trump Tariffs", *The Guardian* (16 December 2024), online: [perma.cc/3SFS-A3AF].

²⁷ Catharine Tunney, "Trudeau Says He's Not the Right Choice to Lead Party in Next Election, Promises to Resign as PM", *CBC News* (6 January 2025), online: [perma.cc/RYP6-AABM].

²⁸ Kevin Maimann & Rhianna Schmunk, "Parliament is Prorogued. Here's What that Means", *CBC News* (8 January 2025), online: [perma.cc/LN2K-NMLM].

²⁹ Darren Major, "Mark Carney Could be Canada's Shortest-Serving Prime Minister", *CBC News* (14 March 2025), online: [perma.cc/46FP-S55N].

³⁰ Kerri Howard et al., "2025 Federal Election – What it Means for the Energy Industry" (30 April 2025), online (blog): [perma.cc/PK7X-U3E3].

³¹ Michael Gullo & Heather Exner-Pirot, "Time to Move from Talk to Action on Regulatory Reform", *Business Council of Canada* (24 March 2025), online: [perma.cc/CP66-6B3M].

³² Stephanie Taylor, "Carney Cuts Carbon Tax Rate to Zero, Neutralizing Unpopular Policy Before Possible Campaign", *National Post* (14 March 2025), online: [perma.cc/ACT6-Z3MQ].

³³ Environment and Climate Change Canada, *Update to the Pan-Canadian Approach to Carbon Pollution Pricing 2023-2030* (Ottawa: Government of Canada, 2021), online: [perma.cc/8EH2-PRS3].

the OBPS, with Saskatchewan announcing a pause on its industrial carbon tax rate, effective 1 April 2025,³⁴ and Alberta announcing on 12 May 2025 an industrial carbon price freeze.³⁵

B. INTERPROVINCIAL TRADE

As discussed above, tenuous trade with the US and the recent election have prompted a renewed interest in cross-country infrastructure projects, such as the Energy East and Northern Gateway pipelines and development of interprovincial transmission infrastructure, and the concept of an energy corridor to facilitate the movement of oil and gas, electricity and critical minerals, and the development of other infrastructure across Canada.³⁶ Notwithstanding considerations as to whether Energy East and Northern Gateway are viable projects in and of themselves, it is interesting to see these discussions resurface, particularly with the required improvement on regulatory certainty in order to move forward. According to a article published in March 2025 by the Business Council of Canada:

Regulatory reform for major projects is one of the most effective ways to pull more private capital into the economy and boost employment and incomes for Canadian workers. We're now seeing a political consensus emerge around the need for such reforms and the projects required to secure Canada's energy supply and improve its ability to export more energy and resources with its allies and trading partners.³⁷

To this end, both the Liberal and Conservative election platforms included promises to improve regulatory certainty, and these pledges centre around major infrastructure projects supporting interprovincial energy trade like pipelines and a potential energy corridor.³⁸ Conservative leader Pierre Poilievre pledged to repeal the *Impact Assessment Act*³⁹ within 100 days, if elected,⁴⁰ and establish a “One-Stop-Shop” for rapid project approvals, and Liberal leader Mark Carney pledged to “require all federal regulatory authorities, including the Impact Assessment Agency, to complete their review of projects that serve the national interest on a two-year timeline” (an accelerated pace for project approval from the current timeline of five years).⁴¹

Even if approved more quickly, the astronomical costs associated with building pipelines and other major infrastructure projects remain a significant concern and barrier to development. For instance, the Trans Mountain pipeline expansion, which required a massive

³⁴ Government of Saskatchewan, *Saskatchewan is the First Province in Canada to be Carbon Tax Free* (News and Media), (Regina: Government of Saskatchewan, 27 March 2025), online: [perma.cc/BUU9-QJGH].

³⁵ Government of Alberta, *Defending Alberta Industry During U.S. Tariffs* (Government News), (Edmonton: Government of Alberta, 12 May 2025), online: [perma.cc/TFB5-ZRNQ].

³⁶ Benjamin Shingler, “Trump Threats Revive Push for Pipelines. Is Quebec on Board?”, *CBC News* (10 April 2025), online: [perma.cc/8T23-HTKM]; Mark Gollom, “Carney and Poilievre Have Both Pledged ‘Energy Corridors.’ That Could be Complicated”, *CBC News* (12 April 2025), online: [perma.cc/4HCK-95UB].

³⁷ Gullo & Exner-Pirot, *supra* note 31.

³⁸ Liberal Party of Canada, “Mark Carney’s Liberals to Make Canada the World’s Leading Energy Superpower” (9 April 2025) at 2, online (pdf): [perma.cc/Q7RB-S7DB]; Conservative Party of Canada, “Poilievre Announces New Canada First Economic Action Plan” (April 2025), online: [perma.cc/SS5B-XH4B].

³⁹ SC 2019, c 28, s 1 [IAA].

⁴⁰ Conservative Party of Canada, “Poilievre Announces ‘100 Days of Change’” (2025), online: [perma.cc/SV9P-G7VS].

⁴¹ Gullo & Exner-Pirot, *supra* note 31.

federal buy-out, and was finally completed at a cost of over CAD\$35 billion,⁴² demonstrates the financial burden of such projects. It remains to be seen whether it will be possible to harness enough investor confidence in new projects (and the regulatory regimes underpinning them) to see final investment decisions.

Additionally, Quebec's historical resistance to pipeline projects, rooted in environmental concerns and the potential impact on local communities, continues to punctuate the question of whether major energy projects (or what type of major energy projects) could unify the country. However, there is some evidence these sentiments may be starting to shift in recent months, with Quebec Premier François Legault recently indicating that Quebec would consider proposals, if they have "social acceptability."⁴³

C. INDIGENOUS OWNERSHIP OF PROJECTS

A recent success story for Indigenous ownership of energy infrastructure projects is the 21 March 2025 announcement that the federal government is contributing up to CAD\$200 million through a contribution agreement under the Strategic Innovation Fund toward a CAD\$5.963 billion project with Cedar LNG: the largest Indigenous majority-owned infrastructure project in Canadian history.⁴⁴ Cedar LNG is a partnership between Calgary-based Pembina Pipeline Corporation and the Haisla First Nation. The floating LNG facility and marine export terminal in Kitimat, BC, within the traditional territory of the Haisla Nation, is scheduled to ship LNG to customers in Asia by late 2028.⁴⁵

For some Indigenous groups, actively participating in project development or acquiring an equity interest in energy infrastructure projects is a more meaningful act of reconciliation than capital transfers often contemplated in Impact Benefit Agreements.⁴⁶ Stephen Buffalo, president and CEO of the Indian Resource Council, articulated this position in commentary published by the Financial Post:

There are no shortcuts around the duty to consult and accommodate. We have the right to be heard. We have the right to be part of the solution to the challenges facing Canadian resource developers. This works. Our communities are partners with hundreds of oil, gas and transmission companies across the country. Our resource-active communities are gaining autonomy from government and are showing that we will be an active and progressive part of this country's economic future.⁴⁷

⁴² Nia Williams, "Trans Mountain Pipeline Has Cost Canada \$35B. Can Ottawa Make it Back?", *Global News* (12 October 2023), online: [perma.cc/ZW5R-J3HC].

⁴³ Shingler, *supra* note 36.

⁴⁴ "Feds to Contribute up to \$200M for Haisla-Led project to Ship Liquefied Natural Gas to Asia", *CBC News* (21 March 2025), online: [perma.cc/8GDY-AJV6].

⁴⁵ Cedar LNG, "Project Overview" (2025), online: [perma.cc/Y4RV-ZZ5N].

⁴⁶ Canada Energy Regulator, *Market Snapshot: Indigenous Ownership of Canadian Renewable Energy Projects is Growing* (Ottawa: CER, 21 June 2023), online: [perma.cc/XBT5-LDBA]; Burnet, Duckworth & Palmer LLP, "Radically Redefining Roles: Proposed Indigenous Ownership of the Trans Mountain Pipeline" (25 November 2019), online: [perma.cc/8T3D-CQW2].

⁴⁷ "We Are First Nations That Support Pipelines, When Pipelines Support First Nations", *Financial Post* (13 September 2018), online: [perma.cc/6A6P-DAFS].

The Business Council of Canada suggests that there is a lack of clarity on the requirements of section 35 of the *Constitution Act*⁴⁸ at the provincial and federal level and a need to:

[S]cope Indigenous nations in, not out, of assessments. [Federal and provincial regulators need] to provide financial and other support to ensure Indigenous nations have sufficient capacity to engage in the regulatory process and are not made to be the bottleneck in project approvals. And they need to work with communities to develop and honour reasonable timelines for decision-making.⁴⁹

Prime Minister Carney appears to be on board with such reforms, having stated that he supports increased infrastructure to transport Alberta oil to eastern Canada, “but only with the support of First Nations and all the provinces ... including Quebec.”⁵⁰

One of the biggest challenges for Indigenous investment is financing the costs to acquire equity. Indigenous investors do not typically have resources to acquire equity and financing will need to be provided by third-party lenders. Often, the initial ask of an Indigenous investor is that the equity will be granted for nominal consideration or based on a loan from the proponent. Guarantees and backstop support are increasingly being provided by government programs.

Prime Minister Carney’s platform included a pledge to double the Indigenous Loan Guarantee program from CAD\$5 billion to CAD\$10 billion, unlocking access to capital for Indigenous groups,⁵¹ as well as increasing funding, to CAD\$40 million per year, for Indigenous capacity to engage on projects early and consistently through the Impact Assessment Agency.⁵² In Alberta, the Alberta Indigenous Opportunities Corporation (AIOC) loan guarantee program was established with the intention of facilitating investment by Indigenous groups in natural resources (energy, mining, and forestry), agriculture, telecommunications and transportation projects, and related infrastructure. The AIOC offers partial or full guarantees for approved loans. Eligible projects must seek a minimum loan guarantee of CAD\$20 million and demonstrate commercial viability. AIOC evaluates this viability by considering factors such as reasonable risk-adjusted commercial terms, with a preference for operational projects that already generate income. Additional considerations include a security pledge, Environmental, Social, and Governance (ESG) factors, the applicant’s direct investment, and other relevant criteria.⁵³

For example, in December 2023, the AIOC provided a CAD\$150 million loan guarantee to support the 12 Indigenous Communities of the Wapiscanias Waseskwan Nipiy Limited Partnership, in financing an equity investment in oil and gas midstream infrastructure in Northern Alberta’s Clearwater play.⁵⁴ Building on this success, in September 2024, the partnership expanded to include Bigstone Cree Nation as an investor and to acquire additional

⁴⁸ *The Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 1.

⁴⁹ Gullo & Exner-Pirot, *supra* note 31.

⁵⁰ Andy Riga, “Quebec Should Use Oil From Alberta, Not The U.S., Carney Says”, *The Montreal Gazette* (7 April 2025), online: [perma.cc/V946-NLSS].

⁵¹ Holly Cabrera, “Carney Aims to Have ‘Free Trade by Canada Day’ Between Provinces and Territories”, *CBC News* (21 March 2025), online: [perma.cc/2T9V-XZKA].

⁵² Liberal Party of Canada, *supra* note 38.

⁵³ Alberta Indigenous Opportunities Corporation, “Loan Guarantee Investment Program Guidelines” (2022), online: [perma.cc/N8XN-SFGD].

⁵⁴ Alberta Indigenous Opportunities Corporation, “Clearwater Midstream Assets” (2025), online: [perma.cc/2DNB-YKBH].

assets. The AIOC contributed an additional CAD\$45 million loan guarantee to finance an 85 percent equity investment in an extra CAD\$51 million of midstream infrastructure within the same region.⁵⁵ More recently, the AIOC provided a loan guarantee to Cold Lake First Nations to support their majority ownership in the 19.8-megawatt Duchess Solar project.⁵⁶

These initiatives demonstrate support of meaningful Indigenous participation in Canada's energy sector, highlighting a collaborative approach to reconciliation through economic development. While equity investments of Indigenous groups in power projects have historically involved minority interests, there is a growing trend toward 50-50 and even majority owned partnerships. The AIOC's backing of Indigenous-led initiatives in Alberta is an example of this shift, setting the stage for mutual economic success and a collective approach to energy development.

