RECENT LEGISLATIVE AND REGULATORY DEVELOPMENTS OF INTEREST TO ENERGY LAWYERS*

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This article provides a high-level overview of regulatory and legislative developments between June 2024 and April 2025, which may be of interest to Canadian energy lawyers. It includes discussion of recent regulatory decisions and changes to regulatory and legislative regimes impacting energy law while also highlighting several ongoing regulatory and legislative developments to watch for in the coming year. Topics of note include legislative and policy changes relating to the *Impact Assessment Act*, provincial legislation regarding federal incursions, the Canada Energy Regulator, the Alberta Restructured Energy Market, among others.

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I. Introduction

The past year saw continued evolution of the Canadian legislative and regulatory landscape pertaining to the practice of energy law albeit against a shifting and sometimes dramatic geopolitical backdrop. This article provides a high level overview of regulatory and legislative developments within that landscape, primarily between June 2024 and April 2025. Topics include legislative and policy changes relating to the *Impact Assessment Act*, provincial legislation regarding alleged federal incursions into provincial jurisdiction, the Canada Energy Regulator, and the Alberta Restructured Energy Market, among others. This article also comments on developments relevant to indigenous law and environmental law more broadly.

II. Climate Change and Decarbonization

a. Federal Framework for Oil and Gas Section Emissions Cap

On November 9, 2024, the Government of Canada released proposed *Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations* ("***Emissions Cap Regulations***").[1] The *Emissions Cap Regulations* are in furtherance of a national emissions cap for the oil and gas sector, aiming to align with Canada's 2030 greenhouse gas ("**GHG**") reduction targets. Envisioned as a cap-and-trade system under the *Canadian Environmental Protection Act, 1999*[2] ("***CEPA***"), the

[1] *Oil and Gas Sector Greenhouse Gas Emissions Cap Regulations*, Canada Gazette, Part I, vol. 158, no. 45, November 9, 2024.

[2] *Canadian Environmental Protection Act, 1999,* SC 1999, c. 33.

proposed *Emissions Cap Regulations* will apply to upstream oil and gas facilities, including LNG and offshore operations. The proposed regime caps emissions rather than production, though the Alberta government and others argue the effect is the same.[3]

Under the draft regulations, the emissions cap for each calendar year of a compliance period (i.e., every three calendar years) will be equal to 73% of a facility's emissions reported in 2026.[4] Covered facilities would be subject to strict emission reporting and verification requirements,[5] with tradeable and bankable emission allowances forming the core compliance mechanism. In addition to emissions allowances, operators with remittance obligations would be able to use a limited quantity of compliance flexibility units, including eligible offset credits and decarbonization units. Together, these two measures are intended to ensure that GHG emissions do not exceed the legal upper limit.[6]

The legal and constitutional viability of this initiative remains to be seen, and the Government of Alberta has already indicated that it views the proposed *Emissions Cap Regulations* as violating section 92 of the *Constitution Act, 1867*.[7]

b. Amendments to the *Energy Efficiency Regulations, 2016*

[3] Alberta, Environment and Protected Areas, *Alberta's response to the federal oil and gas emissions cap :Government of Alberta technical submission* (8 January 2025).

[4] *Emissions Cap Regulations*, *supra* note 1, s 23.

[5] *Ibid*., ss 9-15.

[6] *Ibid*., Part 2.

[7] *Supra* note 3.

Effective December 17, 2024, the federal *Energy Efficiency Regulations, 2016*,[8] enacted under the *Energy Efficiency Act*,[9] were amended to expand the scope of products subject to regulation and harmonize efficiency standards with those in the United States.[10] The amendments changed regulatory standards for three product categories, including ice-makers, metal halide lamp ballasts, and microwave ovens.

These amendments are part of a broader federal strategy, the *2024-2026 Forward Regulatory Plan*, to reduce national carbon emissions by curtailing energy consumption in residential, commercial, and industrial sectors.[11] These amendments are also intended to harmonize Canadian and U.S. standards, ease regulatory burdens on businesses, and promote market efficiency by eliminating less energy-efficient products from circulation within Canada.[12]

c. *Clean Fuel Regulations*

The *Clean Fuel Regulations*[13] were developed and implemented pursuant to Canada's obligations under the *Paris Agreement* and *CEPA*, and aim to reduce the lifecycle carbon intensity of fossil fuels by mandating emission reductions from production to end-use.[14] The

[8] SOR/2016-311.

