

## ***Regulatory Roulette: High Stakes and Unpredictable Outcomes for Alberta's Energy Industry***

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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 paper 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 paper then explores the impact of recent geopolitical developments—particularly the evolving Canada-U.S. trade relationship and the aftermath of the 2025 Canadian federal election—on regulatory frameworks and market

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confidence. Through a series of sub-sector case studies,<sup>2</sup> 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 paper reflects the state of play as of April 30, 2025, we recognize that the regulatory and geopolitical environment will continue to evolve. We remain optimistic that ongoing dialogue, adaptability, and proactive engagement will help 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

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<sup>2</sup> 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.

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 (the “OECD”) in terms of administrative burden, regulatory efficiency, and licensing processes.<sup>3</sup> A joint analysis from Transport Canada, KPMG, and Statistics Canada found there was a 40% increase in federal regulatory requirements generally between 2006 and 2021.<sup>4</sup> 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 GDP per capita of all advanced economies from 2020 to 2060.<sup>5,6</sup>

What follows 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!

## **Part One: 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

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<sup>3</sup> Organization for Economic Co-operation and Development (OECD), “Product Market Regulation” (2024), online: <[oecd.org/en/topics/sub-issues/product-market-regulation.html](https://oecd.org/en/topics/sub-issues/product-market-regulation.html)>.

<sup>4</sup> Statistics Canada, “Research to Insights: Challenges and Opportunities in Innovation, Technology Adoption and Productivity” (24 July 2024), online (report): <[www150.statecan.gc.ca/n1/pub/11-631-x/11-631-x2024005-eng.htm](https://www150.statecan.gc.ca/n1/pub/11-631-x/11-631-x2024005-eng.htm)>.

<sup>5</sup> 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): <[bcbc.com/insight/oecd-predicts-canada-will-be-the-worst-performing-advanced-economy-over-the-next-decade-and-the-three-decades-after-that](https://bcbc.com/insight/oecd-predicts-canada-will-be-the-worst-performing-advanced-economy-over-the-next-decade-and-the-three-decades-after-that)>.

<sup>6</sup> Yvan Guillemette & David Turner, *The long game: Fiscal outlooks to 2060 underline need for structural reform* (Paris: OECD Economic Policy Paper No. 29, OECD Publishing, 2021), online (report): <[oecd.org/content/dam/oecd/en/publications/reports/2021/10/the-long-game-fiscal-outlooks-to-2060-underline-need-for-structural-reform\\_93bcf0c3/a112307e-en.pdf](https://oecd.org/content/dam/oecd/en/publications/reports/2021/10/the-long-game-fiscal-outlooks-to-2060-underline-need-for-structural-reform_93bcf0c3/a112307e-en.pdf)>.

sanctions, executive orders, and tariffs, and only time will tell who will 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.<sup>7</sup>

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,<sup>8</sup> 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.

### *Theme 1: 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 2021<sup>9</sup> 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 April 6, 2025, Goldman Sachs cut their oil price forecast “in the wake of economists predicting a stagnating US economy and higher risk of

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<sup>7</sup> Maria Aspan, “Why CEOs are calm about tariffs in public – but ‘very discouraged’ in private,” *NPR* (14 March 2025), online: <[npr.org/2025/03/14/nx-s1-5327534/trump-ceos-tariffs-economy-recession](https://www.npr.org/2025/03/14/nx-s1-5327534/trump-ceos-tariffs-economy-recession)>.

<sup>8</sup> Brian Evans, John Melloy & Pia Singh, “Dow nosedives 1,600 points, S&P 500 and Nasdaq drop the most since 2020 after Trump's tariff onslaught”, *CNBC* (3 April 2025), online: <[cnbc.com/2025/04/02/stock-market-today-live-updates-trump-tariffs.html](https://www.cnbc.com/2025/04/02/stock-market-today-live-updates-trump-tariffs.html)>.

<sup>9</sup> Ed Ballard, “Oil Prices Slide to Lowest Since 2021”, *The Wall Street Journal* (4 April 2025), online: <[wsj.com/livecoverage/stock-market-tariffs-trade-war-04-04-2025/card/oil-prices-fall-further-after-opec-moves-to-boost-output-kSUXnytIMNfj68Rj6wuW](https://www.wsj.com/livecoverage/stock-market-tariffs-trade-war-04-04-2025/card/oil-prices-fall-further-after-opec-moves-to-boost-output-kSUXnytIMNfj68Rj6wuW)>.

recession.”<sup>10</sup> Goldman Sachs expects Brent crude to trade at an average \$58 per barrel in 2026 and West Texas Intermediate at \$55 per barrel.<sup>11</sup>

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% of the crude oil and close to 100% of the natural gas imported by the US, which represented 96% of Canadian exports that year.<sup>12</sup> 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 20-40 cents per gallon in the Midwest and Northeast.<sup>13</sup> 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.

### *Theme 2: Unreliable Ally*

The realization in Canada (brought on 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.<sup>14</sup> 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.<sup>15</sup> In addition to seeking new

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<sup>10</sup> Rachel Millard, “Oil drops further as fears of global recession rise,” *Financial Times* (7 April 2025), online: <[ft.com/content/0ecfd40e-f73c-4cb2-b7e4-ca2f2a6c7c12](https://www.ft.com/content/0ecfd40e-f73c-4cb2-b7e4-ca2f2a6c7c12)>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Canada Energy Regulator, Market Snapshot: Overview of Canada-U.S. Energy Trade (Ottawa: CER, 2025) online: <[cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2025/market-snapshot-overview-of-canada-us-energy-trade.html](https://cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2025/market-snapshot-overview-of-canada-us-energy-trade.html)>.

<sup>13</sup> Brian Donovan, “What the tariff war may mean for gasoline prices”, *The Globe and Mail* (11 March 2025), online: <[theglobeandmail.com/investing/personal-finance/article-what-will-the-tariff-war-mean-for-gasoline-prices/](https://www.theglobeandmail.com/investing/personal-finance/article-what-will-the-tariff-war-mean-for-gasoline-prices/)>.

<sup>14</sup> Falice Chin, “Rebooting Canada’s backbone: Trump’s tariffs put megaprojects back in spotlight”, *CBC News* (8 March 2025), online: <[cbc.ca/news/canada/calgary/trump-tariff-megaprojects-1.7476739](https://www.cbc.ca/news/canada/calgary/trump-tariff-megaprojects-1.7476739)>.

<sup>15</sup> Meghan Potkins, “Enbridge CEO says revisiting Northern Gateway would require ‘real changes’ from governments”, *Financial Post* (14 February 2025), online: <[ca.finance.yahoo.com/news/enbridge-ceo-says-revisiting-northern-214227647.html?guccounter=1](https://ca.finance.yahoo.com/news/enbridge-ceo-says-revisiting-northern-214227647.html?guccounter=1)>.

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 governments, 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.<sup>16</sup> We discuss opportunities to strengthen interprovincial trade in further sections of this paper.

### *Theme 3: 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 March 10, 2025, that Ontario was placing a 25% 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.<sup>17</sup> The surcharge was short lived, and was suspended shortly after productive conversations occurred between Premier Ford and the US Secretary of Commerce.<sup>18</sup> While notable that this policy, which caught the attention of US officials, netted \$260,000 on 26,000 MWh of energy sold to the U.S. on the single

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<sup>16</sup> BOE Report, “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’” (31 March 2025), online: <[boereport.com/2025/03/31/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/](https://boereport.com/2025/03/31/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/)>.

<sup>17</sup> Allison Jones, “Ontario collected \$260k from its 1-day electricity surcharge on U.S. exports”, *CBC* (11 April 2025), online: <[cbc.ca/news/canada/toronto/ont-energy-surcharge-1.7508379](https://cbc.ca/news/canada/toronto/ont-energy-surcharge-1.7508379)>.

<sup>18</sup> Kinsey Crowley, “Electricity from Canada no longer under surcharge: What to know after tariff flip-flopping”, *USA Today* (11 March 2025), online: <[usatoday.com/story/news/politics/2025/03/11/electricity-us-canada-ontario/82262002007/](https://usatoday.com/story/news/politics/2025/03/11/electricity-us-canada-ontario/82262002007/)>.

day it applied,<sup>19</sup> 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 branch proposed an \$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 U.S. commitment to protect allies on the continent.<sup>20</sup> 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.

#### *Theme 4: 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.<sup>21</sup> Notably, the Environmental Protection Agency has experienced a 65% reduction in its workforce. These

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<sup>19</sup> Isaac Callan & Colin D’Mello, “Ontario’s 1-day surcharge on U.S. energy exports raised \$260K”, *Global News* (11 April 2025), online: <[globalnews.ca/news/11127907/ontario-surcharge-energy-collected/](https://globalnews.ca/news/11127907/ontario-surcharge-energy-collected/)>.

<sup>20</sup> Rob Schmitz, “Europe considers big defense package as Trump signals disengagement,” *NPR* (4 March 2025), online: <[npr.org/2025/03/04/nx-s1-5317453/europe-defense-trump-ukraine-russia](https://npr.org/2025/03/04/nx-s1-5317453/europe-defense-trump-ukraine-russia)>.