D. DECARBONIZATION REGULATION AND INCENTIVES

The previous Liberal government also introduced a “Clean Electricity Strategy”⁵⁷ in late 2024, to help facilitate the goal of decarbonizing the country's electricity grids by 2035. This included, most notably, the *Clean Electricity Regulations*.⁵⁸ The *CER*, along with the *Clean Fuel Regulations*,⁵⁹ and CAD\$60 billion to advance decarbonizing the electricity system as part of the Clean Economy Plan, provide important investment levers to support and encourage decarbonization — including the Canadian clean economy tax credits (Clean Economy ITCs), Canada Infrastructure Bank financing and targeted programming like the Smart Renewables Electrification Program.

The *CER*, together with the *CFR* and CAD\$60 billion in funding for decarbonizing the electricity system through the Clean Economy Plan, provides important tools to support and encourage decarbonization. This support includes clean economy tax credits, Canada Infrastructure Bank financing, and targeted programs like the Smart Renewables Electrification Program.

In addition, the Trudeau government introduced other action plans and strategies throughout its tenure to support electrification and decarbonization, including the *Hydrogen Strategy* (2020)⁶⁰ and Progress Report (2024),⁶¹ the *Small Modular Reactors Action Plan* (2020)⁶² and Progress Update (2022),⁶³ and the *Canada Green Buildings*

⁵⁵ Alberta Indigenous Opportunities Corporation, “Expansion: Clearwater Midstream Assets” (2025), online: [perma.cc/8F6Z-LH55].

⁵⁶ Alberta Indigenous Opportunities Corporation, “Duchess Solar Project” (2025), online: [perma.cc/3PQ7-M9VP].

⁵⁷ Natural Resources Canada, *Powering Canada's Future: A Clean Electricity Strategy* (Ottawa: NRC, 2025), online: [perma.cc/S9P9-ZZWN] [NRC, *Powering Canada's Future*].

⁵⁸ SOR/2024-263 [*CER*].

⁵⁹ SOR/2022-140 [*CFR*].

⁶⁰ Natural Resources Canada, *Hydrogen Strategy for Canada*, Catalogue No M134-65/2020E-PDF (Ottawa: NRC, December 2020) online: [perma.cc/78XV-32FZ].

⁶¹ Government of Canada, *Hydrogen Strategy for Canada: Progress Report* (Ottawa: Government of Canada, 2024) online: [perma.cc/EH2M-LWBX].

⁶² Natural Resources Canada, “Canada's Small Modular Reactor Action Plan” (20 December 2024) online: [perma.cc/5GRT-E97G].

⁶³ Natural Resources Canada, *Canada's SMR Action Plan Progress Update*, Catalogue No M4-228/2022E-PDF (Ottawa: NRC, October 2022) online (pdf): [perma.cc/UMF9-2NCQ].

Strategy (2024).⁶⁴ The scope and impact of these programs will unfold over the coming years, as will ripple effects to sub-sectors such as carbon capture and storage (CCS), which can play a role in helping parties maintain compliance under both the *CER* (where natural gas power generation coupled with CCS can reduce carbon emissions) and the *CFR* (where fuel producers may generate compliance credits by utilising CCS). For the development of CCS and projects in other energy sub-sectors, such as energy storage, the necessary inputs are contingent on large capital investment in order to build facilities and develop technologies, requiring long term certainty around the regulatory frameworks and government frameworks and policies around decarbonization.⁶⁵

Additionally, as parties seek financing in order to develop and build their projects, whether CCS, energy storage, renewable power generation such as wind and solar, or other energy projects, the reliance on government incentives and stable regulatory frameworks become an important consideration for the bankability of projects. One example is the enactment of certain Clean Economy ITCs in recent years, which have played a material role in fostering project development. ITC bridge financing has become a key aspect in the financing of clean energy projects. Proponents have already made investment decisions based upon those Clean Economy ITCs currently in force, and they likely may have begun planning around those that were proposed, but not enacted before the last session of Parliament (that is, the clean electricity investment tax credit (CE ITC) and the electric vehicle supply chain investment tax credit) and which would need to be reintroduced when Parliament reconvenes in June of 2025. In his election platform, Prime Minister Carney included a commitment to move all six Clean Economy ITCs forward,⁶⁶ easing concerns that a change in government could mean some of these announced ITCs may never be enacted, though the timing of their enactment is not yet known. The Canadian ITC financing market remains in early stages relative to its US counterpart and is highly fluid, but it is evolving rapidly as legal, tax, and financial advisors develop structures that balance risk allocation, compliance requirements, and return expectations. At the moment, there is still a wide variation in approaches, structures, and risk-sharing mechanisms depending on the type of project, the counterparties involved, and the interpretation of evolving legislative guidance. It is too early for any consistent “market terms” to have emerged, and most transactions are still being structured on a bespoke, case-by-case basis. Overall, ITC financings are poised to become a central pillar of Canada’s clean energy investment landscape, provided that continued regulatory guidance and market standardization support the scaling of this nascent but promising financing mechanism.

III. SUB-SECTOR CASE STUDIES

Prior to the ongoing geopolitical upheaval, energy industry participants were already facing regulatory uncertainty. In this context, we delve into the current state of specific sub-sectors of the energy industry scrutinizing the hurdles they face and the potential opportunities that lie ahead.

⁶⁴ Natural Resources Canada, *The Canada Green Buildings Strategy: Transforming Canada’s Buildings Sector for a Net-Zero and Resilient Future* (Ottawa: NRC, 2024) online: [perma.cc/XYK5-UWYS].

⁶⁵ NRC, *Powering Canada’s Future*, *supra* note 57.

⁶⁶ Liberal Party of Canada, “Canada Strong: Mark Carney’s Plan” (April 2025) at 45, online (pdf): [perma.cc/4E5D-Q32X].

A. OIL AND NATURAL GAS

Alberta's oil and gas industry has historically been subject to booms, busts, and variable pricing. Now, more than ever, Canadian producers are swept up in a wide array of global forces when it comes to the prices received for Canadian oil and gas. Investment and expansion in oil and gas development at a macro level is driven by demand for hydrocarbons, set against the extent to which producers hold a "social licence to operate" vis-a-vis shareholders, governments, NGOs, and civil society generally.⁶⁷

The National Center for Energy Analytics published a report in January 2025 (NCEA Report) which effectively calls the bluff of the International Energy Agency in its annual World Energy Outlook (WEO),⁶⁸ and the assumption underpinning the WEO's energy demand forecasts that signatories to the 2015 Paris Agreement climate accords are on track with their targets. Indeed, the authors of the NCEA Report dispute the validity of the basis for forecasting peak demand for oil by the early 2030s:

It is fanciful to forecast that, over the next half-dozen years, the growth in the world's population and economy won't continue a two-century-long trend and lead to increased use of the fossil fuels that today supply over 80% of all energy.... The data shows that the global energy system is operating essentially along [Business-as-Usual] lines and not only far off [the policy scenario required to be in line with Paris targets], but even further away from the more aggressive transition aspirations that the WEO also models.⁶⁹

The data relating to oil demand and production is in tension with pressure on producers to be "cleaner" and "greener." But this pressure has lost strength in recent months. Some major energy producers are tempering commitments to invest in renewables, pivoting toward a renewed commitment to capitalize on opportunities to continue oil and gas production to meet the continued global demand.⁷⁰

1. REDIRECTING REGULATORY UNCERTAINTY IN ALBERTA

In Alberta, governments have grappled with the regulation of oil and natural gas, balancing the management of a critical revenue stream against growing ESG imperatives and rulings handed down from the nation's highest court. As energy lawyers know all too well, the regulatory crux of the industry is managing the province's orphaned site inventory, without unduly hampering industry participants' ability to acquire and dispose of assets.

Alberta has experienced an era of regulatory uncertainty since 2016, beginning with the Alberta Court of Queen's Bench's (as it then was) decision in *Redwater*.⁷¹ Readers of this article will be familiar with this saga, and (by way of background to this section) we defer to

⁶⁷ Raphael J Heffron et al, "The Emergence of the 'Social Licence to Operate' in the Extractive Industries?" (2021) 74 Resources Pol'y 101272.

⁶⁸ Mark P Mills & Neil Atkinson, *Energy Delusions: Peak Oil Forecasts* (Washington: National Center for Energy Analytics, 2025) at 2, online (pdf): [perma.cc/8M3G-5RGL].

⁶⁹ *Ibid.*

⁷⁰ Rebecca F Elliott, "Why Oil Companies Are Walking Back From Green Energy", *The New York Times* (18 November 2024).

⁷¹ *Redwater Energy Corporation (Re)*, 2016 ABQB 278.

the excellent body of work produced for the Canadian Energy Law Foundation in the near-decade since.⁷²

It has been a long time coming: on 7 February 2025, the Alberta Energy Regulator (AER) introduced final changes and effectively completed the transition away from the Liability Management Ratio and fully adopted the new Liability Management Framework (LMF).⁷³ The AER is now equipped with the discretion to focus on any aspect of a licensee's profile they consider relevant in assessing both a licensee's eligibility to hold licences and their ability to effect a licence transfer, including, quote:

- Financial health - medium or high assessed level of financial distress
- Magnitude of estimated liability – medium or high estimated total magnitude of liability pre- or post-transfer
- Remaining lifespan of resources
- ...
- Compliance performance of each licensee
- Site-specific risks
- Administrative sanctions, as described in section 6.5 of *Manual 013 [Compliance and Enforcement Program]*
- Statements of concern submitted on a transfer application
- Multiple transfer applications or multiple parties involved in the transfer
- Repeated transfer of licences
- Repeated transfer applications between the same or related parties
- Compliance under the Public Lands Administration Regulations
- New licensees or licensees with limited history/data
- New applications or resubmission related to previous transfer decisions
- Submission of a new application related to previous application
- Reclamation certified and reclamation exempt licences
- Transfer with the intent to repurpose wells or sites for alternative use (e.g., helium, lithium, geothermal, etc.)
- Transfer of a licence where site conditions have indicated that estimated liability is significantly higher than the regional estimated liability
- Overall scope and scale of a transaction (e.g., a large change in inventory).⁷⁴

The breadth and subjectivity of certain of these factors mean that going forward, deal certainty will be impacted by the AER interpretation and weighting thereof. So far, we have seen a degree of unpredictability continuing with the application of the LMF, with some

⁷² Kelly Bourassa, Ryan Zahara & Chris Nyberg, “Restructuring Challenges in the Oil and Gas Sector: The Treatment of Regulatory Orders Post-Redwater” (2016) 54:2 Alta L Rev 383; Jeff Davidson et al, “Leading the Way? Liability Management for the Alberta Oil & Gas Industry” (2022) 60:2 Alta L Rev 487; Jassmine Girgis et al, “Redwater’s Continuing Impact on Canada’s Energy Sector” (2024) 62:2 Alta L Rev 396; Jessica Mercier, Nicole Bakker & Elyse Bouey, “Recent Legislative and Regulatory Developments of Interest to Energy Lawyers” (2024) 62:2 Alta L Rev 573.

⁷³ To complete the implementation of the LCF, *Directives 001, 011, 068, and 088* have been amended, and *Directives 006, 024, and 075* have been rescinded. Subsequent amendments have also been made to remove references to the rescinded Directives and the LMR and LLR programs in the *Oil and Gas Conservation Rules* and the *Pipeline Rules*, as well as throughout other Directives and Manuals, including *Directives 013, 040, 056, 058, 089, 090, and Manuals 001, 012, 021, 023, and 024*.