[9] SC 1992, c 36.

[10] *Regulations Amending the Energy Efficiency Regulations*, SOR/2024-286, Canada Gazette, Part II, vol. 159, no. 1, December 17, 2024.

[11] Natural Resources Canada, *Amendments to the Energy Efficiency Regulations, 2016*.

[12] *Supra*, note 8.

[13] SOR/2022-140.

[14] *Clean Fuel Regulations*, SOR/2022-140, Canada Gazette, Part II, vol. 156, no. 14, June 6, 2022.

Clean Fuel Regulations attempt to accomplish the reduction of carbon intensity partly by establishing a compliance credit market, whereby reduction requirements can be met through three avenues: (i) carbon intensity reduction projects, (ii) low-carbon fuel supply, and (iii) advanced vehicle fuel supply.

A number of changes were introduced pursuant to the *Clean Fuel Regulations* this past year.[15] New regulatory mechanisms were introduced starting on January 1, 2024, including the Emission Reduction Funding Programs and the Land Use and Biodiversity Criteria for feedstock, both used in compliance credit creation. In June 2024, the first Credit Market Data Report was published, showing compliance credit creation categorized according to the three compliance categories listed above.[16] Finally, on September 30, 2024, the *Clean Fuel Regulations* were amended, repealing and replacing the former *Renewable Fuels Regulations*.[17]

d. *Clean Electricity Regulations*

On December 17, 2024, the Government of Canada released finalized *Clean Electricity Regulations*.[18] The *Clean Electricity Regulations* establish a framework aimed at achieving a net-zero electricity grid by 2035 and contribute to economy-wide net-zero emissions by

[15] Environment and Natural Resources, *How it Works: Compliance with the Clean Fuel Regulations.*

[16] Environment and Natural Resources, *Clean Fuel Regulations credit market report, June 2024*.

[17] *Clean Fuel Regulations*, s*upra* note 14, s. 175.

[18] *Clean Electricity Regulations,* SOR/2024-263.

2050.[19] The finalized *Clean Electricity Regulations* replaces the draft regulations previously released in 2023 and incorporates feedback received during the initial comment period. The finalized version of the *Clean Electricity Regulations* introduces alternative mechanisms for achieving compliance, such as compliance credit systems, emissions trading, and revised emissions thresholds.

While these changes address many stakeholder concerns, some issues may remain unresolved. For example, Alberta has announced its intent to challenge the constitutionality of the *Clean Electricity Regulations*.[20] Similarly, Saskatchewan has rejected same as unconstitutional.[21]

e. *Competition Act*

On December 23, 2024, the Competition Bureau released draft guidelines[22] for public consultation concerning environmental claims under the *Competition Act*.[23] These guidelines aim to provide greater clarity on how the Bureau interprets and enforces provisions of the

[19] Government of Canada, Environment and Climate Change *Canada, 2030 Emissions Reduction Plan: Canada's next steps to clean air and strong economy* (2 June 2022).

[20] Jack Farrell, "*Alberta seeks court ruling on constitutionality of federal clean electricity plan*", *The Canadian Press* (1 May 2025).

[21] Government of Saskatchewan, *Saskatchewan Rejects Federal Clean Electricity Regulations* (18 December 2024).

[22] Competition Bureau Canada, *Environmental Claims and the Competition Act*.

[23] R.S.C., 1985, c. C-34.

Act, particularly those prohibiting deceptive marketing practices, in the context of "green" or environmental claims.[24]

The draft guidelines provide practical examples to illustrate permissible environmental claims, and include guidance on topics such as the use of third-party certifications and qualifiers such as “eco-friendly” or “carbon-neutral.” Public consultation on the draft guidelines concluded at the end of February 2025, following a stakeholder engagement process aimed at refining the Bureau’s approach. Feedback from legal practitioners, industry stakeholders, and consumer advocacy groups will presumably inform the final version of the guidelines, which are expected to be published prior to June 20, 2025, when provisions of the Act amended under Bill C-59 are scheduled to come into force.[25]

f. *Alberta Sovereignty within a United Canada Act* and *the Critical Infrastructure Defence Act*

The *Alberta Sovereignty within a United Canada Act*,[26] enacted in December 2022, establishes a framework allowing Alberta’s legislature to resist federal laws deemed unconstitutional or harmful to the province. The Act empowers the Alberta government to direct provincial

[24] *Ibid*., s 74.01.