<sup>21</sup> Jarrett Renshaw, “Trump seeks to fast-track new nuclear licenses, overhaul regulatory agency”, *Reuters* (23 May 2025), online: <[reuters.com/business/energy/trump-seeks-fast-track-new-nuclear-licenses-overhaul-regulatory-agency-2025-05-23/](https://reuters.com/business/energy/trump-seeks-fast-track-new-nuclear-licenses-overhaul-regulatory-agency-2025-05-23/)>.

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.<sup>22</sup>

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.<sup>23</sup> Energy executives critical of the "drill, baby, drill" agenda point out that "the threat of \$50 oil prices by the administration has caused [industry participants] to reduce 2025 and 2026 capital expenditures," an executive said, "[the "drill, baby drill" policy approach] does not work with \$50 per barrel oil. Rigs will get dropped, employment in the energy industry will decrease, and US crude production will decline as it did during COVID-19."<sup>24</sup> All of this could materially impact the US' drive for greater energy security.

## **Part 2: 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 December 16, 2024.<sup>25</sup> 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

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<sup>22</sup> Derek Saul, "DOGE Layoffs Pose 'Growing' Risk To U.S. Economy And Markets, Says Apollo Economist," *Forbes* (24 February 2025), online: <[forbes.com/sites/dereksaul/2025/02/24/doge-layoffs-pose-growing-risk-to-us-economy-and-markets-says-apollo-economist/](https://forbes.com/sites/dereksaul/2025/02/24/doge-layoffs-pose-growing-risk-to-us-economy-and-markets-says-apollo-economist/)>.

<sup>23</sup> Spencer Kimball, "Oil executives bluntly criticize Trump tariffs and 'drill, baby, drill' in anonymous survey," *CNBC* (27 March 2025), online: <[cnbc.com/2025/03/27/oil-execs-slam-trumps-tariffs-and-drill-baby-drill-in-survey.html](https://cnbc.com/2025/03/27/oil-execs-slam-trumps-tariffs-and-drill-baby-drill-in-survey.html)>.

<sup>24</sup> *Ibid.*

<sup>25</sup> Betsy Reed, "Canada's deputy PM resigns from cabinet as tensions with Trudeau rise over Trump tariffs," *The Guardian* (16 December 2024), online: <[theguardian.com/world/2024/dec/16/chrystia-freeland-resigns-canada-trump](https://theguardian.com/world/2024/dec/16/chrystia-freeland-resigns-canada-trump)>.

on January 6, 2025,<sup>26</sup> the prorogation of Parliament,<sup>27</sup> and Mark Carney's election as Liberal Party leader and his swearing in as Prime Minister on March 14, 2025.<sup>28</sup>

Prime Minister Carney called an election on March 23, 2025, ahead of the scheduled resumption of Parliament on March 24, 2025. Canadians elected a minority Liberal government on April 28, 2025.<sup>29</sup> 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.<sup>30</sup> Further, the way that Canadians voted on April 28, 2025, may change the course of certain previously announced policies and programs, some of which are described in further detail below.

### *Consumer Carbon Tax*

On March 14, 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 April 1, 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

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<sup>26</sup> Catharine Tunney, “Trudeau says he's not the right choice to lead party in next election, promises to resign as PM,” *CBC* (6 January 2025), online: <[cbc.ca/news/politics/trudeau-news-conference-1.7423680](https://www.cbc.ca/news/politics/trudeau-news-conference-1.7423680)>.

<sup>27</sup> Kevin Maimann & Rhianna Schmunk, “Parliament is prorogued. Here's what that means,” *CBC* (8 January 2025), online: <[cbc.ca/news/politics/prorogue-parliament-canada-meaning-1.7412120](https://www.cbc.ca/news/politics/prorogue-parliament-canada-meaning-1.7412120)>.

<sup>28</sup> Darren Major, “Mark Carney could be Canada's shortest-serving prime minister,” *CBC* (14 March 2025), online: <[cbc.ca/news/politics/mark-carney-charles-tupper-shortest-prime-minister-1.7484061](https://www.cbc.ca/news/politics/mark-carney-charles-tupper-shortest-prime-minister-1.7484061)>.

<sup>29</sup> Kerri Howard et al, “2025 Federal Election – What it Means for the Energy Industry” (30 April 2025), online: <[mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/2025-federal-election-what-it-means-energy-industry](https://mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/2025-federal-election-what-it-means-energy-industry)>.

<sup>30</sup> Michael Gullo & Heather Exner-Pirot, “Time to move from talk to action on regulatory reform”, *Business Council of Canada* (24 March 2025), online: <[thebusinesscouncil.ca/publication/time-to-move-from-talk-to-action-on-regulatory-reform/](https://thebusinesscouncil.ca/publication/time-to-move-from-talk-to-action-on-regulatory-reform/)>.

large emitter programs.<sup>31</sup> 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.”<sup>32</sup> 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 the OBPS, with Saskatchewan announcing pause on its industrial carbon tax rate, effective April 1, 2025,<sup>33</sup> and Alberta announcing on May 12, 2025, an industrial carbon price freeze.<sup>34</sup>

### *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.<sup>35</sup> Notwithstanding considerations as to

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<sup>31</sup> Stephanie Taylor, “Carney cuts carbon tax rate to zero, neutralizing unpopular policy before possible campaign”, *National Post* (14 March 2025), online: <[nationalpost.com/news/canada/mark-carney-rid-of-carbon-tax](https://nationalpost.com/news/canada/mark-carney-rid-of-carbon-tax)>.

<sup>32</sup> Environment and Climate Change Canada, “Update to the Pan-Canadian Approach to Carbon Pollution Pricing 2023-2030” (last updated 5 August 2021), online: <[canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/carbon-pollution-pricing-federal-benchmark-information/federal-benchmark-2023-2030.html](https://canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/carbon-pollution-pricing-federal-benchmark-information/federal-benchmark-2023-2030.html)>.

<sup>33</sup> Government of Saskatchewan, “Saskatchewan is the First Province in Canada to be Carbon Tax Free” (27 March 2025), online: <<https://www.saskatchewan.ca/government/news-and-media/2025/march/27/saskatchewan-is-the-first-province-in-canada-to-be-carbon-tax-free>>.

<sup>34</sup> Government of Alberta, “Defending Alberta industry during U.S. tariffs” (12 May 2025), online: <[alberta.ca/release.cfm?xID=93283B765EBC5-A9E8-D59B-01C010E7DF9C9D30](https://alberta.ca/release.cfm?xID=93283B765EBC5-A9E8-D59B-01C010E7DF9C9D30)>.

<sup>35</sup> Benjamin Shingler, “Energy East pipeline debate resurfaces in Quebec ahead of federal election,” *CBC News* (18 April 2025), online: <[cbc.ca/news/canada/montreal/pipeline-energy-east-west-quebec-federal-election-1.7505714](https://cbc.ca/news/canada/montreal/pipeline-energy-east-west-quebec-federal-election-1.7505714)>; Benjamin Shingler, “Carney criticizes Poilievre’s energy platform, defends Liberal corridor plan”, *CBC News* (18 April 2025), online: <[cbc.ca/news/politics/carney-poilievre-energy-platform-corridor-1.7508253](https://cbc.ca/news/politics/carney-poilievre-energy-platform-corridor-1.7508253)>.

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 paper 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.”<sup>36</sup>

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.<sup>37</sup> Conservative leader Pierre Poilievre pledged to repeal the *Impact Assessment Act*<sup>38</sup> within 100 days,<sup>39</sup> if elected, 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).<sup>40</sup>

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<sup>36</sup> Gullo & Exner-Pirot, *supra* note 30.

<sup>37</sup> Liberal Party of Canada, *Mark Carney’s Liberals to Make Canada the World’s Leading Energy Superpower* (9 April 2025) at 2, online (pdf): <[liberal.ca/wp-content/uploads/sites/292/2025/04/Mark-Carneys-Liberals-to-make-Canada-the-worlds-leading-energy-superpower.pdf](http://liberal.ca/wp-content/uploads/sites/292/2025/04/Mark-Carneys-Liberals-to-make-Canada-the-worlds-leading-energy-superpower.pdf)>; Conservative Party of Canada, *Poilievre Announces New Canada First Economic Action Plan* (April 2025), online: <[conservative.ca/poilievre-announces-new-canada-first-economic-action-plan/](http://conservative.ca/poilievre-announces-new-canada-first-economic-action-plan/)>.

<sup>38</sup> Canada, House of Commons, *Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019, c 28 (assented to 21 June 2019), online: <[parl.ca/documentviewer/en/42-1/bill/c-69/royal-assent](http://parl.ca/documentviewer/en/42-1/bill/c-69/royal-assent)>.

<sup>39</sup> Conservative Party of Canada, “Poilievre Announces ‘100 Days of Change’ - Conservative Party of Canada”, online: <[conservative.ca/poilievre-announces-100-days-of-change/](http://conservative.ca/poilievre-announces-100-days-of-change/)>.

<sup>40</sup> Gullo & Exner-Pirot, *supra* note 30.