⁷⁴ Alberta Energy Regulator, *Manual 023: Licensee Life-Cycle Management* (Calgary: AER 2025) at 22–23, online (pdf): [perma.cc/JX6T-HQPP].

parties caught off guard by requirements to post security deposits that would not have been imposed under the old Liability Management Ratio regime. In addition, parties may wait several months for the AER to process their licence transfer applications and make decisions under the LMF extending transactions and adding uncertainty. Consistency in application and approach by the AER with respect to the LMF would create much needed predictability for the industry and create a more stable investment signal.

a. Potash

We include a brief discussion of potash due to its parallels with oil and gas regarding resource endowment and management — a domain where Canada boasts substantial influence. There are other critical minerals and resources that equally meet this criteria but given the scarcity of alternative trading partners for potash and its crucial role in agricultural and food supply chains, potash stands as a potential ace up Canada's sleeve amidst trade conflicts. However, this advantage is tempered by the spectre of regulatory uncertainty, just like the other sub-sectors discussed in this article.

Extracted as a mineral resource, potash is a key commodity within the global mining industry, with a particular emphasis and critical role in agriculture as a potassium-rich fertilizer to support plant growth, increase crop yield and disease resistance, and enhance water preservation. Canada is the world's largest producer and exporter of potash and has the largest reserves of the resource globally.⁷⁵ Canada's eleven active potash mines are in Saskatchewan, which, in 2023, produced an estimated 21.9 million tonnes of potash, or approximately 32.4 percent of global production.⁷⁶

The strategic importance of potash and the energy-intensive nature of its mining and refinement, place it at the intersection of mineral resource management, fertilizer trade networks, and global food security. Canada, Russia, and Belarus typically dominate global potash production, together accounting for 65.9 percent of global production in 2023. China and Israel are also among the top six potash producers worldwide.⁷⁷ In response to increasing global demand for potash and growing concerns about food security, enhanced by the sanctions placed on Russia and Belarus following Russia's invasion of Ukraine, the Government of Saskatchewan launched "Securing the Future: Saskatchewan's Critical Minerals Strategy,"⁷⁸ to drive growth and development of the sector in the province. Through the Critical Minerals Strategy, Saskatchewan aims to increase its total share of Canadian mineral exploration spending to 15 percent by 2030, double the number of critical minerals being produced in Saskatchewan by 2030, grow Saskatchewan's production of potash, uranium, and helium, and establish Saskatchewan as a rare earth element hub.⁷⁹

⁷⁵ Natural Resources Canada, *Potash Facts* (Ottawa: Government of Canada, 4 February 2025) online: [perma.cc/C9HS-RK4G].

⁷⁶ *Ibid.*

⁷⁷ Melissa Pistilli, "Top 10 Potash Countries by Production", *Investing News Network* (26 February 2025), online: [perma.cc/RJ6L-LX7T].

⁷⁸ Government of Saskatchewan, *Securing the Future: Saskatchewan's Critical Minerals Strategy* (Regina: Government of Saskatchewan, 2023) online (pdf): [perma.cc/J7Y9-4RAR].

⁷⁹ Government of Saskatchewan, *Critical Minerals* (Regina: Government of Saskatchewan) online: [perma.cc/T2VH-772C].

In Saskatchewan, *The Crown Minerals Act*,⁸⁰ *The Subsurface Mineral Royalty Regulations, 2017*,⁸¹ and the *Mineral Taxation Act, 1983*⁸² govern the production of potash. Depending on the technique used to extract potash, the Ministry of Environment may require an environmental assessment for the development of a potash project. Various licences and permits are required for a potash development project and are typically identified during the environmental assessment process, with the Ministry of Energy and Resources being responsible for well licensing.⁸³

Much of the regulatory uncertainty that currently impacts Canadian potash originates south of the border. Effective 6 March 2025, US imports of potash are subject to a 10 percent tariff. It is notable that potash was initially announced to be subject to a 25 percent tariff, which was ultimately lowered following outcry from American farmers.⁸⁴ The last two presidential terms in the US have seen back and forth on the classification of potash as a critical mineral, with the most recent reversal occurring on 20 March 2025 with an executive order aimed at immediately increasing American production of “critical minerals,” including potash.⁸⁵ The executive order streamlines permitting and aims to increase investment in critical minerals, ostensibly to reduce the US’ dependence on imported potash from Canada, and also to give farmers comfort for the next growing season. An estimated 98 percent of the US’ potash supply is imported, with 85 percent of the imports coming from Canada.⁸⁶ However, the success of the executive order depends on whether domestic development investments actually materialize given the volatility of the US administration and the significant time and capital investments required to create a domestic potash industry in the US.

How Canada wields its significant leverage over the US with respect to potash will be a story to watch in the months to come. The US agriculture industry (similar to refiners in the Midwest) is made up of the current US President’s core voter base. If the reduction of the potash tariff is any indication, pressure from these groups may prove to be positive for Canadian exporters keen to retain their biggest customer.

B. CARBON CAPTURE AND STORAGE

It is unclear to what extent governments in Canada will continue to bet on CCS in 2025 and beyond. As discussed above, Federal carbon pricing systems (which have been a driver for investment in technologies like CCS) may be vulnerable under a minority Liberal government and pressure in favour of provincial autonomy. While this shift may allow for more tailored regional approaches, it raises concerns about the consistency and stability of the regulatory environment, which is needed to foster long-term investment in decarbonization projects. The existence of an industrial carbon pricing system, alongside the

⁸⁰ SS 1984-85-86, c C-502.

⁸¹ RRS c C-50.2 Reg 32.

⁸² SS 1983-84, c M-171.

⁸³ Government of Saskatchewan, *Regulatory Process for Potash Mines in Saskatchewan* (Regina: Government of Saskatchewan) online (pdf): [perma.cc/QS3F-969V].

⁸⁴ Sharon J Riley, “What on Earth is Potash? A Massive Canadian Export in the Eye of the U.S. Tariff Storm”, *The Narwhal* (5 March 2025), online: [perma.cc/FGX2-FUVC].

⁸⁵ US, Donald J Trump, Executive Order No 14241, *Immediate Measures to Increase American Mineral Production*, 90 FR 13683 (2025), (Washington: White House, 2025), online: [perma.cc/H75T-MBUW].

⁸⁶ Taylor Zavala, “TFI Applauds Addition of Potash as US Critical Mineral”, *Argus Media* (21 March 2025), online: [perma.cc/J2MN-SGKV].

introduction of the *CFR*, has incented investment in CCS and capture technology, with industrial players having already made investments in the billions of dollars to comply with these regimes. As political parties grapple with the direction of carbon pricing policies and other regulations like the *CFR*, stakeholders and investors face uncertainty, not only from the potential repeal or scaling back of these regimes, which could strand industrial investments, but also from the imposition of caps or freezes to carbon prices that were originally intended to increase over time. The resulting regulatory volatility, whether through program elimination or changes to pricing trajectories, leaves the investment landscape unpredictable.

CCS is a process whereby CO₂ emissions from industrial emitters are captured before being released into the atmosphere, and either injected into underground pore spaces and permanently sequestered or sourced in its compressed state and used for other applications (such as reinforced concrete and carbonization).⁸⁷ Technologies required for CCS become more economically attractive when they allow emitters to decarbonize their own operations. In an instance of over-compliance or strong emissions performance relative to the applicable carbon pricing benchmark, an emitter could market an offset credit to third parties subject to a regulatory requirement, as discussed below.

1. CARBON PRICING AND COMPLIANCE CREDITS

Canada has a well-established history of implementing carbon pricing systems, with provinces such as British Columbia (2008),⁸⁸ Quebec (2007, 2013),⁸⁹ and Alberta (2007)⁹⁰ pioneering various models. Since 2019, the pan-Canadian approach to pricing carbon pollution has ensured that carbon pricing is applied uniformly across the country, while still allowing provinces and territories the flexibility to design their own systems. However, these systems must align with the federal benchmark, implemented via the national carbon pricing framework under the *Greenhouse Gas Pollution Pricing Act*,⁹¹ which sets minimum national stringency standards.⁹² If a jurisdiction does not implement an approved industrial carbon pricing system meeting these standards or proposes a system that does not meet federal stringency standards, the federal OBPS applies as a backstop performance-based carbon pricing system for large industrial emitters.

⁸⁷ Alberta Energy Regulator, *Carbon Capture, Utilization, and Storage* (Edmonton: AER, 2024), online: [perma.cc/X9KA-2XF4]. Processes that also utilize captured CO₂ are often referred to as CCUS (*ibid*).

⁸⁸ The carbon pricing system introduced in British Columbia is a revenue-neutral carbon tax applied broadly to fossil fuel combustion across the economy to reduce greenhouse gas emissions: Government of British Columbia, *Balanced Budget 2008 - B.C.'s Revenue-Neutral Carbon Tax* (Victoria: Government of British Columbia), online: [perma.cc/H6HK-9BFJ].

⁸⁹ In 2007, Quebec introduced a carbon levy with revenues directed to a Green Fund, which transitioned in 2013 to a cap-and-trade system covering fuel combustion and industrial process emissions across multiple sectors, including mining, power, buildings, transport, industry, agriculture, and forestry: see *Act respecting the Régie de l'énergie*, CQLR c R-6.01; International Carbon Action Partnership, "Canada – Québec Cap-and-Trade System" (2025), online: [perma.cc/V3ZU-ZK5Y].

⁹⁰ Alberta's carbon pricing system is a regulatory-based scheme that imposes emission intensity targets on large industrial emitters, allowing compliance through operational improvements, offset purchases, or payments into a clean technology fund: see *Emissions Management and Climate Resilience Act*, SA 2003, c E-7.8; Andrew Read, *Climate Change Policy in Alberta* (Calgary: Pembina Institute, 2014).

⁹¹ *Greenhouse Gas Pollution Pricing Act*, SC 2018, c 12 s 186.

⁹² Environment and Climate Change Canada, *The Federal Carbon Pollution Pricing Benchmark* (Ottawa: Government of Canada, 2023) online: [perma.cc/32Z7-FYQZ].

CCS investment has also been driven by the need for fossil fuel suppliers to comply with the *CFR* and “gradually reduce the carbon intensity — or the amount of pollution — from the fuels they produce and sell for use in Canada over time, leading to a decrease of approximately 15% (below 2016 levels) in the carbon intensity of gasoline and diesel used in Canada by 2030.”⁹³ One of the features of the *CFR* is the creation of a compliance credit market, with compliance credits generated via several pathways, including through the utilisation of CCS to reduce the carbon intensity at liquid fossil fuel facilities.⁹⁴

The *Technology Innovation and Emissions Reduction Regulation*⁹⁵ sets out Alberta’s emissions management and pricing program. *TIER* applies to industrial facilities that emit greenhouse gases equivalent to at least 100,000 metric tonnes of CO₂ per year or that import more than 10,000 tonnes of hydrogen per year (since this imported fuel’s production typically results in emissions elsewhere) and also contains a mechanism for other emitters to opt-in.⁹⁶ Each year, emitters can meet their obligations under *TIER* by several means, including reducing emissions, purchasing credits by paying into the *TIER* Fund at a price that follows the mandated federal carbon price, using credits they have bought or accumulated to meet their compliance obligations, or submitting emission offset credits or emissions performance credits.⁹⁷ Reductions in emissions under *TIER* or other carbon pricing systems may be used to create various types of compliance credits (such as emission offset credits), which in turn may be used by the emitter or traded on a market such as the Alberta Emission Offset System. While the price on carbon for industrial emitters is frozen at CAD\$95 under *TIER*, the trading value of *TIER* credits on the secondary market has sharply declined in recent years, as *TIER* credits trade lower given uncertainty about *TIER* credits and oversupply,⁹⁸ adding further complication to any CCS or other decarbonization initiatives that included trading of surplus compliance credits as part of revenue creation strategy.

2. CCS DEVELOPMENT IN ALBERTA

Notwithstanding the current climate of uncertainty facing CCS projects, the introduction of carbon pricing at the federal and provincial levels in the past decades has led to significant investment in CCS. In 2024, there were six CCS related projects in service (including projects for enhanced oil recovery) and 25 projects under development in Alberta.⁹⁹ These included 24 projects chosen by the Government of Alberta in 2022 following a request for project proposals process to enter into evaluation agreements for the potential development of carbon

⁹³ Environment and Climate Change Canada, *What are the Clean Fuel Regulations?* (Ottawa: Government of Canada, 2022) online: [perma.cc/VQ4V-7HUR].