[25] Bill C-59, *An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, 1st Sess, 44th Parl, 2024 (assented to June 20, 2024).

[26] SA 2022, c A-33.8.

entities to disregard federal initiatives that are deemed to encroach upon provincial jurisdiction, particularly with respect to natural resource management.

On December 2, 2024, Alberta's legislature invoked the Act in opposition to the federal *Emissions Cap Regulations* (see section A, above), asserting that it infringes on provincial authority over non-renewable resources under section 92 of the *Constitution Act, 1867*.[27] Subsequently, on March 19, 2025, the Government of Alberta introduced Bill 45, proposing amendments to the *Critical Infrastructure Defence Act* ("***CIDA***") to shield emissions data and infrastructure from federal oversight.[28] Together, the Government of Alberta's invocation of the Act and proposed *CIDA* amendments reinforce the Province's assertion of exclusive ownership over natural resource production emissions and further escalate tensions with the federal government over environmental regulation.

g. Bill 38: *Red Tape Statutes Amendment Act, 2025*

Introduced on February 26, 2025, Bill 38[29] proposes amendments to multiple statutes across five Alberta ministries, including the complete repeal of the *Energy Diversification Act*.[30] That Act granted the Minister authority to implement initiatives aimed at promoting economic growth and diversification in the energy sector.[31] When originally enacted in 2018, these

[27] Legislative Assembly of Alberta, Votes and Proceedings, 31st Legislature, 1st sess., no. 76, December 2, 2024 at PDF pg. 4-6.

[28] Critical Infrastructure Defence Amendment Act, 2025, Bill 45, As Passed May 12, 2025 (Alberta, 31st Legislature, 1st sess.).

[29] Red Tape Reduction Statutes Amendment Act, 2025, Bill 38, Alberta, 31st Legislature, 1st sess.

[30] SA 2018, c E-9.6.

[31] *Energy Diversification Act*, s 2.

investments included billions of dollars committed to programs which included funding initiatives such as additional royalty credits issued under the Petrochemicals Diversification Program, loan guarantees and grants issued for the creation of petrochemical feedstock infrastructure, and for technology upgrading.

The Government of Alberta has justified the Act's repeal on the grounds that the Act no longer supports any current programs or initiatives, which have either concluded or transitioned to the Alberta Petrochemicals Incentive Program ("**APIP**").[32] In transitioning these programs and initiatives to the APIP, it appears that the Government of Alberta's primary means of attracting investment in Alberta's petrochemical sector will be through grant funding under APIP, which will provide up to 12% of a project's eligible capital cost. [33] Grant funding will be made available to proposed projects with a minimum capital investment of $50 million based on eligibility criteria that include the consumption of specified feedstock or the production of value-added products used as inputs in the manufacture of petrochemical products.[34] Grants will be paid after the project achieves commercial operations.

[32] Government of Alberta, *Implementing red tape reduction- Key Changes: Bill 38*.

[33] The Alberta Petrochemicals Incentive Program, *Program Guidelines Document*.

[34] *Ibid*., Table 1.

III. Power

On December 6, 2024, the Government of Alberta announced a number of highly anticipated regulatory amendments and policy changes intended to support the "ongoing economic, orderly and efficient development of electricity generation in Alberta."[35] These updates come after the expiry of the *Generation Approvals Pause Regulation,* which was in effect from August 8, 2023 to February 29, 2024, and temporarily halted the Alberta Utilities Commission ("**AUC**") from issuing approvals for renewable power projects. [36]

Upon lifting the pause in February 2024, the Government of Alberta implemented several requirements for renewable power projects while indicating further legislative and regulatory changes would be forthcoming.[37] As discussed below, these changes – now advanced – include introduction of the *Electric Energy Land Use and Visual Assessment Regulation,* and amendments to the *Conservation and Reclamation Amendment Regulation*[38] (with the inclusion of Schedule "B", Code of Practice for Solar and Wind Renewable Energy Operations), AUC Rule 007 and the *Activities Designation Regulation*.[39]

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[35] Government of Alberta, "Restoring balance for Albertans" (December 6, 2024).