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 federal buy-out, and was finally completed at a cost of over \$34 billion,<sup>41</sup> 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."<sup>42</sup>

### *Indigenous Ownership of Projects*

A recent success story for Indigenous ownership of energy infrastructure projects is the March 21, 2025, announcement that the federal government is contributing up to \$200 million through a contribution agreement under the Strategic Innovation Fund toward a \$5.963 billion project with Cedar LNG: the largest Indigenous majority-owned infrastructure project in Canadian history.<sup>43</sup> 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,

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<sup>41</sup> Nia Williams, "Trans Mountain pipeline has cost Canada \$35B. Can Ottawa make it back?," *Global News* (12 October 2023), online: <[globalnews.ca/news/10019634/trans-mountain-pipeline-cost-analysis/](https://globalnews.ca/news/10019634/trans-mountain-pipeline-cost-analysis/)>.

<sup>42</sup> "Energy East pipeline debate resurfaces in Quebec ahead of federal election," *supra* note 35.

<sup>43</sup> CBC News, "Feds to contribute up to \$200M for Haisla-led project to ship liquefied natural gas to Asia", *CBC News* (10 April 2025), online: <[cbc.ca/news/canada/british-columbia/cedar-lng-pipeline-funding-1.7490069](https://cbc.ca/news/canada/british-columbia/cedar-lng-pipeline-funding-1.7490069)>.

within the traditional territory of the Haisla Nation, is scheduled to ship LNG to customers in Asia by late 2028.<sup>44</sup>

For some Indigenous groups, actively participating in project development and/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.<sup>45</sup> 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.”<sup>46</sup>

The Business Council of Canada suggests that there is a lack of clarity on the requirements of Section 35 of the *Constitution Act*<sup>47</sup> at the provincial and federal level and a need to:

“scope Indigenous nations in, not out, of assessments. [The federal government needs] to provide financial and other support to ensure Indigenous nations have sufficient

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<sup>44</sup> Cedar LNG, *Project Overview*, online: <cedarlng.com/project/>.

<sup>45</sup> CER, *Market Snapshot: Indigenous Ownership of Canadian Renewable Energy Projects is Growing* (21 June 2023), online: <cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2023/market-snapshot-indigenous-ownership-canadian-renewable-energy-projects-growing.html>; A. Quesnel & R. Finley, “Radically Redefining Roles: Proposed Indigenous Ownership of the Trans Mountain Pipeline”, online: <mondaq.com/canada/indigenous-peoples/867442/radically-redefining-roles-proposed-indigenous-ownership-of-the-trans-mountain-pipeline>.

<sup>46</sup> Ellis Ross, Chris Sankey & Dale Swampy, “We are First Nations that support pipelines when pipelines support First Nations”, *Financial Post* (11 October 2023), online: <financialpost.com/opinion/we-are-first-nations-that-support-pipelines-when-pipelines-support-first-nations>.

<sup>47</sup> *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11, s 35.

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.”<sup>48</sup>

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.”

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 includes a pledge to double the Indigenous Loan Guarantee program from \$5 billion to \$10 billion, unlocking access to capital for Indigenous groups,<sup>49</sup> as well as increasing funding, to \$40 million per year, for Indigenous capacity to engage on projects early and consistently through the Impact Assessment Agency.<sup>50</sup> 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

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<sup>48</sup> Gullo & Exner-Pirot, *supra* note 30.

<sup>49</sup> Holly Cabrera, “Carney aims to have ‘free trade by Canada Day’ between provinces and territories,” *CBC News* (21 March 2025), online: <[cbc.ca/news/politics/carney-premiers-meeting-1.7489368](https://www.cbc.ca/news/politics/carney-premiers-meeting-1.7489368)>.

<sup>50</sup> Mark Carney’s *Liberals to Make Canada the World’s Leading Energy Superpower*, *supra* note 37.

minimum loan guarantee of \$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.

For example, in December 2023, the AIOC provided a \$150 million loan guarantee to support the 12 Indigenous Communities of the Wapiscanis Waseskwan Nipiy Limited Partnership, in financing an equity investment in oil and gas midstream infrastructure in Northern Alberta's Clearwater play.<sup>51</sup> Building on this success, in September 2024, the partnership expanded to include Bigstone Cree Nation as an investor and to acquire additional assets. The AIOC contributed an additional \$45 million loan guarantee to finance an 85% equity investment in an extra \$51 million of midstream infrastructure within the same region.<sup>52</sup>

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 towards 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.

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<sup>51</sup> Alberta Indigenous Opportunities Corporation, *Clearwater Midstream Assets*, (n.d.) online: <[theaioc.com/projects/clearwater-midstream-assets/](http://theaioc.com/projects/clearwater-midstream-assets/)>.

<sup>52</sup> Alberta Indigenous Opportunities Corporation, *Expansion: Clearwater Midstream Assets*, (n.d.) online: <[theaioc.com/projects/expansion-clearwater-midstream-assets/](http://theaioc.com/projects/expansion-clearwater-midstream-assets/)>.

### *Decarbonization Regulation and Incentives*

The previous Liberal government also introduced a “Clean Electricity Strategy”<sup>53</sup> 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* (the “**CER**”).<sup>54</sup> The CER, along with the *Clean Fuel Regulations*<sup>55</sup> (“**CFR**”) and \$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 Clean Fuel Regulations and \$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)<sup>56</sup> and Progress Report (2024), the *Small Modular Reactors Action Plan* (2020)<sup>57</sup>

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<sup>53</sup> Government of Canada, *Powering Canada’s Future: A Clean Electricity Strategy* (Ottawa: NRC, 2025), online: <natural-resources.canada.ca/energy-sources/powering-canada-s-future-clean-electricity-strategy>.

<sup>54</sup> [SOR/2024-263](#).

<sup>55</sup> [SOR/2022-140](#).

<sup>56</sup> Natural Resources Canada, *Hydrogen Strategy for Canada* (Ottawa: NRC, December 2020), online: <natural-resources.canada.ca/energy-sources/clean-fuels/hydrogen-strategy>.

<sup>57</sup> Government of Canada, *Canada’s Small Modular Reactor Action Plan* (Ottawa: Government of Canada, 2020).

and Progress Update (2022), and the *Canada Green Buildings Strategy* (2024).<sup>58</sup> 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.<sup>59</sup>

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 (*i.e.*, the clean electricity investment tax credit (“CE ITC”) and the EV 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

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<sup>58</sup> Natural Resources Canada, *The Canada Green Buildings Strategy: Transforming Canada's buildings sector for a net-zero and resilient future* (Ottawa: NRC, 2024), online: <natural-resources.canada.ca/energy-efficiency/building-energy-efficiency/canada-green-buildings-strategy-transforming-canada-s-buildings-sector-net-zero-resilient-future>.

<sup>59</sup> *Powering Canada's Future: A Clean Electricity Strategy*, *supra* note 53.

commitment to move all 6 Clean Economy ITCs forward,<sup>60</sup> 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 U.S. 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.

### **Part 3: 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.

#### **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

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<sup>60</sup> Liberal Party of Canada, “Canada Strong: Mark Carney’s Plan” (April 2025), online: <liberal.ca/wp-content/uploads/sites/292/2025/04/Canada-Strong.pdf> at 45.

which producers hold a “social licence to operate” vis-a-vis shareholders, governments, NGOs, and civil society generally.<sup>61</sup>

The National Center for Energy Analytics published a report in January 2025 (the “**NCEA Report**”) which effectively calls the bluff of the International Energy Agency in its annual World Energy Outlook (the “**WEO**”),<sup>62</sup> 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 will not 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.<sup>63</sup>”

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 towards a renewed

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<sup>61</sup> Raphael Heffron et al, “The emergence of the ‘social licence to operate’ in the extractive industries?” (2021) 74 Resources Policy (December) at 101272.

<sup>62</sup> Mark P Mills & Neil Atkinson, *Energy Delusions: Peak Oil Forecasts* (Washington: National Center for Energy Analytics, 2025) at 2.

<sup>63</sup> Mills & Atkinson, *supra* note 62. *Ibid.*

commitment to capitalize on opportunities to continue oil and gas production to meet the continued global demand.<sup>64</sup>

### *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*.<sup>65</sup> Readers of this paper will be familiar with this saga, and (by way of background to this section) we defer to the excellent body of work produced for the Canadian Energy Law Foundation in the near-decade since.<sup>66</sup>

It has been a long time coming: on February 7, 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").<sup>67</sup> The AER is now equipped with the discretion to focus on any aspect of a licensee's profile they

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<sup>64</sup> Rebecca F Elliott, "Why Oil Companies Are Walking Back From Green Energy", *The New York Times* (18 November 2024), online: <[nytimes.com/2024/11/18/business/energy-environment/cop-oil-gas-green-energy.html](https://www.nytimes.com/2024/11/18/business/energy-environment/cop-oil-gas-green-energy.html)>.

<sup>65</sup> *Redwater Energy Corporation (Re)*, 2016 ABQB 278.