⁹⁴ *Ibid.*

⁹⁵ Alta Reg 133/2019 [*TIER*].

⁹⁶ *Ibid.*, s 3; see also Government of Alberta, *Technology Innovation and Emissions Reduction Regulation* (Edmonton: Government of Alberta) online: [perma.cc/95RX-CJKM].

⁹⁷ *Ibid.*, ss 13, 19–21.

⁹⁸ Emma Dizon & Grant Bishop, “Strengthening TIER for Alberta’s Low-Carbon Growth: Measuring Credit Oversupply Risks in Alberta’s Carbon Market” (Toronto: Clean Prosperity, July 2024) at 32–33, online (pdf): [perma.cc/Z5ZW-L8DW].

⁹⁹ Canada Energy Regulator, *Market Snapshot: Canada is Expanding its CO₂ Pipeline Network* (Ottawa: CER, 1 May 2024), online: [perma.cc/5TMH-LHRR]; Canada Energy Regulator, *Market Snapshot: New Projects in Alberta Could Add Significant Carbon Storage Capacity by 2030* (Ottawa: CER, 21 December 2022) online: [perma.cc/SN3K-SP69]; Alberta, Ministry of Energy and Minerals, *Carbon Capture, Utilization and Storage – Carbon Sequestration Tenure* (Edmonton: Ministry of Energy and Minerals), online: [perma.cc/T2Y7-KGRJ].

sequestration hubs.¹⁰⁰ Once proponents demonstrated that their project would provide permanent and safe carbon sequestration, they may enter into a further process with the Government of Alberta to apply for injection rights and tenure over sequestration pore space.¹⁰¹

As a developing industry, CCS and the Province's hub operator model in particular, face several areas of uncertainty that parties have been working through as they move through the Evaluation Permit, Carbon Sequestration Agreement (CSA), and AER's *Directive 065* regulatory processes. The Ministry of Energy and Minerals continues to grapple in its industry-wide form of CSA¹⁰² with enabling third party rights of access to sequestration services, managing pore space tenure based on operational data and the potential for CO₂ mineral trespass. Meanwhile, the AER has updated its key regulatory tool for CCS, *Directive 065*,¹⁰³ to include provisions for risk assessment related to the regulation of induced seismicity. However, it remains silent on pressure management in cases where multiple hubs are injecting into the Basal Cambrian Sand formation. Also, yet to be addressed is what might occur with competing resource applications for adjacent CCS injection projects or overlapping pore space rights granted for CCS, critical minerals and geothermal. However, the Government of Alberta has released a proposed form of Unitization Agreement¹⁰⁴ which hints that such discussions are expected to be based on commercial arrangements, with ministerial consent. As such, the nascent CCS industry has a solid body of law and regulation on which to base its initial projects, but its long-term growth and commercialization will be determined in the coming decades as competing priorities are adjudicated.

Since 2022, the progress of CCS projects in Alberta has been mixed. One low came in May of 2024, when Capital Power announced that its planned CCS project at the Genessee natural gas-fired power plant was no longer economically feasible and would not proceed. The project was expected to have captured up to three million tonnes of CO₂ per year.¹⁰⁵ There are also some highlights, however, with Shell Canada's announcement of a positive final investment decision to proceed with its Polaris carbon capture project and the Atlas Carbon Storage Hub, in partnership with ATCO EnPower (the first phase of which will connect to and provide CO₂ sequestration for Polaris).¹⁰⁶ The Atlas Carbon Storage Hub was also the first hub project to reach the milestone of signing a CSA with the Government of Alberta in July of 2024.¹⁰⁷

¹⁰⁰ Alberta, Ministry of Energy and Minerals, *supra* note 99.

¹⁰¹ *Ibid.*

¹⁰² Kerri Howard et al, "Pore Space as a Resource: A Discussion of the Policy and Regulatory Framework for Carbon Capture, Utilization, and Storage" (2023) 61:2 Alta L Rev 183 at 241–42 [Howard et al, "Pore Space"].

¹⁰³ Alberta Energy Regulator, *Directive 065: Resources Applications for Oil and Gas Reservoirs* (Calgary: AER, 2024), online (pdf): [perma.cc/K3CH-JLBB].

¹⁰⁴ Government of Alberta, *Guide for Unit Agreements: Establishing and Maintaining a Unit-Type Agreement, Including Commercial Gas Storage Unit Agreements* (Edmonton: Government of Alberta, 5 August 2025) online (pdf): [perma.cc/L437-JLFR].

¹⁰⁵ Wallis Snowdon, "Plans for \$2.4B Carbon Capture and Storage Project Near Edmonton Have Been Cancelled", *CBC News* (2 May 2024), online: [perma.cc/2F8Z-JHZG].

¹⁰⁶ Amanda Stephenson, "Shell Going Ahead with Canadian Carbon Capture and Storage Projects", *Calgary Herald* (26 June 2024), online: [perma.cc/RZ2G-D62V].

¹⁰⁷ Chris Varcoe, "Varcoe: Shell, ATCO Carbon Hub Proves 'Economic Business Case' for Emerging Sector in Alberta", *Calgary Herald* (8 July 2024), online: [perma.cc/X2WV-HBRZ].

3. PRICING AND INCENTIVES

The industrial carbon pricing system is said to be the primary driver for the country's emission reductions, but the debate over its benefits has recently intensified.¹⁰⁸ The conflicting political stances present a complex backdrop for stakeholders considering the future of CCS in Canada's energy strategy. This leads to a fundamental question: if the industrial carbon pricing system is dismantled or weakened, what incentive remains for significant investment in carbon capture technologies? One means of addressing carbon pricing uncertainty is through the implementation of tools such as contracts for difference for CCS projects in order to provide some pricing certainty to mitigate the risks of future government policy changes. Generally, with a contract for difference, the parties would contract to purchase and sell product such as carbon credits at a certain "strike price." If pricing changes (for example due to changes in the OBPS or *TIER* pricing benchmarks), the seller is protected against potential drops below the strike price which could otherwise impair the economics of their project. Conversely, the buyer may share in the upside of pricing changes by receiving a payment from the seller in the event prices rise above the contracted strike price. Such a program was announced by the federal Government in 2022 with the creation of the Canada Growth Fund (CGF), whose mandate included the possibility of offtake agreements and contracts for difference to help accelerate the development of technologies such as CCS.¹⁰⁹ This type of program could help to manage uncertainties around the variable carbon pricing policies of changing governments and since governments are ultimately responsible for setting the industrial carbon prices, they are arguably in the best position to help mitigate these risks through the use of strategic investments such as contracts for difference.¹¹⁰ Since the implementation of the CGF, however, only two investments have been made in CCS-related projects — a strategic investment and carbon offtake agreement with Entropy Inc.,¹¹¹ and a partnership with Strathcona Resources Ltd. for the development of CCS infrastructure for steam-assisted gravity drainage oil sands facilities.¹¹²

Incentives have been implemented at both the Provincial and Federal levels to help offset the large capital investments required to get these projects off the ground. The *Fall Economic Statement Implementation Act, 2023*,¹¹³ which became law on 20 June 2024, included the Carbon Capture, Utilization, and Storage Investment Tax Credit (CCUS ITC), which is a refundable investment tax credit for qualifying expenditures made in respect of qualified CCS projects, providing refundable tax credits for eligible CCUS expenditures incurred from after 31 December 2021 and before 1 January 2041. The Alberta Carbon Capture Incentive

¹⁰⁸ Inayat Singh, "What's at Stake as Canada's Industrial Carbon Pricing Rules Face Political Headwinds", *CBC News* (30 March 2025), online: [perma.cc/2D5Q-BHPK].

¹⁰⁹ Department of Finance Canada, *Canada Growth Fund: Technical Backgrounder* (Ottawa: Department of Finance, 2022) online (pdf): [perma.cc/Q6ZC-3M7W].

¹¹⁰ Howard et al, "Pore Space", *supra* note 102; Memorandum from Dale Beugin & Blake Shaffer to Catherine McKenna, "Re: The Climate Policy Certainty Gap and How to Fill It" (4 June 2021), online (pdf): The CD Howe Institute [perma.cc/6WSE-STJ8].

¹¹¹ Canada Growth Fund, Press Release, "Canada Growth Fund Announces Strategic Investment in Entropy Inc and Carbon Credit Offtake Commitment" (20 December 2023), online (pdf): [perma.cc/78SA-P9E3].

¹¹² Canada Growth Fund, Press Release, "Canada Growth Fund Announces up to \$2 Billion Carbon Capture and Sequestration Partnership with Strathcona Resources" (10 July 2024), online (pdf): [perma.cc/2N4V-FRVK].

¹¹³ SC 2024, c 15; Bill C-59, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess, 44th Parliament, 2024 (assented to 20 June 2024)

Program (ACCIP), which is still under development, will also provide incremental refundable tax credits for eligible CCS projects in the form of a grant of up to 12 percent of capital costs.¹¹⁴

Notwithstanding these measures may help to offset the costs of developing and building CCS projects, the economic feasibility of these projects also requires that they can be expected to return a profit through their operations. Some parties have also pointed fingers at the Federal government and their slow movement on finalizing the CCUS ITCs and carbon pricing contracts for difference as one reason CCS projects have been cancelled or have failed to progress to positive final investment decisions in recent years.¹¹⁵ Given “the costs associated with CCUS projects — including the required infrastructure and technology — without proper revenue streams that provide a fair return on investment, there is the risk that such projects become too costly to make them viable and long-term options.”¹¹⁶ For CCS projects, the potential to profit is largely tied to carbon pricing, and for hub-based models, an operator’s ability to charge for sequestration services.¹¹⁷ The price of carbon is linked to CCS investments in several ways but primarily as a higher carbon price makes emitting carbon more expensive, and makes the utilisation of tools such as CCS more attractive as a means to reduce those emissions as well as to generate environmental attributes and various types of carbon offset credits. Notably, however, under the current *TIER* structure, the proponents or operators of CCS hubs who actually sequester the CO₂ would not be able to generate carbon credits, as these would be allocated to the emitter.¹¹⁸ As such, long term send or pay CO₂ transportation contracts underpin the viability of CCS hub development in Alberta, underscoring the need for regulatory certainty to allow CCS hubs and emitter customers to correctly set the price needed to ensure an appropriate return for the life of the asset.

4. WHY ARE CARBON PRICES WEAKENING?

Compliance markets, like those in California and the European Union, remain stable but have seen price volatility due to policy uncertainty and shifting market conditions.¹¹⁹ Canadian carbon markets face added challenges from a fragmented regulatory landscape, with ten different industrial emitter systems across the provinces, with the eleventh being proposed in the draft *Emissions Cap Regulations*. The fragmentation of markets impact the ability of individual jurisdictions to manage and balance the supply and demand of credits, while maintaining marginal carbon price levels, coupled with the possibility of an additional system arising from the draft Emissions Cap Regulations all add to regulatory uncertainty, which ultimately discourages investment. Consequently, businesses are hesitant to engage in long-term climate investments without the assurance of consistent and stable regulatory conditions.

¹¹⁴ Government of Alberta, *Alberta Carbon Capture Incentive Program* (Edmonton: Government of Alberta) online: [perma.cc/4KYY-2NKA].

¹¹⁵ Chris Varcoe, “Varcoe: Major Carbon Capture Projects in Alberta Face ‘Serious Risk’ if Government-Industry Talks Remain Gridlocked”, *Calgary Herald* (7 May 2024), online: [perma.cc/M2G4-EPTU].

¹¹⁶ Howard et al, “Pore Space”, *supra* note 102 at 224.

¹¹⁷ Sonya Savage & Alan Ross, “Carbon Contracts for Difference: Mitigating Carbon Price Risk for CCUS Projects in Canada”, *Lexpert* (17 January 2024), online: [perma.cc/8JK2-L48F].

¹¹⁸ Howard et al, “Pore Space”, *supra* note 102 at 224.