[36] *Generation Approvals Pause Regulation*, Alta Reg 108/2023 (repealed).

[37] Government of Alberta, Deputy Minister, Affordability and Utilities, Letter to Alberta Utilities Commission, "Policy Guidance to Alberta Utilities Commission" (February 28, 2024). Additionally, on December 3, 2024, the AUC released Bulletin 2024-24, announcing a one-year suspension of Section 3 of AUC Rule 033: Post-approval Monitoring Requirements for Wind and Solar Power Plants for select solar power plants.

[38] *Conservation and Reclamation Regulation*, AR 115/93.

[39] *Activities Designation Regulation*, Alta Reg 276/2003.

a. *Conservation and Reclamation Regulation* and *Activities Designation Regulation*

Amendments to the *Conservation and Reclamation Regulation* and the *Activities Designation Regulation* are intended to "create consistent reclamation requirements across all forms of renewable energy operations, including a mandatory reclamation security requirement."[40] Notable amendments to the *Conservation and Reclamation Regulation*[41] include:

- incorporation of the existing Code of Practice for Solar and Wind Renewable Energy Operations into the regulation[42];
- the creation of consistent reclamation requirements across all forms of renewable energy operations, including a mandatory reclamation security requirement[43]; and
- an exemption from security requirements for wind and solar operators who apply for registration under the *Environmental Protection and Enhancement Act* and provide security to a registered owner of the land under a surface lease[44].

[40] Government of Alberta, Affordability and Utilities, "Summary of Policy Changes", (December 6, 2024).

[41] Government of Alberta, Order in Council 369/2024, *Conservation and Reclamation Amendment Regulation*, (December 6, 2024).

[42] To be added to the *Conservation and Reclamation Regulation* as Section 3.1(1)(c); At the time of writing, the Code for Solar and Wind Operations has yet to be published, however, it is anticipated to have the same authority as existing legislation governing financial security obligations of non-renewable energy projects. See for example: the *Code of Practice for Exploration Operations* and *Code of Practice for Pits*, which set out specifics on the required form, timelines and amount of security that must be posted by project approval holders. Further, the security must be in a form prescribed by the Regulation, which includes cash, cheque, government bond, irrevocable letter of credit, performance bond or any other form acceptable to the Director.

[43] To be added to the Schedule to the *Conservation and Reclamation Regulation*.

[44] To be added to the *Conservation and Reclamation Regulation* as Section 17.1(e).

b. *Electric Energy Land Use and Visual Assessment Regulation*

The new *Electric Energy Land Use and Visual Assessment Regulation*[45], ("***EELUVA Regulation***") made under the *Alberta Utilities Commission Act*[46], came into force on December 6, 2024, pursuant to Order in Council 368/2024.[47] The *EELUVA Regulation* is consistent with the Alberta government's "agricultural first" approach to renewable power generation and seeks to protect high-quality agricultural land, irrigable land, and valued viewscapes from the impacts of electric energy generation development.[48]

The *EELUVA Regulation* applies to all applications for the construction or operation of power plants (including solar and wind power plants) under AUC Rule 007,[49] unless one of the exemptions set out under subsection 2(2) of the *EELUVA Regulation* applies. Specifically, the *EELUVA Regulation* does not apply to applications for the construction and operation of small power plants, isolated generating units, micro-generation units, power plants situated on a federal Indian reserve, or for alterations to an existing power plant approval issued by the AUC.[50]

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45 *Electric Energy Land Use and Visual Assessment Regulation*, AR 203/2024.

46 *Alberta Utilities Commission Act,* SA 2007, c A-37.2.

47 Government of Alberta, Order in Council 368/2024 (December 6, 2024).

48 *Supra,* note 35..

49 AUC Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations, Hydro Development and Gas Utility Pipelines* [*Rule 007*].

50 *EELUVA Regulation, supra,* note 45, subsection 2(2).