<sup>66</sup> 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 R* 383; Jeff Davidson et al, "Leading the Way? Liability Management for the Alberta Oil & Gas Industry" (2022) 60:2 *Alta L R* 487; Jassmine Girgis, Robyn Gurofsky, Orest Konowalchuk & Walker MacLeod, "Redwater's Continuing Impact on Canada's Energy Sector" (2024) 62:2 *Alta L R* 395; Jessica Mercier, Nicole Bakker & Elyse Bouey, "Recent Legislative and Regulatory Developments of Interest to Energy Lawyers" (2024) 62:2 *Alta L R* 395.

<sup>67</sup> 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 *Directive 013*, *Directive 040*, *Directive 056*, *Directive 058*, *Directive 089*, *Directive 090*, *Manual 001*, *Manual 012*, *Manual 021*, *Manual 023*, and *Manual 024*.

consider relevant in assessing both a licensee's eligibility to hold licences and their ability to effect a licence transfer, including:

- 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)<sup>68</sup>

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 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

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<sup>68</sup> AER, *Manual 023: Licensee Life-Cycle Management* (Calgary: AER, 7 February 2025) at 22-23, online: <[static.aer.ca/prd/documents/manuals/Manual023.pdf](http://static.aer.ca/prd/documents/manuals/Manual023.pdf)>.

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

### 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 paper.

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.<sup>69</sup> Canada’s eleven active potash mines are in Saskatchewan, which, in 2023, produced an estimated 21.9 million tones of potash, or approximately 32.4% of global production.<sup>70</sup>

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<sup>69</sup> Natural Resources Canada, “Potash Facts” (4 February 2025), online: <natural-resources.canada.ca/minerals-mining/mining-data-statistics-analysis/minerals-metals-facts/potash-facts>.

<sup>70</sup> *Ibid.*

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% of global production in 2023. China and Israel are also among the top six potash producers worldwide.<sup>71</sup> 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", 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% 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.<sup>72</sup>

In Saskatchewan, *The Crown Minerals Act*,<sup>73</sup> *The Subsurface Mineral Royalty Regulations, 2017*,<sup>74</sup> and the *Mineral Taxation Act, 1983*<sup>75</sup> 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.<sup>76</sup>

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<sup>71</sup> Melissa Pistilli, "Top 10 Potash Countries by Production", *Investing News Network* (26 February 2025), online: <[investingnews.com/daily/resource-investing/agriculture-investing/potash-investing/top-potash-countries-by-production/](https://investingnews.com/daily/resource-investing/agriculture-investing/potash-investing/top-potash-countries-by-production/)>.

<sup>72</sup> Government of Saskatchewan, "Critical Minerals," online: <[saskatchewan.ca/business/agriculture-natural-resources-and-industry/mineral-exploration-and-mining/critical-minerals](https://saskatchewan.ca/business/agriculture-natural-resources-and-industry/mineral-exploration-and-mining/critical-minerals)>.

<sup>73</sup> *The Crown Minerals Act*, [SS 1984-85-86, c C-50.2](#).

<sup>74</sup> *The Subsurface Mineral Royalty Regulations, 2017*, [RRS c C-50.2 Reg 32](#).

<sup>75</sup> *Mineral Taxation Act, 1983*, [SS 1983-84, c M-17.1](#).

<sup>76</sup> Government of Saskatchewan, "Regulatory Process for Potash Mines in Saskatchewan", online: <[saskatchewan.ca/-/media/news-release-backgrounders/2019/sep/regulatory-process-for-potash-mines-in-saskatchewan.pdf](https://saskatchewan.ca/-/media/news-release-backgrounders/2019/sep/regulatory-process-for-potash-mines-in-saskatchewan.pdf)>.

Much of the regulatory uncertainty that currently impacts Canadian potash originates south of the border. Effective March 6, 2025, US imports of potash are subject to a 10% tariff. It is notable that potash was initially announced to be subject to a 25% tariff, which was ultimately lowered following outcry from American farmers.<sup>77</sup> 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 March 20, 2025 with an executive order aimed at immediately increasing American production of ‘critical minerals’, including potash.<sup>78</sup> 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% of the US’ potash supply is imported, with 85% of the imports coming from Canada.<sup>79</sup> 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.

### **Carbon Capture and Storage (CCS)**

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<sup>77</sup> 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: <[thenarwhal.ca/potash-us-tariffs/](https://thenarwhal.ca/potash-us-tariffs/)>.

<sup>78</sup> United States of America, White House, *Immediate Measures to Increase American Mineral Production* (Washington: The White House, 2025), online: <[whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/](https://whitehouse.gov/presidential-actions/2025/03/immediate-measures-to-increase-american-mineral-production/)>.

<sup>79</sup> Taylor Zavala, “TFI applauds addition of potash as US critical mineral”, *Argus Media* (21 March 2025), online: <[argusmedia.com/en/news-and-insights/latest-market-news/2670630-tfi-applauds-addition-of-potash-as-us-critical-mineral](https://argusmedia.com/en/news-and-insights/latest-market-news/2670630-tfi-applauds-addition-of-potash-as-us-critical-mineral/)>.

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 introduction of the CFR, has incited 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 (or “CCUS” where there is a utilization component of captured carbon dioxide (“CO<sub>2</sub>”)) is a process whereby CO<sub>2</sub> 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).<sup>80</sup> Technologies required for CCS become more economically

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<sup>80</sup> AER, “Carbon Capture, Utilization, and Storage (CCUS)” (last updated June 2024), online: <aer.ca/data-and-performance-reports/statistical-reports/alberta-energy-outlook-st98/carbon-capture-utilization-and-storage-ccus#: ~: text=Existing%20Projects, Energy’s%20CO2%2DEOR%20project>.

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.

### *Carbon Pricing and Compliance Credits*

Canada has a well-established history of implementing carbon pricing systems, with provinces such as British Columbia (2008),<sup>81</sup> Quebec (2007, 2013),<sup>82</sup> and Alberta (2007)<sup>83</sup> 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*,<sup>84</sup> which sets minimum national stringency standards.<sup>85</sup> 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.

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<sup>81</sup> 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. See Government of British Columbia, “Balanced Budget 2008 - B.C.’s Revenue-neutral Carbon Tax” (n.d.), online: <[bcbudget.gov.bc.ca/2008/backgrounders/backgrounder\\_carbon\\_tax.htm](http://bcbudget.gov.bc.ca/2008/backgrounders/backgrounder_carbon_tax.htm)>.

<sup>82</sup> 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 – Quebec Cap-and-Trade System” (accessed 27 May 2025), online: <[icapcarbonaction.com/en/ets/canada-quebec-cap-and-trade-system](http://icapcarbonaction.com/en/ets/canada-quebec-cap-and-trade-system)>.

<sup>83</sup> 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).

<sup>84</sup> *Greenhouse Gas Pollution Pricing Act*, [SC 2018, c 12, s 186](#).

<sup>85</sup> Environment and Climate Change Canada, “The federal carbon pollution pricing benchmark” (6 June 2023), online: <[canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/carbon-pollution-pricing-federal-benchmark-information.html](http://canada.ca/en/environment-climate-change/services/climate-change/pricing-pollution-how-it-will-work/carbon-pollution-pricing-federal-benchmark-information.html)>.

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.”<sup>86</sup> 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.<sup>87</sup>

The *Technology Innovation and Emissions Reduction Regulation*<sup>88</sup> (“TIER”) 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 CO<sub>2</sub> 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.<sup>89</sup> 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.<sup>90</sup> 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

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<sup>86</sup> Environment and Climate Change Canada, “What are the Clean Fuel Regulations?” (7 July 2022), online: <[canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html](https://canada.ca/en/environment-climate-change/services/managing-pollution/energy-production/fuel-regulations/clean-fuel-regulations/about.html)>.

<sup>87</sup> *Ibid.*

<sup>88</sup> [Alta Reg 133/2019](#).

<sup>89</sup> *Ibid.*, s 3; see also Government of Alberta, “Technology Innovation and Emissions Reduction Regulation” (n.d.), online: <[alberta.ca/technology-innovation-and-emissions-reduction-regulation#jumplinks-0](https://alberta.ca/technology-innovation-and-emissions-reduction-regulation#jumplinks-0)>.

<sup>90</sup> *Ibid.*, ss 13, 19-21.

industrial emitters is frozen at \$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,<sup>91</sup> adding further complication to any CCS or other decarbonization initiatives that included trading of surplus compliance credits as part of revenue creation strategy.

### *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.<sup>92</sup> 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 sequestration hubs.<sup>93</sup> 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.<sup>94</sup>

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

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<sup>91</sup> Emma Dizon & Grant Bishop, "Strengthening TIER for Alberta's Low-Carbon Growth: Measuring credit oversupply risks in Alberta's carbon market" (Toronto: Clean Prosperity, 2024) at 32-33.

<sup>92</sup> CER, "Market Snapshot: Canada is expanding its CO2 pipeline network" (1 May 2024), online: <[cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2024/market-snapshot-canada-is-expanding-its-co2-pipeline-network.html](https://cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2024/market-snapshot-canada-is-expanding-its-co2-pipeline-network.html)>; CER, "Market Snapshot: New projects in Alberta could add significant carbon storage capacity by 2030" (21 December 2022), online: <[cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2022/market-snapshot-new-projects-alberta-could-add-significant-carbon-storage-capacity-2030.html](https://cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2022/market-snapshot-new-projects-alberta-could-add-significant-carbon-storage-capacity-2030.html)>; Government of Alberta, "Carbon capture, utilization and storage – Carbon Sequestration Tenure" (n.d.), online: <[alberta.ca/carbon-capture-utilization-and-storage-carbon-sequestration-tenure](https://alberta.ca/carbon-capture-utilization-and-storage-carbon-sequestration-tenure)>.

