

# Regulatory Roulette

*High Stakes and Unpredictable Outcomes for Alberta's Energy Industry*

**Authors:** Audrey Bouffard-Nesbitt, Robyn Finley, Ashley Urch and Riley Thackray

**Contributor:** Carolyn Milne (Shell Canada Limited)

# Introduction & Context

## Purpose of the Paper:

- Offers an overview of the dynamic regulatory landscape affecting Canadian energy.
- Highlights key themes such as regulatory uncertainty, government funding, and the impact of evolving energy policies.

## Background Context:

- Post-pandemic regulatory environment with rapid evolution.
- The influence of global geopolitical events (e.g., trade wars, political changes).

## Presentation Roadmap:

- Overview of regulatory challenges.
- Deeper insights into funding issues and compliance.
- Case studies and calls to action

# Updates

## Election & Federal Direction

- Defence spending increase by \$9.3 billion
- Industry Response – Call from Energy CEOs

## Emissions Cap

## Industrial Carbon Tax

- Saskatchewan sets carbon price to \$0 (individual and industrial) & Alberta sets industrial price to \$95

## Indigenous Loan Guarantee Program

### Bill C-5: *One Economy Act*

- Criteria include the project's likelihood of success, whether it would strengthen the country's resiliency and advance the interests of Indigenous Peoples, and whether it would contribute to economic growth in an environmentally responsible way.

### Bill 52: *Energy and Utilities Statutes Amendment Act (REM)*

## LNG

- Prince Rupert Gas Transmission being deemed substantially started
- Enbridge Westcoast - \$400 million loan guarantee

## **What are some of the larger global and national conditions that have led to this state of uncertainty? Why did we decide to write about it?**

- Entering 2025, regulatory uncertainty—especially around whether Canada is "open for business"—emerged as a central concern for the energy sector and broader economy.
- Bill C-5 aims to improve regulatory efficiency, but lacks a clear blueprint for consultation and has already drawn criticism from First Nations leaders for insufficient engagement.
- Achieving true regulatory certainty requires balancing streamlined approvals with meaningful, culturally sensitive consultation—especially given the diverse interests of Indigenous groups and provinces.
- Recent changes in Alberta’s regulatory framework (e.g., the AER’s discretion on security deposits) highlight ongoing unpredictability, which continues to challenge investor confidence.
- Ultimately, Canada and Alberta can be open for business if they strike the right balance between regulatory certainty, obligations to stakeholders, and creating an attractive climate for investment.

## **For a developing industry like CCS, what are some of the more recent impacts arising from the changing regulatory environment?**

- CCS has benefitted from several types of government incentives to enable investment in this nascent industry:
  - Capital rebates (50% capture, 37.5% wells and pipelines federally, 12% provincially)
  - Federal CFR credits and provincial TIER credits that can be marketed
- Resulted in record interest in CCS investment in Alberta, 25 hub Exploration Permits awarded, new industry standard CSA that enables third party access

## **For a developing industry like CCS, what are some of the more recent impacts arising from the changing regulatory environment?**

- 025: What happened? New government policies have had an unforeseen chilling effect on CCS development
  - TIER credit market: unexpected impact from accelerated coal phase out
  - Freezing TIER carbon price
  - Trade war with US and China: impacts to long term cost and schedule planning
  - US reprioritization of decarbonization: cancellation of subsidies
- **Net Effect: 'wait and see' approach due to fear of overcommitment**
  - pore space extensions needed to manage commercial and regulatory uncertainty

## From a financing perspective, what are some of the impacts in the project finance space related to changing regulatory environments and the still developing market for mechanisms such as the Clean Economy Investment Tax Credits?

- Project Financing Activity
  - 2021 renewables boom in Alberta = aggressive, sponsor friendly lending structures
  - 2025 Alberta is full – no appetite for merchant exposure (in part due to indirect carbon policy exposure), and even limited appetite for contracted projects
  - Developers are not deploying capital in Alberta, they are investing in BC, ON, QC and NS and particularly the US
- Investment Tax Credits (“ITCs”)
  - ITC bridge financing allows developers to access capital to be used to pay project costs based on expected ITC refund in respect of a project’s eligible expenditures
    - Clean Technology ITC (“**CT ITC**”) = 30% refundable ITC → taxable corporations, REITS and partnerships
    - Clean Economy ITC (“**CE ITC**”) = 15% refundable ITC → taxable corporations, Crown corps, **Indigenous corporations**
  - Still highly negotiated, but some themes emerging (ITC Consultant Report and ITC Compliance Plan)

**What can we, as lawyers, can do to help our clients manage some of these regulatory uncertainties? What are some areas to watch or sign posts to look out for going forward to gauge whether regulatory certainty is increasing?**

- Anticipate and manage legal and regulatory risks
- Document impacts to business model policy changes – concrete data points
- Recognize potential for IC investment by leveraging experienced intermediaries
- Prepare for accelerated timing
- Renewable Projects Refinancings
- Indigenous Loan Guarantees / Bond Market



# Questions?