The *EELUVA Regulation* codifies certain requirements for the construction and operation of power plants, which are intended to enhance protections for "conserving the environment, agricultural lands and beautiful viewscapes".[51] These requirements fall within the following categories: (i) agricultural lands and productivity, (ii) irrigation potential, and (iii) valued viewscapes.[52]

The *EELUVA Regulation* defines "high-quality agricultural land" as Class 1[53] or 2 Land Suitability Rating System (**"LSRS"**)[54] land, or Class 3 land in designated municipalities.[55] Section 4 of the *EELUVA Regulation* requires all new applications "for the construction or operation of a wind power plant or solar power plant on privately owned, high-quality agricultural land" filed after December 6, 2024, to include an agricultural impact assessment.[56] The agricultural impact assessment must include: "(i) details of the expected effect of the wind power plant or solar power plant on agricultural productivity and (ii) measures demonstrating that the wind power plant or solar power plant is designed to achieve coexistence with agricultural land use."[57] Also related to agricultural lands, section 5 of the *EELUVA Regulation* requires the

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[51] *Supra,* note 35.

[52] AUC Bulletin 2024-25, "*Changes to interim information requirements for power plant applications*", issued December 18, 2024 [*Bulletin 2024-25*].

[53] Alberta does not have any LSRS Class 1 lands, largely due to climate factors (see Government of Alberta, *Land Suitability Rating System (LSRS)*).

[54] *EELUVA Regulation*, *supra,* note 45, at s. 1(h), ""Land Suitability Rating System (LSRS)" means the system for evaluating land suitability based on soil, landscape and climate factors, as described in *Land Suitability Rating System for Agricultural Crops*: 1. Spring-seeded small grains, published by Agriculture and Agri-Food Canada in 1995 and amended from time to time".

[55] *EELUVA Regulation, supra,* note 45, at s. 1(f). Note Designated Municipalities are listed in Schedule 1 of the *EELUVA Regulation.*

[56] *EELUVA Regulation, supra,* note 45, at s. 6.

[57] *EELUVA Regulation, supra,* note 45, at s. 4(2).

owner or operator of a wind power plant or solar power plant situated on privately owned high-quality land to report to the AUC on agricultural productivity within 36 months of the start of operations.[58]

The government of Alberta also released a map identifying visual impact assessment zones, buffer zones, LSRS Class 2 and Class 3H lands, white areas and unimpacted areas that are referenced in the Schedules of the *EELUVA Regulation*.[59] Section 6 of the *EELUVA Regulation* provides that "[i]f required by the Commission, a person applying for the construction or operation of a power plant within the White Area [of the Green and White Map][60]must submit an irrigability assessment as part of their AUC application."[61]

In conjunction with the release of the *EELUVA Regulation,* the Government of Alberta released a map identifying the location of "buffer zones" and "visual impact assessment zones" referenced in the *EELUVA Regulation.*[62] The map accompanies a list of legal land descriptions in Schedule 2 of designated "buffer zones" and "visual impact assessment zones."[63] The stated purpose of establishing these zones is to prevent projects from impacting viewscapes.

[58] *EELUVA Regulation, supra,* note 45, at s. 5; see also *Bulletin 2024-25, supra,* note 52.

[59] Government of Alberta, "Pristine Viewscapes and Visual Impact Assessment Zones".

[60] *EELUVA Regulation, supra,* note 45, at s. 1(m); see also: Government of Alberta, Green and White Map.

[61] *EELUVA Regulation, supra,* note 45, at s. 6.

[62] Government of Alberta, "Map - Pristine Viewscapes and Visual Impact Assessment Zone", (December 2024) [Zone Map]. Note, this map also overlaps LSRS Class 2 and Class 3H lands, white areas and unimpacted areas.

[63] *EELUVA Regulation, supra,* note 45, at s. 7.

Section 8 of the *EELUVA Regulation* sets out a requirement for all types of power plants to submit a visual impact assessment if they are located within a buffer zone or a visual impact assessment zone.[64] Subsection 8(3) of the *EELUVA Regulation* provides that the AUC "shall not accept any applications under Rule 007 for the construction or operation of a wind power plant in a buffer zone." Regarding the visual impact assessment, this must include: (i) an evaluation of the anticipated visual impacts on the buffer zone or visual impact assessment zone, (ii) visual simulations from key vantage points illustrating the potential visual impact of the proposed power plant, and (iii) proposed mitigation measures to minimize or offset any adverse visual effects on the buffer zone or visual impact assessment zone."[65]