<sup>93</sup> Government of Alberta, *supra* note 92.

<sup>94</sup> *Ibid.*

regulatory processes. The Ministry of Energy and Minerals continues to grapple in its industry-wide form of CSA<sup>95</sup> with enabling third party rights of access to sequestration services, managing pore space tenure based on operational data and the potential for CO<sub>2</sub> mineral trespass. Meanwhile, the AER has updated its key regulatory tool for CCS, Directive 065,<sup>96</sup> 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 Agreement<sup>97</sup> 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 CO<sub>2</sub> per year.<sup>98</sup> 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

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<sup>95</sup> 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 241-242.

<sup>96</sup> AER, "Directive 065" (12 November 2024), online: <aer.ca/regulations-and-compliance-enforcement/rules-and-regulations/directives/directive-065>.

<sup>97</sup> <[https://training.energy.gov.ab.ca/Guides/Guide\\_For\\_Unit\\_Agreements.pdf](https://training.energy.gov.ab.ca/Guides/Guide_For_Unit_Agreements.pdf)>

<sup>98</sup> Wallis Snowdon, "Plans for \$2.4B carbon capture and storage project near Edmonton have been cancelled", *CBC News* (2 May 2024), online: <[cbc.ca/news/canada/edmonton/plans-for-2-4b-carbon-capture-and-storage-project-near-edmonton-have-been-cancelled-1.7191573](https://www.cbc.ca/news/canada/edmonton/plans-for-2-4b-carbon-capture-and-storage-project-near-edmonton-have-been-cancelled-1.7191573)>.

with ATCO EnPower (the first phase of which will connect to and provide CO<sub>2</sub> sequestration for Polaris).<sup>99</sup> 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.<sup>100</sup>

### *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.<sup>101</sup> 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

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<sup>99</sup> Amanda Stephenson, "Shell going ahead with Canadian carbon capture and storage projects", *Calgary Herald* (26 June 2024), online: <[calgaryherald.com/business/shell-going-ahead-with-canadian-carbon-capture-and-storage-projects](https://calgaryherald.com/business/shell-going-ahead-with-canadian-carbon-capture-and-storage-projects)>.

<sup>100</sup> Chris Varcoe, "Varcoe: Shell, ATCO carbon hub proves 'economic business case' for emerging sector in Alberta", *Calgary Herald* (8 July 2024), online: <[calgaryherald.com/opinion/columnists/varcoe-shell-atco-carbon-hub-alberta-economic-business-case](https://calgaryherald.com/opinion/columnists/varcoe-shell-atco-carbon-hub-alberta-economic-business-case)>.

<sup>101</sup> Inayat Singh, "What's at stake as Canada's industrial carbon pricing rules face political headwinds," *CBC News* (30 March 2025), online: <[cbc.ca/news/science/industrial-carbon-pricing-1.7496658](https://cbc.ca/news/science/industrial-carbon-pricing-1.7496658)>.

of offtake agreements and contracts for difference to help accelerate the development of technologies such as CCS.<sup>102</sup> 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.<sup>103</sup> 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.,<sup>104</sup> and a partnership with Strathcona Resources Ltd. for the development of CCS infrastructure for steam-assisted gravity drainage oil sands facilities.<sup>105</sup>

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, which became law on June 20, 2024, included the investment tax credit for 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 December 31, 2021 and before January 1, 2041. The Alberta Carbon Capture Incentive 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% of capital costs.<sup>106</sup>

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<sup>102</sup> Department of Finance, Canada Growth Fund: Technical Backgrounder (Department of Finance, 2022), online (pdf): [perma.cc/Q6ZC-3M7W].

<sup>103</sup> Kerri Howard et al, *supra* note 95; Memorandum from Dale Beugin & Blake Shaffer to Catherine McKenna (4 June 2021), “Re: The Climate Policy Certainty Gap and How to Fill It,” online: The CD Howe Institute [perma.cc/6WSE-STJ8].

<sup>104</sup> Canada Growth Fund, “Canada Growth Fund Announces Strategic Investment in Entropy Inc and Carbon Credit Offtake Commitment” (20 December 2023), online: <d2apye5bf031b.cloudfront.net/documents/Press-Release-CGF-Entropy-Dec-2023-EN.pdf>.

<sup>105</sup> Canada Growth Fund, “Canada Growth Fund Announces up to \$2 Billion Carbon Capture and Sequestration Partnership with Strathcona Resources” (10 July 2024), online: <d2apye5bf031b.cloudfront.net/documents/Project-Trailblazer\_final-NR-for-distribution-EN.pdf>.

<sup>106</sup> Government of Alberta, “Alberta Carbon Capture Incentive Program” (n.d.), online: <alberta.ca/alberta-carbon-capture-incentive-program>.

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.<sup>107</sup> Given “the costs associated with [CCS] 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.”<sup>108</sup> 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.<sup>109</sup> 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 CO<sub>2</sub> would not be able to generate carbon credits, as these would be allocated to the emitter.<sup>110</sup> As such, long term sell or pay CO<sub>2</sub> 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.

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<sup>107</sup> Chris Varcoe, “Varcoe: Major carbon capture projects in Alberta face ‘serious risk’ if government-industry talks remain gridlocked,” *Calgary Herald* (7 May 2024), online: <[calgaryherald.com/opinion/columnists/varcoe-capital-power-ccus-project-end-alberta](http://calgaryherald.com/opinion/columnists/varcoe-capital-power-ccus-project-end-alberta)>.

<sup>108</sup> Kerri Howard et al, *supra* note 103 at 224.

<sup>109</sup> Sonya Savage & Alan Ross, “Carbon Contracts for Difference: Mitigating Carbon Price Risk for CCUS Projects in Canada,” *Lexpert* (17 January 2024), online: <[lexpert.ca/news/legal-insights/carbon-contracts-for-difference-mitigating-carbon-price-risk-for-ccus-projects-in-canada/381983](http://lexpert.ca/news/legal-insights/carbon-contracts-for-difference-mitigating-carbon-price-risk-for-ccus-projects-in-canada/381983)>.

<sup>110</sup> Kerri Howard et al, *supra* note 95 at 224.

### *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.<sup>111</sup> 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.

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.<sup>112</sup> Historically, the market price of credits increased in tandem with Alberta's scheduled carbon price increases until the beginning of 2023. After reaching approximately \$55, the market prices for carbon credits then plateaued and eventually decreased, despite Alberta's carbon price

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<sup>111</sup> Rob Langston, "A year of policy and politics for compliance carbon markets," *Environmental Finance* (2025), online: <environmental-finance.com/content/awards/environmental-market-rankings-2024-2025/categories/a-year-of-policy-and-politics-for-compliance-carbon-markets.html#: ~: text=Despite%20hopes%20of%20a%20strong, by%20the%20voluntary%20carbon%20market>.

<sup>112</sup> Emma Dizon & Grant Bishop, "Strengthening TIER for Alberta's Low-Carbon Growth: Measuring credit oversupply risks in Alberta's carbon market" (July 2024), online (pdf): <cleanprosperity.ca/wp-content/uploads/2024/07/Strengthening-TIER-for-Albertas-Low-Carbon-Growth.pdf>.

increasing under TIER.<sup>113</sup> For example, in the fourth quarter of 2024, emissions performance credits and emissions offset credits in Alberta’s carbon market were trading at roughly \$40 per metric ton, half of the effective industrial carbon tax price of \$80 per ton. In line with this trend, despite the federal carbon price projected to rise to \$170 per ton 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.<sup>114</sup> 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 \$95, decoupling the TIER price from future increases to OPBS prices.<sup>115</sup>

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% federally for capture directly from ambient air,<sup>116</sup> 50% federally for capture other than directly from ambient air,<sup>117</sup> and in either case an additional 12% provincially), transportation and storage infrastructure (37.5% federally and 12% provincially) it may still be possible for both capture customers and

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<sup>113</sup> Robert Tuttle, “Weak Carbon Prices in Oil-Sands’ Home Seen Slowing Climate Gains”, *BNN Bloomberg* (18 September 2024), online: <[bnnbloomberg.ca/investing/commodities/2024/09/18/weak-carbon-prices-in-oil-sands-home-seen-slowing-climate-gains/](https://bnnbloomberg.ca/investing/commodities/2024/09/18/weak-carbon-prices-in-oil-sands-home-seen-slowing-climate-gains/)>.

<sup>114</sup> *Ibid.*

<sup>115</sup> Government of Alberta, “Defending Alberta industry during U.S. tariffs” (12 May 2025), online: <[alberta.ca/release.cfm?xID=93283B765EBC5-A9E8-D59B-01C010E7DF9C9D30](https://alberta.ca/release.cfm?xID=93283B765EBC5-A9E8-D59B-01C010E7DF9C9D30)>.