¹¹⁹ Rob Langston, “A Year of Policy and Politics for Compliance Carbon Markets”, *Environmental Finance* (2025), online: [perma.cc/TQ3M-73R8].

Some of the concern for weakening carbon prices comes from the fact that carbon credits in Alberta are losing value in the trading market, partly due to longer-term uncertainty about the stability of *TIER* and an oversupply of credits and declining demand therefore, exacerbated by factors like the province's phase-out of coal and anticipated influx of credits from carbon capture projects.¹²⁰ Historically, the market price of credits increased in tandem with Alberta's scheduled carbon price increases until the beginning of 2023. After reaching approximately CAD\$55, the market prices for carbon credits then plateaued and eventually decreased, despite Alberta's carbon price increasing under *TIER*.¹²¹ For example, in the fourth quarter of 2024, emissions performance credits and emissions offset credits in Alberta's carbon market were trading at roughly CAD\$40 per metric tonne, half of the effective industrial carbon tax price of CAD\$80 per ton. In line with this trend, despite the federal carbon price projected to rise to CAD\$170 per tonne by 2030, the value of *TIER* credits in the secondary market is falling due to uncertainties about Alberta's commitment to future carbon price increases and the potential for an excess supply of credits.¹²² The weak carbon-credit prices threaten a key source of revenue or cost avoidance on which emitting companies rely for investment in capture technology. A further complication to this is Alberta's announcement that the price set under *TIER* will be frozen indefinitely at the current rate of CAD\$95, decoupling the *TIER* price from future increases to OPBS prices while such freeze remains in place.¹²³

While some forms of carbon credits are retired directly against an emitter's compliance obligations (for example, under *TIER* and *CFR*), a low carbon credit market prices could impact compliance requirements and the use of carbon credits as offsets or as a source of income that companies use to finance decarbonization efforts, including CCS projects. Taking into account the CCUS ITCs for eligible qualified capital expenses expenditures for capture (60 percent federally for capture directly from ambient air,¹²⁴ 50 percent federally for capture other than directly from ambient air,¹²⁵ and in either case an additional 12 percent provincially), transportation, and storage infrastructure (37.5 percent federally and 12 percent provincially), it may still be possible for both capture customers and CCS hub service providers to make sufficient returns to justify long term investments. Key to the viability of these long term projects is: (1) a stable regulatory system that recognizes decarbonization investment with sufficient returns on capital through service fees; (2) the existence and continuation of fiscal incentives at existing levels; and (3) typical for all major capital projects, the ability to forecast costs of project execution with a moderate degree of accuracy. As has been detailed in this article, each essential element is currently tenuous and subject to a wide range of uncertainty, making the current investment climate quite a bit more fragile. However, major energy producers typically take into account both short- and long-range market force and scenario planning when allocating capital budgets; as such the future of

¹²⁰ Dizon & Bishop, *supra* note 98.

¹²¹ Robert Tuttle, "Weak Carbon Prices in Oil-Sands' Home Seen Slowing Climate Gains", *BNN Bloomberg* (18 September 2024), online: [perma.cc/L36D-ALVB].

¹²² *Ibid.*

¹²³ Government of Alberta, *Defending Alberta Industry During U.S. Tariffs* (Edmonton: Government of Alberta, 12 May 2025) online: [perma.cc/TFB5-ZRNQ].

¹²⁴ Reduced to 30 percent after 31 December 2030, and before 1 January 2041, and then nil thereafter: Canada Revenue Agency, *Carbon Capture, Utilization, and Storage (CCUS) Investment Tax Credit (ITC) - Calculating the Credit* (Ottawa: Government of Canada, 28 January 2025), online: [perma.cc/LJT4-8YLD].

¹²⁵ Reduced to 25 percent after 31 December 2030, and before 1 January 2041, and then nil thereafter (*ibid.*).

CCS in Alberta will not be solely determined by the current geopolitical uncertainty and regulatory back and forth in Canada in light of our new government. It is a pivotal moment for CCS in Canada, as the forthcoming policy and regulatory decisions will be instrumental in determining whether this technology receives the necessary support to thrive.

C. LIQUIFIED NATURAL GAS

These days, the acronym for liquified natural gas (LNG) could equally stand for “Legislation, Negotiations, and Gridlock.” Canada is the world’s fifth largest producer of LNG, and the development of Canada’s LNG export capabilities is a critical piece to expanding market access for Canadian (and Albertan) natural gas producers to Asian and European markets.

LNG is a crucial element in the energy transition, as a fuel source, as it has a comparatively lower environmental impact compared to products, such as coal. LNG can be utilized across various sectors, including power generation, industrial processes and transportation, and its adaptability enables it to fulfil a pivotal role in enhancing energy security by diversifying from higher-carbon fuel sources.¹²⁶

In this section, we focus primarily on the challenges and opportunities surrounding the development of export options for LNG originating in Western Canada via ports in British Columbia. Proponents of the sale of this valuable resource will cite extensive upside of participation in the global trade of LNG.¹²⁷ The volumetric and storage properties of LNG enable countries with rich energy resources to transport LNG to countries with high-energy demand, incentivizing international trade and collaboration.¹²⁸

In Canada, LNG projects face the challenge of managing a difficult regulatory system and identifying and applying unclear legal standards. Proponents must navigate complex Indigenous relations and interprovincial political and regulatory environments to secure material approvals before construction and operation, which are costly and time consuming. Opposition from interest groups can further complicate the task of getting natural gas to tidewater.

1. CANADA’S BOURGEONING LNG EXPORT INDUSTRY

There are seven LNG export projects and one infrastructure project in various stages of development in Canada, representing a possible capital investment of almost CAD\$109 billion and a potential production capacity of 50.3 million tonnes per annum of LNG.¹²⁹ There are also four natural gas liquefaction facilities, and two LNG import facilities, operating in Canada that serve the domestic market.¹³⁰ LNG Canada, in Kitimat, British Columbia, will be Canada’s first large-scale LNG export facility once complete. LNG Canada’s Phase 1 is

¹²⁶ Tuttle, *supra* note 121.

¹²⁷ Drew Anderson & Fatima Syed, “Canada Has Another Carbon Tax. Poilievre Wants to Axe it, Too”, *The Narwhal* (27 March 2025), online: [perma.cc/N228-N29J].

¹²⁸ *Ibid.*

¹²⁹ Natural Resources Canada, *Canadian Liquified Natural Gas Projects* (Ottawa: Government of Canada, 7 January 2025) online: [perma.cc/C45G-TUUY].

¹³⁰ *Ibid.*

scheduled to begin shipments to Asia in 2025, with the goal of exporting 14 million tonnes of LNG per year.¹³¹ The four additional facilities under construction in British Columbia — Woodfibre LNG, Tilbury LNG, Cedar LNG, and Ksi Lisims LNG — have anticipated completion dates ranging from 2027 to 2030.¹³²

2. RELEVANT REGULATORS

In Canada, the development and approval of LNG projects involve a patchwork of provincial and federal regulatory bodies, each with specific statutes granting them authority. At the provincial level, the British Columbia Energy Regulator (BCER) regulates energy resource activities, including the processing and storage of oil and gas. The BCER operates under the authority of the *Energy Resource Activities Act*¹³³ and has broad regulatory powers under various pieces of legislation such as the *Environmental Management Act*,¹³⁴ the *Heritage Conservation Act*,¹³⁵ the *Land Act*,¹³⁶ the *Forest Act*,¹³⁷ and the *Water Sustainability Act*.¹³⁸ Federally, the Impact Assessment Agency of Canada is the key player in the environmental assessment and approval process for LNG projects. The Impact Assessment Agency of Canada operates under the *IAA*.¹³⁹

3. REGULATORY BURDENS

One of the primary challenges facing LNG projects is navigating the complex and protracted regulatory framework, particularly for export-focused facilities. Canadian LNG projects are typically for export, due to higher demand and prices in Asian markets.¹⁴⁰ Such projects often involve interprovincial pipelines and marine terminals to facilitate exportation to global markets. Unlike conventional oil and gas projects, LNG facilities typically trigger comprehensive environmental assessments under both the federal *IAA*¹⁴¹ and provincial statutes, such as British Columbia's *Environmental Assessment Act*,¹⁴² given their large-scale construction, locations near or within First Nation traditional territories, impacts on marine environments and broad range of stakeholder involvement.¹⁴³ This invariably creates a demanding regulatory environment.

A 2020 study conducted by the Canadian Energy Research Institute evaluated the competitiveness of Canada's regulatory framework for the oil and gas sector, both at the federal and provincial levels, in comparison to the US.¹⁴⁴ The findings indicated that Canada

¹³¹ McCarthy Tétrault, "Power Perspectives" (19 February 2025), online (pdf): [perma.cc/7XAH-UKM2].
¹³² *Ibid.*

¹³³ SBC 2008, c 36.

¹³⁴ SBC 2003, c 53.

¹³⁵ RSBC 1996, c 187.

¹³⁶ RSBC 1996, c 245.

¹³⁷ RSBC 1996, c 157.

¹³⁸ SBC 2014, c 15.

¹³⁹ SC 2019, c 28, s 1.

¹⁴⁰ Canada Energy Regulator, *Market Snapshot: Exploring Canada's Future in LNG Exports* (Ottawa: Government of Canada, 4 September 2024) online: [perma.cc/AR3F-N8V9].

¹⁴¹ *Supra* note 139.

¹⁴² *Environmental Assessment Act*, SBC 2002, c 43.

¹⁴³ Selina Lee-Andersen, "Peeling Back the Layers of LNG Development – A Primer on the Regulatory Framework for LNG Projects in B.C." (28 November 2013), online (blog): [perma.cc/5ABW-8A6B].

¹⁴⁴ Elmira Aliakbari & Jairo Yunis, "Canada's Lost LNG Opportunities Due to Dearth of Export Facilities" (4 March 2022), online: [perma.cc/T3MA-8TNJ].

faces a competitive disadvantage with LNG projects, which require approximately 19 additional months to obtain approval in Canada compared to the US.¹⁴⁵

The federal impact assessment process under the *IAA*¹⁴⁶ involves three main phases: planning (up to 180 days), impact statement (up to three years), and assessment (300 to 600 days).¹⁴⁷ Litigation and judicial reviews often delay LNG projects, as do environmental groups and stakeholders challenge assessments and Indigenous consultation. Unlike many upstream oil and gas projects, LNG approvals involve overlapping jurisdictions, heightened environmental oversight, and export-related complexities, making them among the most procedurally demanding in Canada.

Within the environmental assessment process, as is applicable to other major project developments, LNG project approval and construction is prolonged by the need to obtain a broad array of discrete permits and authorizations. For LNG projects, these include facility-specific operating permits, Indigenous consultations and potential Indigenous-led assessments, marine terminal approvals, and export licences issued by the Canada Energy Regulator under the *Canadian Energy Regulator Act*.¹⁴⁸ The cumulative permitting process is time-consuming and can delay project development by several years. For example, the LNG Canada project in Kitimat, a CAD\$40 billion joint venture led by Shell, took over six years to progress from initial consultation to final investment decision, and approximately thirteen years from initial consultations to projected operational status in 2025.¹⁴⁹ These extended timelines were due in part to the comprehensive environmental assessment process, extensive engagement with Indigenous communities, and compliance with numerous regulatory conditions. Similarly, the Cedar LNG project, a floating LNG facility led by the Haisla Nation, underwent concurrent reviews under both the federal *IAA*¹⁵⁰ and British Columbia's *Environmental Assessment Act*,¹⁵¹ in addition to Canada Energy Regulator oversight for export authorization. The project required approximately five years to reach a final investment decision and is expected to span nearly nine years from initial proposal to anticipated commercial operation in late 2028, highlighting the procedural complexity inherent in LNG project approvals.¹⁵²

These long timelines and regulatory complexities have created market uncertainty for investors, contributing to the cancellation of several LNG projects in Canada. In 2017, Petronas Canada cancelled its CAD\$36 billion Pacific North West LNG project due to “delays and long regulatory timelines.”¹⁵³ In 2021, Quebec refused to authorize GNL Quebec Inc.'s

¹⁴⁵ *Ibid.*

¹⁴⁶ *IAA*, *supra* note 139.