In response to the *EELUVA Regulation,* on December 18, 2024 the AUC released Bulletin 2024-25[66] announcing changes to the interim information requirements for power plant applications[67] that will apply to all new applications filed after December 6, 2024. *Bulletin 2024-25* provides initial direction on how the AUC will apply the *EELUVA Regulation* and includes an Appendix setting out the revised information requirements. The updated information requirements relate to: (i) the determination of high-quality agricultural land, (ii)

[64] The requirement for a visual impact assessment only applies to new applications filed after December 6, 2024 for power plants in applicable buffer and visual impact assessment zones identified in the Zoning Map. However, as noted above, *Bulletin 2024-25, supra* note 52, states that the AUC will apply the requirement for a visual impact assessment to all proceedings currently before it for power plants within the zones defined in the *EELUVA Regulation*.

[65] *EELUVA Regulation, supra,* note 45*,* at s. 8(2).

[66] *Bulletin 2024-25, supra* note 52*.*.

[67] On September 6, 2023, the AUC initially introduced through Bulletin 2023-05, new, interim *Rule 007* information requirements relating to agricultural land, viewscapes, reclamation security and land use planning, which included a request for evidence on impacts to high-quality agricultural land.

irrigation potential, (iii) professional expertise and (iv) agricultural impact assessments.[68] All existing interim information requirements related to municipal land use and reclamation security set out in *Bulletin 2024-08*[69] remain in force and are included in the Appendix of *Bulletin 2024-25.*

c. Blackline Rule 007

On March 24, 2025, the AUC issued a draft blackline version of Rule 007, which is open for written feedback until May 23, 2025.[70] The draft blackline version of Rule 007 incorporates feedback received through written and oral consultation conducted by the AUC from May to September 2024, consideration of the *EELUVA Regulation* and the interim information requirements set out in *Bulletin 2024-25.*

Another notable change proposed in the draft blackline version of Rule 007 relates to the time extension process for power plants and energy storage facilities. Specifically, the AUC proposes to implement a five-year period to finish construction, after which, if construction has not been completed, a new application must be filed. Further, the draft blackline version of Rule 007 provides that "[t]ime extension requests of short duration will only be available

[68] *Bulletin 2024-25, supra* note 52 at PDF pg. 1.

[69] AUC Bulletin 2024-08, "AUC consultation on Rule 007 and enhanced interim information requirements", issued May 2, 2024, [*Bulletin 2024-08*].

[70] AUC Draft Blackline version of Rule 007, issued March 24, 2024.

in limited and exceptional circumstances (e.g., a short extension request for projects that have already substantially completed construction and are facing a minor delay."[71]

d. Rule 033[72] Suspension

On February 21, 2025, the AUC issued amended *Bulletin 2024-24,* which temporarily suspended post-construction monitoring obligations, contained in section 3 of *Rule 033,* for approval holders of operational solar power plants that are not located within 1,000 meters of a named lake or a wetland-based Important Bird Area. The 1,000-meter setback aligned with the standards set out in the *Wildlife Directive for Alberta Solar Energy Projects.*[73] This suspension came into effect on January 1, 2025, and will expire on December 31, 2025. The suspension does not apply to wind power plants.

Bulletin 2024-24 states that Alberta Environment and Protected Areas ("**AEPA**") requested the temporary suspension "to allow it to conduct a review of the province-wide post-construction wildlife mortality data and assess the risk to wildlife at solar power plants."[74] AEPA's request for this temporary suspension appears to be motivated by findings, at least for projects located outside the 1,000 meter setback, that since the requirement for post-construction mortality surveys were introduced (in 2016), only "some wildlife mortality has

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71 *Ibid,* sections 5.1 and 10.7.1

72 AUC Rule 033: *Post-approval Monitoring Requirements for Wind and Solar Power Plants ["*Rule 033*"].*

73 Alberta Environment and Parks, *Wildlife Directive for Alberta Solar Projects,* (October 4, 2017) [*Wildlife Directive*].