<sup>116</sup> Reduced to 30% after December 31, 2030, and before January 1, 2041, and then nil thereafter. Canada Revenue Agency, “Carbon Capture, Utilization, and Storage (CCUS) Investment Tax Credit (ITC) - Calculating the credit” (last modified 28 January 2025), online: <[canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/clean-economy-itc/carbon-capture-itc/claiming-credit-ccus-itc/calculate.html](https://canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/business-tax-credits/clean-economy-itc/carbon-capture-itc/claiming-credit-ccus-itc/calculate.html)>.

<sup>117</sup> *Ibid.* Reduced to 25% after December 31, 2030, and before January 1, 2041, and then nil thereafter.

CCS hub service providers to make sufficient returns to justify long term investments. Key to the viability of these long term projects is: (i) a stable regulatory system that recognizes decarbonization investment with sufficient returns on capital through service fees; (ii) the existence and continuation of fiscal incentives at existing levels; and (iii) 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 paper, 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 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.

### **LNG**

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.<sup>118</sup>

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.<sup>119</sup> 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.<sup>120</sup>

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.

### *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 \$109 billion and a potential production capacity of 50.3 million tonnes per annum of LNG.<sup>121</sup> There are also four natural gas liquefaction facilities, and two LNG import facilities, operating in Canada that serve

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<sup>118</sup> Tuttle, *supra* note 113.

<sup>119</sup> Drew Anderson & Fatima Syed, "Canada has another carbon tax. Poilievre wants to axe it, too", *The Narwhal* (27 March 2025), online: <[thenarwhal.ca/canada-industrial-carbon-tax-explainer/](https://thenarwhal.ca/canada-industrial-carbon-tax-explainer/)>.

<sup>120</sup> *Ibid.*

<sup>121</sup> Natural Resources Canada, "Canadian liquified natural gas projects" (7 January 2025), online: <[natural-resources.canada.ca/energy-sources/fossil-fuels/canadian-liquified-natural-gas-projects/](https://natural-resources.canada.ca/energy-sources/fossil-fuels/canadian-liquified-natural-gas-projects/)>.

the domestic market.<sup>122</sup> LNG Canada, in Kitimat, British Columbia, will be Canada’s first large-scale LNG export facility once complete. LNG Canada’s Phase 1 is scheduled to begin shipments to Asia in 2025, with the goal of exporting 14 million tonnes of LNG per year.<sup>123</sup> 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.<sup>124</sup>

### *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 (the “**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*<sup>125</sup> and has broad regulatory powers under various pieces of legislation such as the *Environmental Management Act*,<sup>126</sup> the *Heritage Conservation Act*,<sup>127</sup> the *Land Act*,<sup>128</sup> the *Forest Act*,<sup>129</sup> and the *Water Sustainability Act*.<sup>130</sup> 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 *Impact Assessment Act*.<sup>131</sup>

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<sup>122</sup> *Ibid.*

<sup>123</sup> McCarthy Tétrault, “Power Perspectives” (19 February 2025), online (pdf): <comms.mccarthy.ca/McCarthy-Power-Outlook-2025-W.pdf>.

<sup>124</sup> *Ibid.*

<sup>125</sup> *Energy Resource Activities Act*, [SBC 2008, c 36](#).

<sup>126</sup> *Environmental Management Act*, [SBC 2003, c 53](#).

<sup>127</sup> *Heritage Conservation Act*, [RSBC 1996, c 187](#).

<sup>128</sup> *Land Act*, [RSBC 1996, c 245](#).

<sup>129</sup> *Forest Act*, [RSBC 1996, c 157](#).

<sup>130</sup> *Water Sustainability Act*, [SBC 2014, c 15](#).

<sup>131</sup> *Impact Assessment Act*, [SC 2019, c 28, s 1](#).

### *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.<sup>132</sup> 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 *Impact Assessment Act*<sup>133</sup> and provincial statutes, such as British Columbia's *Environmental Assessment Act*,<sup>134</sup> given their large-scale construction, marine shipping components and broad range of stakeholder involvement, including Indigenous nations.<sup>135</sup> 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.<sup>136</sup> The findings indicated that Canada faces a competitive disadvantage with LNG projects, which require approximately 19 additional months to obtain approval in Canada compared to the US.<sup>137</sup>

The federal impact assessment process under the *Impact Assessment Act*<sup>138</sup> involves three main phases: planning (up to 180 days), impact statement (up to three years), and assessment (300-

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<sup>132</sup> CER, "Market Snapshot: Exploring Canada's Future in LNG Exports" (4 September 2024), online: <cer-rec.gc.ca/en/data-analysis/energy-markets/market-snapshots/2024/market-snapshot-exploring-canadas-future-in-lng-exports.html>.

<sup>133</sup> *Impact Assessment Act*, [SC 2019, c 28, s 1](#).

<sup>134</sup> *Environmental Assessment Act*, [SBC 2002, c 43](#).

<sup>135</sup> Selina Lee-Andersen, "Peeling Back the Layers of LNG Development – A Primer on the Regulatory Framework for LNG Projects in B.C." (27 November 2013), online (blog): <mccarthy.ca/en/insights/articles/peeling-back-layers-lng-development-primer-regulatory-framework-lng-projects-bc>.

<sup>136</sup> Elmira Aliakbari & Jairo Yunis, "Canada's lost LNG opportunities due to dearth of export facilities" (4 March 2022), online: <fraserinstitute.org/commentary/canadas-lost-lng-opportunities-due-dearth-export-facilities>.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Impact Assessment Act*, *supra* note 133.

600 days).<sup>139</sup> Litigation and judicial reviews often delay LNG projects, as 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, marine terminal approvals, and export licences issued by the CER under the *Canadian Energy Regulator Act*.<sup>140</sup> The cumulative permitting process is time-consuming and can delay project development by several years. For example, the LNG Canada project, a \$40 billion joint venture, 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.<sup>141</sup> 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 *Impact Assessment Act*<sup>142</sup> and British Columbia's *Environmental Assessment Act*,<sup>143</sup> in addition to CER oversight for export authorization. The project required approximately five years

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<sup>139</sup> Government of Canada, "Impact Assessment Process Overview" (1 January 2025), online: <[canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html](https://canada.ca/en/impact-assessment-agency/services/policy-guidance/impact-assessment-process-overview.html)>.

<sup>140</sup> *Canadian Energy Regulator Act*, SC 2019, c 28, s 10. See also Canada Energy Regulator, "LNG Export Licences," online: <[cer-rec.gc.ca/en/applications-hearings/view-applications-projects/export-import-licence-applications/](https://cer-rec.gc.ca/en/applications-hearings/view-applications-projects/export-import-licence-applications/)>

<sup>141</sup> LNG Canada, "Summary: Environmental Assessment Certificate Application" (November 2014), online: <[lngcanada.ca/wp-content/uploads/EA-Summary-Report\\_SPg\\_PRESS\\_Final-1.pdf](https://lngcanada.ca/wp-content/uploads/EA-Summary-Report_SPg_PRESS_Final-1.pdf)>.

<sup>142</sup> *Impact Assessment Act*, *supra* note 133.

<sup>143</sup> *Environmental Assessment Act*, *supra* note 134.

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.<sup>144</sup>

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 \$36 billion Pacific NorthWest LNG project due to “delays and long regulatory timelines.”<sup>145</sup> In 2021, Quebec refused to authorize GNL Quebec Inc.’s proposed LNG facility citing environmental and other concerns.<sup>146</sup> 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.<sup>147</sup>

At the same time, several major LNG projects are currently underway in British Columbia. LNG Canada in Kitimat, a \$40 billion joint venture led by Shell, is the most advanced and expects first exports by 2025.<sup>148</sup> Woodfibre LNG, a \$5.1 billion project by Pacific Energy Corp., began major construction in 2023 and is expected to be completed by 2027.<sup>149</sup> Cedar LNG received environmental approval in 2023 to build a floating LNG facility on the Douglas Channel near Kitimat, with completion expected in 2028.<sup>150</sup>

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<sup>144</sup> Cedar LNG, “Project Update” (December 2024), online: <cedarlng.com/wp-content/uploads/2024/12/CedarLNG-Project-Update-v03-20241203-WEB.pdf>.

<sup>145</sup> *Ibid.*

<sup>146</sup> Patrice Bergeron & Thomas Laberge, “Quebec government open to rekindled LNG project to ship energy from Alberta overseas”, *Global News* (5 February 2025), online: <globalnews.ca/news/11005269/quebec-lng-project-saguenay-alberta/>.

<sup>147</sup> Aliakbari & Yunis, *supra* note 136.

<sup>148</sup> Derrick Penner, “Is LNG in B.C. falling behind? Here's the status of five major projects”, *Vancouver Sun* (27 May 2025), online: <vancouver.sun.com/news/bc-canada-lng-projects-update/>.

<sup>149</sup> *Ibid.*; Woodfibre LNG, “Regulatory Review” (accessed 27 May 2025), online: <woodfibrelng.ca/about-woodfibre-lng/regulatory-overview/>; The Squamish Report, “WLNG marks key milestone as first LNG modules arrives at Woodfibre site”, *The Squamish Report* (26 May 2025), online: <squamishreporter.com/2025/05/26/wlng-marks-key-milestone-as-first-lng-modules-arrives-at-woodfibre-site/>.