¹⁴⁷ Government of Canada, *Impact Assessment Process Overview* (Ottawa: Impact Assessment Agency of Canada, 7 August 2025) online: [perma.cc/65ZE-YYXF].

¹⁴⁸ SC 2019, c 28, s 10. See also Canada Energy Regulator, *Export and Import Licence Applications* (Ottawa: Government of Canada, 5 May 2023) online: [perma.cc/MA5Y-VHLL].

¹⁴⁹ LNG Canada, “Summary: Environmental Assessment Certificate Application” (November 2014), online: [perma.cc/5MM8-SACT].

¹⁵⁰ *Supra* note 139.

¹⁵¹ *Environmental Assessment Act*, *supra* note 142.

¹⁵² Cedar LNG, “Project Update” (December 2024), online (pdf): [perma.cc/GRT5-93X4].

¹⁵³ Aliakbari & Yunis, *supra* note 144.

proposed LNG facility citing environmental and other concerns.¹⁵⁴ In 2021, joint venture partners Chevron and Woodside Energy withdrew their support of the Kitimat LNG project in northern British Columbia after more than a decade of slow progress.¹⁵⁵

At the same time, several major LNG projects are currently underway in British Columbia. LNG Canada is the most advanced and expects first exports by 2025.¹⁵⁶ Woodfibre LNG, a CAD\$5.1 billion project by Pacific Energy Corp., began major construction in 2023 and is expected to be completed by 2027.¹⁵⁷ Cedar LNG received environmental approval in 2023 to build a floating LNG facility on the Douglas Channel near Kitimat, with completion expected in 2028.¹⁵⁸

4. PUBLIC OPPOSITION FROM CERTAIN INDIGENOUS COMMUNITIES

Indigenous partnerships are an important component of economic reconciliation and integral aspects of the LNG project development process, given the potential to build capacity with Indigenous investors and provide opportunities for Indigenous communities to meaningfully engage. Several LNG projects in British Columbia are located within the traditional territories of First Nations and therefore require deep levels of consultation and engagement. The Cedar LNG project that we highlighted above is the largest Indigenous majority-owned infrastructure project in Canada and the Woodfibre LNG project is the first project in Canada to undergo an Indigenous-led environmental assessment pursuant to an agreement with the Skwxwú7mesh Úxwumixw (Squamish) First Nation.¹⁵⁹ Throughout LNG project phases, including planning, assessment, review, construction, operation, and decommissioning, the Crown has constitutional obligations to consult with Indigenous communities and, if necessary, accommodation when there is conduct that might adversely impact potential or established Indigenous rights and interests. Certain LNG projects have faced public opposition, legal challenges, and blockades from those opposing these projects, further complicating the development of LNG projects.

Natural gas producers closely observed the British Columbia Supreme Court's ruling in *Yahey v. British Columbia*,¹⁶⁰ which caused a complete halt in British Columbia drilling licences for two months in the summer of 2021.¹⁶¹ The Court found that the provincial government had infringed on the rights of the Blueberry River First Nations (BRFN) under the Treaty 8 agreement signed in 1899 between various First Nations and the Canadian government.¹⁶² The Court found cumulative impacts of industrial development approved by

¹⁵⁴ Patrice Bergeron & Thomas Laberge, "Quebec Government Open to Rekindled LNG Project to Ship Energy from Alberta Overseas", *Global News* (5 February 2025), online: [perma.cc/A8G2-YUB4].

¹⁵⁵ Aliakbari & Yunis, *supra* note 144.

¹⁵⁶ Derrick Penner, "Is LNG in B.C. Falling Behind? Here's the Status of Five Major Projects", *Vancouver Sun* (27 May 2025), online: [perma.cc/A4CF-BM8Y].

¹⁵⁷ *Ibid*; Woodfibre LNG, "Regulatory Overview", online: [perma.cc/6YZW-9QXQ]; "WLNG Marks Key Milestone as First LNG Modules Arrives at Woodfibre Site", *The Squamish Reporter* (26 May 2025), online: [perma.cc/YL3V-JYQX].

¹⁵⁸ Impact Assessment Agency of Canada, *Cedar LNG Project* (Ottawa: Impact Assessment Agency of Canada, 25 July 2025) online: [perma.cc/N2AH-X49N]; Penner, *supra* note 156.

¹⁵⁹ Woodfibre LNG, "Squamish Nation Environmental Assessment Agreement", online [perma.cc/WHV6-JPF4].

¹⁶⁰ 2021 BCSC 1287.

¹⁶¹ Omar Mawji & Brad Williams, "Review of LNG Canada Project: Delays, Policy Changes, and Rising Costs" (November 2021), online (pdf): [perma.cc/H7WC-SXMC].

¹⁶² *Ibid*.

the provincial government had diminished the BRFN's rights within its traditional territory because of adverse effects on the environment that interfered with the BRFN's way of life.¹⁶³ Early engagement and meaningful relationships with Indigenous communities is a necessary requirement for upstream gas producers and LNG proponents to successfully navigate regulatory landscapes. Meaningful participation of Indigenous communities in LNG projects can foster positive relations throughout the entire value chain and lifespan of an LNG project.

5. OPPORTUNITY IN ADVERSITY?

The global demand for LNG is forecast to rise by around 60 percent by 2040, largely driven by economic growth in Asia, emissions reductions in heavy industry and transport, as well as the impact of AI, as discussed in more detail below.¹⁶⁴ A considerable disparity exists between the demand for LNG in Asia and Europe and their domestic natural gas production.¹⁶⁵ This shortfall will be addressed through imports from various countries. Canadian LNG has the potential to significantly contribute to global energy needs, if Canada establishes itself as a dependable supplier.¹⁶⁶

With commissioning starting at the first LNG carrier arriving to the LNG Canada facility in Kitimat, in the traditional territory of the Haisla Nation on 2 April 2025, there is a renewed enthusiasm about LNG exports.¹⁶⁷ LNG Canada expects that cargoes, each valued in the CAD\$150 million to CAD\$220 million range, will depart Kitimat approximately every two days.¹⁶⁸ Amid a push to expand markets and decrease US reliance, Canada now has the chance to export its natural gas to new destinations beyond domestic and US markets.

The provincial government in British Columbia has expressed (albeit qualified) support for LNG projects in the province. In 2023, they introduced an energy action framework, which proposed new requirements for future LNG facilities and the province's oil and gas industry participants to align with the province's emissions-reduction goals. Shortly thereafter, the British Columbia government issued its Oil and Gas Emissions Cap Policy Article.¹⁶⁹ The article sets out examples of how LNG may meet zero emissions by 2030, such as adopting best-in-class technology and offsetting emissions through verified carbon-offset projects.¹⁷⁰ Additionally, since the imposition of tariffs on Canadian energy, the Quebec government has stated that it would be open to reviving a LNG project to transport Alberta energy overseas.¹⁷¹

¹⁶³ *Ibid.*

¹⁶⁴ Offshore, "Report: Asian Economic Growth Expected to Drive 60% Rise in LNG Demand to 2040", *Offshore Magazine* (10 March 2025), online: [perma.cc/A83G-RVCW].

¹⁶⁵ Ven Venkatachalam & Lennie Kaplan, "The Global Liquefied Natural Gas (LNG) Market: Where Does Canada Fit In?" (21 June 2022), online: [perma.cc/BUF5-9UMM].

¹⁶⁶ McCarthy Tétrault, *supra* note 131.

¹⁶⁷ LNG Canada, "LNG Import Cargo Has Arrived" (2 April 2025), online: [perma.cc/U6NJ-RF84].

¹⁶⁸ Vaughn Palmer, "Incoming LNG Tanker Marks Near Completion of Kitimat Export Terminal", *Vancouver Sun* (27 March 2025), online: [perma.cc/V8AU-7JC9].

¹⁶⁹ Government of British Columbia, *Net-Zero New Industry Intentions Paper* (Victoria: Clean BC, July 2023) online (pdf): [perma.cc/C385-Y83Y].

¹⁷⁰ McCarthy Tétrault, *supra* note 131.

¹⁷¹ Bergeron & Laberge, *supra* note 154.

In a landscape characterized by “Legislation, Negotiations, and Gridlock,” the future of Canada’s LNG industry hinges on its ability to overcome regulatory stalemates and capitalize on the increasing global appetite for LNG and alternative trading partners to the US. With the world watching, the latter may serve as the ultimate catalyst, compelling Canada to refine its regulatory approach and place a strategic bet on LNG.

D. POWER MARKETS AND BATTERY STORAGE

Alberta’s electricity industry sits at the intersection of tension between federal and provincial levels of government, net-zero targets, climate change, and emerging industries in the province. From an emerging battery-storage sub-sector to a restructured energy market, flipping on the lights has never had such high stakes. Power is plagued by the same themes of regulatory uncertainty and a patchwork of reform that impacts other sub-sectors that we discuss, but battery storage provides a case study of an instance where demonstrated need¹⁷² has given the industry clarity to support significant investment.

Electricity is supplied to Alberta by a variety of generators that are powered by natural gas, wind, solar, hydro, and biomass. The supply is supplemented by imported power from British Columbia, Saskatchewan, and Montana. Each generator sells the energy they produce into the wholesale electricity market and the wholesale price of electricity is set each hour.¹⁷³ Once generated, electricity travels across Alberta over high-voltage transmission lines to local substations. In Alberta, transmission systems are owned and operated by shareholder or municipally owned companies such as: AltaLink, ATCO Electric Transmission, EPCOR Distribution and Transmission Inc. and ENMAX Power Corporation. The Alberta Utilities Commission (AUC) regulates these companies’ transmission costs,¹⁷⁴ and the Alberta Electric System Operator (AESO) oversees supply and demand and regulates the wholesale electricity market.¹⁷⁵ The growing number of extreme weather events and emerging electricity-intensive industries have given rise to louder calls for the province to develop battery storage capacity that can help manage surges in demand. The *Electricity Statutes (Modernizing Alberta’s Electricity Grid) Amendment Act*,¹⁷⁶ which received proclamation on 6 March 2024, has brought significant clarity to regulatory requirements for building energy storage facilities in Alberta.¹⁷⁷

¹⁷² In January 2024, Alberta experienced an unprecedented energy emergency when its electricity system entered a level three grid alert due to extreme cold, low wind, and outages from natural gas generators. This situation brought the province close to load shedding, which is a deliberate shutdown of electric power in a part or parts of a power distribution system, generally to prevent the failure of the entire system when the demand strains the capacity of the system. During the January 2024 event, a critical factor that helped avoid a grid failure was the 190MW of storage capacity available to provide “operating reserves.” Although energy storage helped mitigate the crisis, it was only able to provide temporary relief, highlighting the need for more storage capacity in the province: *Alberta Electricity System Events on January 13 and April 5, 2024: MSA Review and Recommendations*, Report to the Alberta Electric System Operator (6 August 2024), online (pdf): [perma.cc/DL9Q-VUSC].

¹⁷³ Utilities Consumer Advocate, “Understanding the Electricity Market”, online: [perma.cc/Z6HL-46BA].
¹⁷⁴ *Ibid.*

¹⁷⁵ Alberta Electric System Operator, “About the AESO”, online: [perma.cc/4EXY-GY26].

¹⁷⁶ SA 2022, c 8; Bill 22, *Electricity Statutes (Modernizing Alberta’s Electricity Grid) Amendment Act*, 3rd Sess, 30th Leg, Alberta, 2022 (assented to 31 May 2022).

¹⁷⁷ Government of Alberta, *Transforming the Utilities System* (Edmonton: Government of Alberta, 9 April 2025) online: [perma.cc/2UMM-B4AW]; Bill 52, *Energy and Utilities Statutes Amendment Act*, 1st Sess, 31st Leg, Alberta, 2025, amending the *Electric Utilities Act*, SA 2003, c E-5.1, online: [perma.cc/2WDV-Q364].