74 AUC Bulletin 2024-24, "*Suspension of post-construction monitoring requirements at applicable solar power plants for the 2025 season*", issued December 3, 2024 [*Bulletin 2024-24*].

occurred at solar power plants but not to the level that has required AEPA to direct additional mitigations."[75]

Following its analysis, AEPA intends to "identify recommended changes or updates to the solar directives, survey protocols, processes or requirements, and engage with the AUC on these recommendations. This includes whether the current data available provides enough evidence to assess the conservation value of mortality surveys, assessing the risk solar power plants present to wildlife populations in Alberta and potentially identifying adjustments to make the surveys more effective."[76]

The temporary suspension does not relieve approval holders for suspended facilities from their obligation to complete mortality surveys for the full time period specified in their approvals, and only defers the obligation to conduct post-construction surveys for the 2025 season. Further, during the suspension period, approval holders are still obligated to report any discovery of an "unusual mortality event"[77] and discoveries of mortalities of "Threatened" or "Endangered"[78] species at a solar facility.[79]

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[75] *Ibid,* at PDF pg. 1.

[76] *Ibid.*

[77] *Bulletin 2024-24* describes an "unusual mortality event" as "10 or more deceased individuals(any combination of birds, mammals, amphibians or reptiles), found at any one time within an 800-metre radius of each other, within and immediately adjacent to the fenceline of a solar facility. If an unusual mortality event is discovered by any personnel, a qualified wildlife biologist should be contacted immediately to assist with data collection, as set out under Section 2.2.2 of *the Post-Construction Survey Protocols for Wind and Solar Energy Projects*."

[78] Species listed as "Threatened" or "Endangered" under Schedule 6 of the *Wildlife Directive, supra* note 73.

[79] *Bulletin 2024-24, supra,* note 4 at PDF pg. 2.

e. Offshore Renewable Energy

Natural Resources Canada leads the Offshore Renewable Energy Regulations Initiative ("**ORER"**), which is focused on developing "modern safety and environmental protection regulations that will apply to site assessment, construction, operation and decommissioning and abandonment activities related to renewable energy projects and power lines throughout Canada's offshore."[80]

Phase 1 of the Initiative focused on developing regulations under the *Canadian Energy Regulator Act.*[81] On December 16, 2024, the *Canada Offshore Renewable Energy Regulations*[82] came into effect. The *Offshore Renewable Energy Regulations* operationalize Part 5 of the *CER Act* "by establishing comprehensive requirements respecting work and activities related to [offshore renewable energy] project[s] and offshore power lines for the purposes of safety, security and environmental protection."[83] The *Offshore Renewable Energy Regulations* will apply to offshore renewable energy projects and offshore power lines in Canada's federally regulated offshore areas.

Phase 2 of the Initiative is focused on development of coordinating regulations under the *Canada-Nova Scotia Petroleum Resources Accord Implementation Act*[84] and the *Canada-*

[80] Government of Canada, "The Offshore Renewable Energy Regulations Initiative" (March 14, 2024).

[81] *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 [*CER Act*].

[82] *Canada Offshore Renewable Energy Regulations*, SOR/2024-272 [*Offshore Renewable Regulations*].

[83] Government of Canada, "Canada Offshore Renewable Energy Regulations" (January 13, 2025).

[84] *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act,* S.C. 1987, c. 3.

Newfoundland and Labrador Atlantic Accord Implementation Act[85] (together, the "**Accord Acts"**). The proposed regulations under the Accord Acts follow amendments to the Accord Acts previously passed pursuant to Bill C-49, which expanded the mandate of the two Atlantic offshore energy regulators[86] to include offshore renewable energy. Additionally, Bill C-49 limited the duration of petroleum discovery licenses and established new authorities to support the Government of Canada's marine conservation agenda. The proposed regulations under the Accord Acts will align with the *Offshore Renewable Regulations* and are expected to be pre-published in the Canada Gazette, Part I in the Spring 2025, for public comment.

f. *Utilities Affordability Statutes Amendment Act*

The *Utilities Affordability Statutes Amendment Act*, 2024 was proclaimed on June 20, 2024.[87] The *Utilities Affordability Statutes Amendment Act* introduced amendments to several existing provincial statutes, including:

- *Alberta Utilities Commission Act*;[88]
- *Electric Utilities Act* (**"*EUA*"**);[89]

85 *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*, S.C. 1987, c. 3.