<sup>150</sup> Impact Assessment Agency of Canada, “Cedar LNG Project” (last updated 22 May 2025), online: <iaac-aec.gc.ca/050/evaluations/proj/80208/>; Penner, *supra* note 148.

*Public opposition from certain Indigenous communities*

Indigenous partnerships are becoming integral aspects of the LNG export process, given the potential for profitable partnerships that we have highlighted above, and also because aboriginal title to land in British Columbia is largely an unsettled issue due to the absence of pre-Confederation treaties that are in place across the rest of the country. Several LNG projects in British Columbia involve significant engagement from Indigenous communities, such as the Cedar LNG project that we highlighted above – the largest Indigenous majority-owned infrastructure project in Canada. Throughout LNG project phases, including planning, assessment, review, construction, and decommissioning, Indigenous communities have common law, legislated, and constitutional rights to consultation 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.

Numerous natural gas producers closely observed the British Columbia Supreme Court’s ruling in *Yahey v British Columbia*, which caused a complete halt in British Columbia drilling licences for two months in the summer of 2021.<sup>151</sup> The court found that the provincial government had infringed on the rights of the Blueberry River First Nations (the “**BRFN**”) under the Treaty 8 agreement signed in 1899 between various First Nations and the Canadian government.<sup>152</sup> The court found cumulative impacts of industrial development approved by the provincial government had diminished the BRFN’s rights within its traditional territory because of adverse effects on the

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<sup>151</sup> Omar Mawji & Brad Williams, “Review of LNG Canada Project: Delays, Policy Changes, and Rising Costs” (November 2021), online (pdf): <[ieefa.org/sites/default/files/2022-02/Review-of-LNG-Canada-Project-Delays-Policy-Changes-and-Rising-Costs\\_November-2021.pdf](https://ieefa.org/sites/default/files/2022-02/Review-of-LNG-Canada-Project-Delays-Policy-Changes-and-Rising-Costs_November-2021.pdf)>.

<sup>152</sup> *Ibid.*

environment that interfered with the BRFN's way of life.<sup>153</sup> Early dialogue and meaningful engagement with Indigenous communities is a necessary requirement on upstream gas producers and LNG proponents. Active participation with Indigenous communities can ensure positive relations throughout the entire value chain and lifespan of an LNG project.

### *Opportunity in Adversity?*

The global demand for LNG is forecast to rise by around 60% 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.<sup>154</sup> A considerable disparity exists between the demand for LNG in Asia and Europe and their domestic natural gas production.<sup>155</sup> 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.<sup>156</sup>

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 April 2, 2025, there is a renewed enthusiasm about LNG exports.<sup>157</sup> LNG Canada expects that cargoes, each valued in the \$150 million to \$220 million range, will depart Kitimat approximately every two days.<sup>158</sup> 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.

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<sup>153</sup> *Ibid.*

<sup>154</sup> "Report: Asian economic growth expected to drive 60% rise in LNG demand to 2040", *Offshore Magazine* (10 March 2025), online: <[offshore-mag.com/special-reports/news/55273554/shell-report-asian-economic-growth-expected-to-drive-60-rise-in-lng-demand-to-2040](https://offshore-mag.com/special-reports/news/55273554/shell-report-asian-economic-growth-expected-to-drive-60-rise-in-lng-demand-to-2040)>.

<sup>155</sup> Venkatachalam & Lennie Kaplan, "The global liquefied natural gas (LNG) market: Where does Canada fit in?" (21 June 2022), online: <[canadianenergycentre.ca/the-global-liquefied-natural-gas-lng-market-where-does-canada-fit-in/](https://canadianenergycentre.ca/the-global-liquefied-natural-gas-lng-market-where-does-canada-fit-in/)>.

<sup>156</sup> McCarthy Tétrault, *supra* note 123.

<sup>157</sup> LNG Canada, "LNG Import Cargo Has Arrived" (2 April 2025), online: <[lngcanada.ca/news/lng-import-cargo-has-arrived/](https://lngcanada.ca/news/lng-import-cargo-has-arrived/)>.

<sup>158</sup> Vaughn Palmer, "Incoming LNG tanker marks near completion of Kitimat export terminal", *Vancouver Sun* (27 March 2025), online: <[vancouver.sun.com/opinion/columnists/lng-tanker-near-completion-kitimat-export-terminal](https://vancouver.sun.com/opinion/columnists/lng-tanker-near-completion-kitimat-export-terminal)>.

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 Paper.<sup>159</sup> The paper 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.<sup>160</sup> 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.<sup>161</sup>

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.

### **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

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<sup>159</sup> Government of British Columbia, “Net-Zero New Industry Intentions Paper” (July 2023), online: <[www2.gov.bc.ca/assets/gov/environment/climate-change/ind/nzni/net-zero-new-industry-intentions-paper.pdf](http://www2.gov.bc.ca/assets/gov/environment/climate-change/ind/nzni/net-zero-new-industry-intentions-paper.pdf)>.

<sup>160</sup> McCarthy Tétrault, *supra* note 123.

<sup>161</sup> Bergeron & Laberge, *supra* note 146.

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 need<sup>162</sup> 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.<sup>163</sup> 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,<sup>164</sup> and the Alberta Electric System Operator (“AESO”) oversees supply and demand and regulates the wholesale electricity market.<sup>165</sup> 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* (the “**Amendment Act**”), which received proclamation on March 6, 2024,

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<sup>162</sup> 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.

<sup>163</sup> Utilities Consumer Advocate, “Understanding the Electricity Market”, online: <ucahelps.alberta.ca/your-utilities/electricity/understanding-the-electricity-market/>.

<sup>164</sup> *Ibid.*

<sup>165</sup> Alberta Electric System Operator, “About the AESO”, online: <www.aeso.ca/aeso/about-the-aeso/>.

has brought significant clarity to regulatory requirements for building energy storage facilities in Alberta.<sup>166</sup>

Stakeholders across the entire electricity supply chain are critical of multiple overlapping consultation and bureaucratic processes that compound regulatory uncertainty.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup>

### *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.<sup>170</sup> 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

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<sup>166</sup> Government of Alberta, "Transforming the utilities system" (n.d.), online: <[alberta.ca/transforming-the-utilities-system](https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_31/session_1/20230530_bill-052.pdf)>; [https://docs.assembly.ab.ca/LADDAR\\_files/docs/bills/bill/legislature\\_31/session\\_1/20230530\\_bill-052.pdf](https://docs.assembly.ab.ca/LADDAR_files/docs/bills/bill/legislature_31/session_1/20230530_bill-052.pdf).

<sup>167</sup> AESO, "Consolidated Written Feedback: REM High-Level Design" (17 January 2025), online: <[aesoengage.aeso.ca/42905/widgets/179160/documents/146356](https://aesoengage.aeso.ca/42905/widgets/179160/documents/146356)> at 56, 237, 250.

<sup>168</sup> *Ibid* at 6, 250.

<sup>169</sup> 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. Lisa Johnson & Jack Farrel, "Alberta releases new rules and no-go zones on wind and solar projects", *CBC* (6 December 2024), online: <[cbc.ca/news/canada/calgary/alberta-new-rules-renewable-energy-wind-solar-1.7404024](https://www.cbc.ca/news/canada/calgary/alberta-new-rules-renewable-energy-wind-solar-1.7404024)>.

<sup>170</sup> Kimberly J. Howard, Riley M. Thackray & Reena Goyal, "Powering Change: Alberta's Restructured Energy Market (REM)" (12 March 2024), online (blog): <[mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/powering-change-albertas-restructured-energy-market-rem](https://mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/powering-change-albertas-restructured-energy-market-rem)>.

policies, such as the CER,<sup>171</sup> 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:

- 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.<sup>172</sup>

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 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.<sup>173</sup> However, on

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<sup>171</sup> *Ibid.*

<sup>172</sup> Kimberly J. Howard, Riley M. Thackray & Amanda 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): <[mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/developments-albertas-restructured-energy-market-rem-removal-day-ahead-commitment-market-and-day-ahead-energy-scheduling-market](https://mccarthy.ca/en/insights/blogs/canadian-energy-perspectives/developments-albertas-restructured-energy-market-rem-removal-day-ahead-commitment-market-and-day-ahead-energy-scheduling-market)>.

<sup>173</sup> AESO, *supra* note 167 at 6.

April 4, 2025, the AESO announced that it would not be proceeding with the proposed DAC market and the day-ahead energy scheduling market.<sup>174</sup> 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.<sup>175</sup>

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.<sup>176</sup> Questions remain on how issues will be addressed as they arise, what recourse market participants have, and how decisions will be memorialized.<sup>177</sup> 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 May 22, 2025, the AESO released its Updated REM High-Level Design to provide stakeholders with a comprehensive overview of the key design components.<sup>178</sup> 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

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<sup>174</sup> AESO, "REM Technical Design," online: <[aesoengage.aeso.ca/rem-technical-design](https://aesoengage.aeso.ca/rem-technical-design)>.