Stakeholders across the entire electricity supply chain are critical of multiple overlapping consultation and bureaucratic processes that compound regulatory uncertainty.¹⁷⁸ They call for better integration and communication at each stage to ensure that the overall market design is coherent, implementable, and supportive of long-term stability.¹⁷⁹ Renewable energy projects and new battery storage operations also require proponent and investor support, and creating as much certainty as possible when it comes to permitting and market function is key for attracting commitments to building these projects in Alberta.

In the paragraphs that follow, we highlight the ongoing reforms to the power market in Alberta, as well as new opportunities on the horizon.¹⁸⁰

1. ALBERTA'S RESTRUCTURED ENERGY MARKET

Beginning in August of 2023, the Minister of Affordability and Utilities directed the AESO to prepare a report recommending market mechanisms that can support a stable and affordable energy supply mix.¹⁸¹ Those advising clients in the electricity space will be familiar with the result of the consultation, engagement and design process that followed: Alberta's Restructured Energy Market (REM). REM is designed to address uncertainties stemming from evolving federal policies, such as the *CER*,¹⁸² as well as concerns of regulatory uncertainty raised throughout the consultation process, particularly relating to market stability, ensuring transparency, and clear and predictable regulatory processes. At this stage, REM continues to take shape, and uncertainty abounds as stakeholders consider project development and acquisition opportunities. Notwithstanding the uncertainty that comes with the introduction of a new system, key elements of REM include, quote:

- Co-optimization of energy and ramping reserves, wider real-time price range (price cap of \$3,000/MWh) to send more dynamic signals in the market;
- Congestion pricing (AESO preferred option: Locational Marginal Pricing) in coordination with Optimal Transmission Planning to manage congestion within the market; and
- Market power mitigation measures (secondary offer cap) to provide guardrails against excessive exercise of market power.¹⁸³

One of the key features of REM has been the Day-Ahead Commitment (DAC). A day-ahead market allows participants to place bids and complete transactions for the following day's energy, securing their anticipated load in advance. Alberta's current hourly pricing

¹⁷⁸ Alberta Electric System Operator, "Consolidated Written Feedback: REM High-Level Design" (17 January 2025) at 56, 237, 250, online (pdf): [perma.cc/74LE-TKAC] [AESO].

¹⁷⁹ *Ibid* at 6, 250.

¹⁸⁰ Alongside new opportunities, new restrictions have also emerged. For instance, in 2024, the Alberta government introduced exclusion zones prohibiting renewable energy development on high-quality agricultural land and scenic landscapes: see Lisa Johnson & Jack Farrell, "Alberta Releases New Rules and No-Go Zones on Wind and Solar Projects", *CBC News* (6 December 2024), online: [perma.cc/YK4Y-X28U].

¹⁸¹ Kimberly J Howard, Riley M Thackray & Reena Goyal, "Powering Change: Alberta's Restructured Energy Market (REM)" (12 March 2024), online (blog): [perma.cc/J493-Y9PA].

¹⁸² *Ibid*.

¹⁸³ Kimberly J Howard, Riley M Thackray & Amanda J Cha, "Developments in Alberta's Restructured Energy Market (REM): Removal of the Day-Ahead Commitment Market and the Day-Ahead Energy Scheduling Market" (16 April 2025), online (blog): [perma.cc/7MTF-DK BX].

model, on the other hand, reflects the actual, minute-by-minute price of electricity in the real-time market, determined by supply and demand. The DAC was initially proposed as a way to improve transparency, efficiency, reliability and affordability of Alberta's electricity grid.¹⁸⁴ However, on 4 April 2025, the AESO announced that it would not be proceeding with the proposed DAC market and the day-ahead energy scheduling market.¹⁸⁵ The AESO has attributed its pivot to concerns around the complexity of a DAC market, and has pledged that the reliability and affordability objectives of the REM can be achieved through other market design changes, but it is unclear what the final outcome will be. Notwithstanding the AESO's stated pivot away from a DAC, Bill 52 introduced amendments to the *Electric Utilities Act* to facilitate a day-ahead market for both electric energy and ancillary services.¹⁸⁶

Critics of REM have point to lack of clarity regarding the decision-making process, including the decision to potentially bypass the AUC process for implementing the initial REM rules.¹⁸⁷ Questions remain on how issues will be addressed as they arise, what recourse market participants have, and how decisions will be memorialized.¹⁸⁸ The need for a formalized governance structure has been stressed, one that includes mechanisms for ongoing public consultation, a stakeholder advisory committee and regular and independent reviews.

Despite criticism, and as noted above, the AESO has actively been engaging with industry stakeholders and market participants. As a step toward greater certainty, on 22 May 2025, the AESO released its Updated REM High-Level Design to provide stakeholders with a comprehensive overview of the key design components.¹⁸⁹ The REM process demonstrates that these factors are evolving and that industry feedback is being incorporated, demonstrating (at least in this context) that government stakeholders are aligned with the need to consult regulated industries and tailor frameworks to the businesses that they serve. This is a call to action that we echo in later parts of this article.

2. RELIABILITY AND INVESTOR CONFIDENCE

The combined effect of the issues mentioned above, including a lack of transparency, unclear decision-making processes, and administrative pricing risks, has the potential to undermine investor confidence.¹⁹⁰ Without clear rules, securing financing for new projects becomes challenging, which may result in grid defection. Regulatory risks also arise from the dynamic nature of transmission planning parameters, definitions, and objectives, which can lead to unpredictable changes that further discourage investment. Investors require assurance that the market's regulatory framework is stable and predictably governed to enable long-term, market-driven investment.¹⁹¹ In addition, there is a noticeable call for defined success

¹⁸⁴ AESO, *supra* note 178 at 6.

¹⁸⁵ Alberta Electric System Operator, "REM Technical Design" (7 August 2025), online: [perma.cc/J9PQ-NKHM].

¹⁸⁶ Bill 52, *Energy and Utilities Statutes Amendment Act*, 1st Sess 31st Leg 3 Charles III Alberta 2025 (assented to 15 May 2025), SA 2025, c 8.

¹⁸⁷ AESO, *supra* note 178 at 6, 33, 81, 159, 220, 274, 282.

¹⁸⁸ *Ibid* at 81.

¹⁸⁹ Alberta Electric System Operator, *Restructured Energy Market High-Level Design Update* (22 May 2025), online (pdf): [perma.cc/4NZ5-6U26].

¹⁹⁰ AESO, *supra* note 178 at 47.

¹⁹¹ *Ibid* at 31, 35, 43, 159, 199, 210, 276.

metrics and independent oversight mechanisms, which would help in monitoring performance against the overall objectives of reliability, affordability, and sustainability.¹⁹²

3. LINK TO CARBON PRICING

The interplay between the electricity market dynamics and policy plays a role in shaping the financial structuring and development of renewable energy projects in Alberta. Renewable power projects often look to the sale of environmental attributes and carbon offsets to enhance their economic viability. It is not uncommon in Alberta for developers of renewable energy projects to enter into virtual power purchase agreements (VPPA) with third parties. A key feature of many VPPAs is the purchase and sale of various types of renewable energy and the incorporation of environmental attributes and carbon offsets generated by the renewable power project. The potential renewed uncertainty around carbon pricing systems, including the *TIER* system and the federal OBPS, could also have significant implications for the renewable power sector in Alberta. The absence of clear benefits from emissions offsets could make these agreements less attractive. Additionally, for projects that have already secured VPPAs, any significant changes to carbon pricing regimes could potentially trigger change in law provisions within those agreements. This could force reviews of contractual obligations and possibly renegotiations, further complicating the financial landscape for renewable energy projects in Alberta.

4. BATTERY STORAGE

Energy storage is an example of new regulations helping to create more certainty and foster the development of this sub-sector in Alberta. Prior to the improved regulatory certainty brought about by the coming into force of the *Amendment Act*, energy storage projects were approved on an ad hoc basis due to the lack of defined regulatory treatment of storage assets.¹⁹³ Some uncertainty persists, however, as under section 13.01 of the *Hydro and Electric Energy Act*¹⁹⁴ and the *Hydro and Electric Energy Regulation*,¹⁹⁵ energy storage facilities are required to be permitted and approved in accordance with AUC Rule 007, which is currently being revised and is in draft form.¹⁹⁶

The Trudeau government was supportive of deploying energy storage facilities, particularly within the context of enabling Canada's net-zero goals.¹⁹⁷ As discussed above, incentives like the Clean Economy ITCs, including the 30 percent clean technology investment tax credit (CT ITC), the 30 percent clean technology manufacturing investment tax credit, and the proposed CE ITC, a 15 percent Clean Electricity ITC can help to facilitate development of clean electricity projects, such as energy storage.

¹⁹² *Ibid* at 6, 158, 282, 295.

¹⁹³ Doug Evanchuk & Joelle French, "Shifting Currents: Modernizing Alberta's Electricity Grid" (20 March 2024), online (blog): [perma.cc/GG6M-U ELF].

¹⁹⁴ RSA 2000, c H-16, s 1301.

¹⁹⁵ Alta Reg 32/2024.

¹⁹⁶ Alberta Utilities Commission, Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines* (Edmonton: AUC, 2024), online: [perma.cc/AML4-5M54].

¹⁹⁷ Justin Rangooni, "A Snapshot of Canada's Energy Storage Market in 2023", *Energy Storage News* (30 May 2023), online: [perma.cc/4YPF-GKLC].

5. PROJECTS IN THE WORKS

Our brush with energy scarcity during Alberta's grid alert in January 2024 underscores the critical role of battery storage in staving off blackouts, particularly during periods of extreme weather and high demand. The growth of data-driven industries such as cloud-based services, computer and mobile applications, AI and machine learning technology is driving exponential demand for data storage infrastructure.¹⁹⁸ As Alberta confronts the dual challenges of ensuring grid stability and powering data-intensive industries, the expansion of energy storage capacity emerges as a pivotal solution to safeguard and sustain the province's energy ecosystem. Recognizing the importance of this, Alberta has seen the development of several energy storage projects aimed at enhancing the reliability and efficiency of its power systems:

- *Laramide Battery Storage Facility*: Proposed by Enfinite Energy, this 100MW facility near High River will use 105 lithium-ion battery modules to store 400MWh of energy, connecting to the Alberta Interconnected Electric System (AIES) via a new transmission line, with an AUC hearing expected in 2025.¹⁹⁹
- *Marguerite Lake Compressed Air Energy Storage*: This Compressed Air Energy Storage project in Bonnyville will store 320MW of energy for up to 48 hours using underground salt caverns, with an estimated cost of CAD\$500 million and completion expected in 2027.²⁰⁰
- *Irrican eBAR Battery Storage Project*: Approved by the AUC, this project will store hydroelectricity and power from the AIES, featuring a 15.4MW capacity and located near the Raymond Reservoir Hydro Plant.²⁰¹
- *WaterCharger Battery Storage Project*: Approved by the AUC, TransAlta Alberta Hydro Inc. will construct a 180MW battery energy storage plant in the Ghost Lake area, with approval granted in November 2022.²⁰²

Several data centre projects have also been proposed in Alberta, potentially requiring energy storage facilities to meet their significant energy demands. Between 8 April 2024 and 10 May 2024, Beacon AI Data Centres, a private development firm, submitted five large AI hubs to the AESO connection list, which would require between 200MW to 400MW of demand per facility.²⁰³ On 29 October 2024, the largest Canadian-owned and operated data

¹⁹⁸ McCarthy Tétrault, *supra* note 131 at 89.

¹⁹⁹ *Laramide Battery Storage Facility*, Proceeding 28906, online: Alberta Utilities Commission [perma.cc/A39P-ZL5K].

²⁰⁰ *Marguerite Lake Compressed Air Energy Storage Project* (5 June 2025), 28132-D01–2025, online: Alberta Utilities Commission [perma.cc/T5ZL-MCRB].

²⁰¹ *Raymond eBAR Battery Energy Storage Facility* (23 April 2024), 28805-D01–2024, online: Alberta Utilities Commission [perma.cc/PZ8R-4PRB].