<sup>175</sup> Bill 52, *Energy and Utilities Statutes Amendment Act, 2025*, First Sess, 31st Leg, 3 Charles III (assented to 15 May 2025).

<sup>176</sup> AESO, *supra* note 167 at 6, 33, 81, 159, 220, 274, 282.

<sup>177</sup> *Ibid* at 81.

<sup>178</sup> AESO, "Restructured Energy Market High-Level Design Update" (22 May 2025), online: <[aesoengage.aeso.ca/42905/widgets/197800/documents/153168](https://aesoengage.aeso.ca/42905/widgets/197800/documents/153168)>.

industries and tailor frameworks to the businesses that they serve. This is a call to action that we echo in later parts of this paper.

### *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.<sup>179</sup> 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.<sup>180</sup> In addition, there is a noticeable call for defined success metrics and independent oversight mechanisms, which would help in monitoring performance against the overall objectives of reliability, affordability, and sustainability.<sup>181</sup>

### *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/or 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

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<sup>179</sup> AESO, *supra* note 167 at 47.

<sup>180</sup> *Ibid* at 31, 35, 43, 159, 199, 210, 276.

<sup>181</sup> *Ibid* at 6, 158, 282, 295.

of environmental attributes and/or 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.

### *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.<sup>182</sup> Some uncertainty persists, however, as under section 13.01 of the *Hydro and Electric Energy Act*<sup>183</sup> and the *Hydro and Electric Energy Regulation*,<sup>184</sup> 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.<sup>185</sup>

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<sup>182</sup> Doug Evanchuk, Joella French & Joelle Vandenborre, “Shifting Currents: Modernizing Alberta’s Electricity Grid” (20 March 2024), online (blog): <[mross.com/what-we-think/article/shifting-currents-modernizing-alberta-s-electricity-grid](https://mross.com/what-we-think/article/shifting-currents-modernizing-alberta-s-electricity-grid)>.

<sup>183</sup> *Hydro and Electric Energy Act*, RSA 2000, c H-16, s 13.01.

<sup>184</sup> [Alta Reg 32/2024](#).

<sup>185</sup> AUC Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Developments and Gas Utility Pipelines, online: <[auc.ab.ca/rule-007/](https://auc.ab.ca/rule-007/)>.

The Trudeau government was supportive of deploying energy storage facilities, particularly within the context of enabling Canada's net-zero goals.<sup>186</sup> As discussed above, incentives like the Clean Economy ITCs, including the 30% clean technology investment tax credit ("CT ITC"), the a 30% clean technology manufacturing investment tax credit and the proposed CE ITC, a 15% Clean Electricity ITC can help to facilitate development of clean electricity projects, such as energy storage.

*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.<sup>187</sup> 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

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<sup>186</sup> Justin Rangooni, "A snapshot of Canada's energy storage market in 2023", *Energy Storage News* (30 May 2023), online: <energy-storage.news/a-snapshot-of-canadas-energy-storage-market-in-2023/>.

<sup>187</sup> McCarthy Tétrault, *supra* note 123 at 89.

400MWh of energy, connecting to the AIES via a new transmission line, with an AUC hearing expected in 2025.<sup>188</sup>

- **Marguerite Lake Compressed Air Energy Storage:** This CAES project in Bonnyville will store 320MW of energy for up to 48 hours using underground salt caverns, with an estimated cost of \$500 million and completion expected in 2027.<sup>189</sup>
- **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.<sup>190</sup>
- **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.<sup>191</sup>

Several data centre projects have also been proposed in Alberta, potentially requiring energy storage facilities to meet their significant energy demands. Between April 8, 2024 and May 10, 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.<sup>192</sup> On October 29, 2024, the largest Canadian-owned and operated data centre provider,

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<sup>188</sup> AUC, Proceeding 28906 (n.d.), online: <<https://www2.auc.ab.ca/proceeding/28906>>.

<sup>189</sup> AUC Proceeding 28132 (n.d.), online: <<https://www2.auc.ab.ca/proceeding/28132>>.

<sup>190</sup> AUC Proceeding 28805, Application 28805-A001, January 8, 2025, online, [https://www2.auc.ab.ca/proceeding/28805/documents/828759/28805\\_X\[\]\\_28805\\_X\[\]\\_Approval%2028805-D02-2024%20-%2015.4-Megawatt%20Energy%20Storage%20Facility\\_000048\\_000050.pdf/False/view..](https://www2.auc.ab.ca/proceeding/28805/documents/828759/28805_X[]_28805_X[]_Approval%2028805-D02-2024%20-%2015.4-Megawatt%20Energy%20Storage%20Facility_000048_000050.pdf/False/view..)

<sup>191</sup> AUC Proceeding 27109, Application 27109-A001, June 12, 2024 online: < [https://prd-spwfe-ext-efiling20.auc.ab.ca/sites/P014/PublicDocs\\_27109/27109\\_X%5B%5D\\_27109\\_X%5B%5D\\_Appendix%201%20-%20Approval%2027109-D02-2022%20-%20WaterCharger%20Battery%20Storage%20Facility\\_000175\\_000176.pdf](https://prd-spwfe-ext-efiling20.auc.ab.ca/sites/P014/PublicDocs_27109/27109_X%5B%5D_27109_X%5B%5D_Appendix%201%20-%20Approval%2027109-D02-2022%20-%20WaterCharger%20Battery%20Storage%20Facility_000175_000176.pdf)>.

<sup>192</sup> McCarthy Tétrault, *supra* note 123, citing AESO, “Connection Project Reporting” (last visited 2 April 2025), online: <[aeso.ca/grid/transmission-projects/connection-project-reporting](https://aeso.ca/grid/transmission-projects/connection-project-reporting)>.

eStructure, announced that they plan to invest over \$750 million to construct CAL-3, a 90MW data centre in Rocky View County, just north of Calgary.<sup>193</sup>

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.<sup>194</sup>

#### **Part 4: Practicing while waiting for the chips to fall: strategies for our day jobs**

##### *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.

##### *Keeping Abreast of Potential Sources of Funding*

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<sup>193</sup>eStructure Data Centers, Press Release, “eStructure Announces Alberta’s Largest Data Center: Introducing the Groundbreaking CAL-3 Facility” (15 November 2024), online: <[estructure.com/press-releases/estructure-announces-albertas-largest-data-center-introducing-the-groundbreaking-cal-3-facility](https://estructure.com/press-releases/estructure-announces-albertas-largest-data-center-introducing-the-groundbreaking-cal-3-facility)>.

<sup>194</sup> Huadong Mo et al, “Energy storage systems for carbon neutrality: Challenges and opportunities” (2025) 12:2 *Frontiers of Engineering Management* 305-329.

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 through the AIOC working with Indigenous partners, may fully emerge as a means of securing necessary investments, and lawyers should be aware of potential opportunities that may benefit their clients.

*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 paper, 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 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, and clients' interests in contractual certainty versus ensuring continued commercial viability will dictate whether lawyers push for or against it.

### *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*<sup>195</sup> 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,<sup>196</sup> 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.

### *Building in Commercial Flexibility vs. Anticipating a Lack of Commercial Flexibility*

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<sup>195</sup> *Yegre EB Ltd. v. Seguin*, 2024 BCCA 365 at para 50.

<sup>196</sup> Connor Bildfell & Salessa King, “Forum Selection Clauses Must Use Express Language to Grant Exclusive Jurisdiction” (19 November 2024), online (blog): <mccarthy.ca/en/insights/blogs/canadian-appeals-monitor/forum-selection-clauses-must-use-express-language-grant-exclusive-jurisdiction>.

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

*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 officer 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 participation should be integrated at the earliest stages of project development. The most effective approach is to engage Indigenous groups from the outset, ensuring their involvement as equity partners from the beginning. This includes substantive participation in decision-making processes, particularly in the design and direction of the proposed project. Evidence from case studies, such as the involvement of the AIOC in energy projects, clearly demonstrates the economic and relational benefits of engaging Indigenous groups as equity partners. To further support this approach, it is recommended to establish partnership models that enable Indigenous communities to invest in and share both the risks and returns of these projects.

## **3. Demand Legislative Clarity and Conciseness**

This paper 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.

## 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 Canadian pride that I have not seen in my lifetime since the Quebec Referendum in 1995 – there’s this notion that we’ve all woken up. We have been getting in our own way in terms of preventing our ability to come together as a country from an economic standpoint to decrease interprovincial trade barriers. This is our chance 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 a little too complacent. We’ve all said that for a long time. There’s no stock portfolio that doesn’t manage risk and invests in one stock. That’s basically what we’ve done. [...] It’s about infrastructure, it’s pipelines, it’s railways. 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, 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.”<sup>197</sup>

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

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<sup>197</sup> Radio Interview of Deborah Yedlin on CBC’s Calgary Eyeopener (2 April 2025), “The latest on U.S. tariffs”, online: <[cbc.ca/listen/live-radio/1-5-calgary-eyeopener/clip/16137697-the-latest-u.s.-tariffs](https://cbc.ca/listen/live-radio/1-5-calgary-eyeopener/clip/16137697-the-latest-u.s.-tariffs)>.

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.