²⁰² *WaterCharger Battery Storage Facility* (12 June 2024), 28947-D01–2024, online: Alberta Utilities Commission [perma.cc/36E8-AEH6].

²⁰³ McCarthy Tétrault, *supra* note 131, citing Alberta Electric System Operator, "Connection Project Reporting" (2025), online: [perma.cc/PD77-FR4U].

centre provider, eStruxture, announced that they plan to invest over CAD\$750 million to construct CAL-3, a 90MW data centre in Rocky View County, just north of Calgary.²⁰⁴

Increased energy storage would help meet peak demand, improve grid reliability, and lower electricity costs by charging when demand is low and discharging energy during high-priced periods, offering a solution to problems facing emerging industries in our province.²⁰⁵

IV. PRACTICING WHILE WAITING FOR THE CHIPS TO FALL: STRATEGIES FOR OUR DAY JOBS

A. READY FOR ACTION

We are optimistic that the new federal government will bring about regulatory reform that builds certainty and heralds a new era of major projects that support the growth and prosperity of the energy industry. To this end, lawyers should prepare themselves, their clients, and the businesses they serve to adapt their ways of working to take advantage of any newfound bureaucratic efficiency and prospects that may arise. To the extent that the industry has become accustomed to the pace of the status quo, any regulatory changes will only be as helpful as the industry is able to take advantage of opportunities. In-house counsel should advise the businesses they work with that they should ready themselves to move quickly and may rely on outside counsel to provide timely advice on the shifting landscape.

B. KEEPING ABREAST OF POTENTIAL SOURCES OF FUNDING

Where energy lawyers' clients are involved in sub-sectors or project work that relies on government investment, guarantees, or other sources of funding, we suggest that their counsel should remain alive to the possibility that key government financial inputs may be cut. Such cuts could stem from government diverting funding to other areas in response to geopolitical factors (including defence, as described above) or as a result of political changes. In the event that certain funding cuts (for example, incentives for the development of renewables projects) become a reality, other sources of funding available to Indigenous groups, such as the federal loan guarantee and the AIOC, may further encourage project proponents to work with Indigenous partners as a means of securing necessary investments, and lawyers should be aware of potential opportunities that may benefit their clients.

C. APPLICABLE LAW AND CHANGE IN LAW PROVISIONS

Depending on the extent to which the client is involved in one of the sub-sectors that we discussed in this article, and has an interest in ensuring compliance with changing requirements, we suggest increasing the breadth of Applicable Law provisions to capture changing legislation and regulatory requirements — requiring compliance where it is unclear

²⁰⁴ eStruxture Data Centers, Press Release, “eStruxture Announces Alberta’s Largest Data Center: Introducing the Groundbreaking CAL-3 Facility” (15 November 2024), online: [perma.cc/GP2E-XMLP].

²⁰⁵ Huadong Mo et al, “Energy Storage Systems for Carbon Neutrality: Challenges and Opportunities” (2025) 12:2 *Frontiers Engineering Management* 305.

at time of drafting what the law may be. This way, compliance during the term is tied to those laws and regulations currently in effect.

When acting for a party who may be adversely affected by a change of law or regulatory requirements, consider trying to negotiate for change in law provisions which include a process to renegotiate to address a sharing of economic burdens or unwind or terminate a transaction if a change renders a transaction materially uneconomic, unlawful, or impossible for the client to perform.

Similarly, we expect to start to see tariffs or trade restriction listed as enumerated exclusions from force majeure clauses, and clients' interests in contractual certainty versus ensuring continued commercial viability will dictate whether lawyers push for or against it.

D. JURISDICTION AND FORUM CLAUSES

Now, more than ever, we expect that parties will be keen to create jurisdictional certainty in the event of disputes arising out of agreements, and recent jurisprudence suggests that a lack of specificity can give rise to non-exclusive choice of forum that may result in litigation occurring in an unwanted location. The British Columbia Court of Appeal held in *Yegre EB Ltd. v. Seguin*²⁰⁶ that a forum selection clause using the words “submit” or “attorn” does not, on its own, grant exclusive jurisdiction to a court. Rather, the Court suggests that parties must add clear and express language granting exclusive jurisdiction, clearly specify whether the jurisdiction is exclusive or non-exclusive,²⁰⁷ and avoid terms like “submit” or “attorn” without additional clarification, as they can be interpreted in multiple ways. For example:

[This Agreement] shall be governed by and will be construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein. The Parties agree to submit any dispute arising out of [this Agreement] *exclusively* to the courts of Alberta.

Giving extra attention to attornment or choice of forum provisions can help establish certainty around jurisdiction in the event of a dispute.

E. BUILDING IN COMMERCIAL FLEXIBILITY VERSUS ANTICIPATING A LACK OF COMMERCIAL FLEXIBILITY

Energy lawyers are accustomed to attempting to draft agreements around the inherently uncertain cycles of the industry, but the geopolitical factors that we have discussed throughout this article should signal that our practice may reach new heights of anticipatory risk management. Long term capital projects may be increasingly pursued in phased development stages, with market-driven demand and logical offramps, using regulatory certainty as a condition precedent to joint stage gate decision-making. Financing major projects may become increasingly challenging as trade uncertainty persists, but commercial flexibility and offramps may face increased scrutiny when lenders backstop project agreements — we anticipate that amendments to credit facilities may include more stringent covenants as lenders navigate an uncertain environment. Lenders may start to show preference for

²⁰⁶ 2024 BCCA 365 at para 50.

²⁰⁷ Connor Bildfell & Salessa King, “Forum Selection Clauses Must Use Express Language to Grant Exclusive Jurisdiction” (19 November 2024), online (blog): [perma.cc/4H2K-GX6Q].

apportioning risk through consortium agreements, emphasizing strong governance and the creditworthiness of participants to absorb price shocks and employ long-term capital strategies.

F. EXTRA DILIGENCE WHERE IT IS DUE

When transactions involving assets subject to the AER's new LMF framework progress to the due diligence stage, we suggest that lawyers working through diligence familiarize themselves with the various heads of review now available to the AER as part of its holistic assessment of licence transfers, and ensure that their clients are aware that their compliance history, personal histories of directors and officers, and debt-to-capital ratios may all influence parties' ability to transfer licences or require increased security deposits.

Energy lawyers will be familiar with the now-common practice of closing transactions in escrow. This process is a compromise among oil and gas industry participants to complete commercial transactions in a regulatory environment where parties are expected to transfer assets before AER approval for such transfers are sought. Further complications to the process of transferring assets are added by protracted delays for the AER to complete licence transfers and uncertainty around whether security deposits will be demanded of the parties, and their quantum. We suggest that the full implementation of the LMF means that the practice of escrow closings is here to stay as a means of managing this uncertainty for both sides. In some instances, counsel for purchasers may also consider negotiating caps on the amount of security deposits their clients are obligated to pay under the terms of the purchase and sale agreement (and to avoid contractual breaches) and introduce a means for the parties to terminate a transaction where an unexpectedly high security deposit means a transaction no longer makes commercial sense. In the long term, we hope the regulatory process may adapt to provide more certainty for approval applications and security requirements up front, rather than waiting until assets are already in the process of being transferred to begin this decision-making process.

With this perspective in mind, we offer our recommendations for actions that can serve as a basis of a roadmap to build meaningful confidence, among both industry participants and investors, in Alberta's regulatory landscape. Given the dynamic nature of the regulatory environment, no single set of recommendations can be exhaustive. Ongoing consultation is necessary for adapting to new challenges and ensuring that reforms remain relevant and effective.

1. STREAMLINE ENVIRONMENTAL REVIEWS

Streamlining environmental reviews is key to enhancing operational efficiency and reducing investor uncertainty in the energy sector. We suggest that these environmental assessments occur at a single level, either federal or provincial, rather than requiring overlapping reviews. This approach addresses the critical issue of duplicative assessments that not only extend project timelines but also creates risk for investors.

2. ENHANCED EARLY INDIGENOUS PARTICIPATION

Meaningful Indigenous engagement should be integrated at the earliest stages of project development. There is no one-size-fits-all approach to engaging with Indigenous communities as each community has unique priorities, governance structures, and expectations regarding consultation. However, certain best practices have emerged as effective in building respectful and constructive relationships. These include a commitment to learning a community's values, concerns, and previous experiences with consultation; engaging early in the project lifecycle and in person where possible; and establishing relationships before delving into technical project details. Early engagement — prior to key project decisions being finalized — is particularly critical. Late engagement can erode trust and increase the risk of project delays or opposition, whereas early involvement helps build strong relationships and can serve as a protective factor in the event of legal challenges concerning the duty to consult. Sometimes, the most effective engagement strategies involve integrating Indigenous communities as equity partners from the outset, thereby ensuring their participation in substantive decision-making. Case studies, such as those involving the AIOC, demonstrate the relational and economic benefits of this model. It is important to note, though, that not all Indigenous communities have the means or desire to participate in equity ownership, further underscoring the need for early and meaningful engagement and relationship building in order to foster understanding of an Indigenous community's priorities and values.

3. DEMAND LEGISLATIVE CLARITY AND CONCISENESS

This article has highlighted that regulatory uncertainty undermines investor confidence and can, in turn, complicate project financing. Legislated timelines and streamlined procedures, including definitive review and approval timelines, could resolve some of these issues. Clear mandates and timelines foster a predictable environment conducive to long-term investment while protecting public interest. We encourage industry participants and legal counsel to engage with policymakers, providing perspectives for more a transparent regulatory framework.

4. REGULATORY DUE DILIGENCE FROM THE OUTSET

Recognizing the inherent delays an unpredictable nature of regulatory changes, lawyers must be proactive in ensuring all relevant timelines and obligations are clearly defined and managed within contractual agreements. Lawyers should conduct comprehensive regulatory due diligence from the start of any project, incorporating potential delays into project planning, and readying their clients for updated and shifting timelines.

V. CONCLUSION

It is evident that Canada stands at a pivotal juncture in the current geopolitical climate, with a unique opportunity to redefine its energy landscape and build independence and trade diversity into our economy. Deborah Yedlin, CEO of the Calgary Chamber of Commerce, shared (in a radio interview) the perspective that the current situation should spur action:

I think we're starting to see ... other than the 1995 Quebec Referendum in 1995, the surge in Canadian pride, this notion that we've all woken up and we have been getting in our own way, in a very good way, in terms of preventing our ability to come together as a country from an economic standpoint to decrease interprovincial trade barriers, to really look at why we need infrastructure, trade infrastructure built, and why we have the potential to grow our own economy and really decrease the reliance on, on the US. We've been, you know, a little too complacent. We've all said that for a long time. There's no, no stock portfolio that doesn't manage risk and invests in one stock. That's basically what we've done.... It's trade infrastructure, it's pipelines, it's port infrastructure, it's rail. Let's make sure we can get what we have, what we can produce, from coast-to-coast-to-coast. Let's look at new options ... but we really have to look at what we can send to the rest of the world, not just south of the border. It's going to cost money. We need to do it, and it's a nation-building opportunity.²⁰⁸

As lawyers, we can use our understanding of the regulatory gaps and gluts that have turned our clients' worlds into a wild game of chance, to advocate for change and advise clients to press forward in the most efficient manner possible. We know firsthand that regulatory bloat not only hampers the agility needed to respond to rapid geopolitical shifts but also undermines investor confidence and deal certainty, which is crucial to realize all of the potential projects and opportunities that we have highlighted. Just controlling what one can control on an individual level is a helpful mantra in the face of the unknown, Canada has the chance to do the same: to look inwards and de-risk the regulatory game. By using our strategic thinking to identify and appropriately mitigate or allocate risks, we can break down future uncertainty into manageable questions that can be addressed or avoided with commercial drafting. If we seize this opportunity, we may have the elephant down south to thank for heralding in a new age of Canadian prosperity and smoother sailing for energy lawyers and our clients.

²⁰⁸ Radio Interview of Deborah Yedlin (2 April 2025) on *CBC Listen: Calgary Eyeopener*, "The Latest on U.S. Tariffs" at 00h:06m:30s, online (podcast): [perma.cc/6XPS-NABB].