86 Under Bill C-49, the Canada-Nova Scotia Offshore Petroleum Board's name changed to the Canada-Nova Scotia Offshore Energy Regulator (CNSOER) and the Canada-Newfoundland and Labrador Offshore Petroleum Board's name changed to the Canada-Newfoundland and Labrador Offshore Energy Regulator (CNLOER)

87 SA 2024 c 8.

88 *Alberta Utilities Commission Act*, *supra* note 46.

89 *Electric Utilities Act*, SA 2003, c E-5.1.

- *Gas Utilities Act* (**"*GUA*"**);[90]
- *Government Organization Act*;[91]
- *Municipal Government Act* (**"*MGA*"**);[92] and
- *Regulated Rate Option Stability Act*.[93]

The Government of Alberta stated that the purpose of the *Utilities Affordability Statutes Amendment Act* is to "promote long-term affordability and predictability for utility bills by prohibiting the use of variable rates when calculating municipalities' local access fees."[94]

Section 6 of the *Utilities Affordability Statutes Amendment Act* replaces the *Regulated Rate Option Stability Act* with the *Rate of Last Resort Stability Act*.[95] The Government of Alberta stated that the purpose of the name change was to encourage existing Regulated Rate Option customers to switch to competitive contracts[96], however, it remains unclear at this time how many ratepayers will switch to retail contracts.[97]

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[90] *Gas Utilities Act*, RSA 2000, c G-5.

[91] *Government Organization Act*, RSA 2000, c G-10.

[92] *Municipal Government Act*, RSA 2000, c M-26

[93] *Regulated Rate Option Stability Act*, SA 2017, c R-13.5

[94] Local access fees are fees charged by the municipality on the utility distributor – those fees are ultimately passed onto customers by the utility distributor; See also Government of Alberta, "*Making utility bills more affordable*" (April 22, 2024).

[95] The *Utilities Affordability Statutes Amendment Act* also amends the *Government Organization Act, Regulated Rate Option Stability Act, Electric Utilities Act and Alberta Utilities Commission Act* to substitute "Regulated Rate Option" with "Rate of Last Resort".

[96] Government of Alberta, News Release: "*Making electricity more affordable*" (April 18, 2024).

[97] MSA Retail Statistics (2025-04-01), released April 1, 2025. As of 2024 December approximately 24% of residential customers in Alberta are on Regulated Rate Option rate, down only 2% from 26% as of 2023 December.

The *Utilities Affordability Statutes Amendment Act* also introduced amendments to the *MGA,* the *EUA*, and the *GUA* related to electric and natural gas franchise agreements. These amendments address the AUC's oversight of franchise agreements made under section 45 of the *MGA* and how fees are to be calculated.

Pursuant to the new section 45.01 of the *MGA*, franchise agreements made under section 45 of the *MGA* are prohibited from providing for the payment of fees that are "calculated, in whole or in part, using a price per kilowatt hour of electric power…or a price per gigajoule of fuel that varies periodically according to market price[s]."[98] The *Utilities Affordability Statutes Amendment Act* standardizes how municipalities and regional service commissions are allowed to calculate franchise fees on electricity bills.

Section 139 of the *EUA* now requires AUC approval of all electric distribution franchise agreements between a municipality and a corporation controlled by the municipality[99] or a subsidiary of the municipality. Subsection 139(7) of the EUA provides that, without AUC approval, existing franchise agreements between municipalities and subsidiaries terminate 270 days from the date the *Utilities Affordability Statutes Amendment Act* was proclaimed (i.e. March 17, 2025).[100] Similarly, amendments to section 49 of the *GUA* provide that a prior privilege or franchise granted by a municipality to an owner of a gas utility continues in effect

[98] *Utilities Affordability Statutes Amendment Act, supra* note 8787, s. 5(3); and *MGA, supra note 92,* s. 45.01.

[99] A corporation is controlled by a municipality if the test set out in section 1(2) of the *MGA* is met.

[100] *Utilities Affordability Statutes Amendment Act, supra* note 87, s. 2(8). *EUA,* supra *note 89,* s. 139(7).

until the earliest of the approval by the AUC or in the absence of that, terminated on March 17, 2025.[101]

On July 10, 2024, the AUC issued Bulletin 2024-12, which outlines the AUC's process for approving franchise agreements and franchise fee approvals affected by the proclamation of the *Utilities Affordability Statutes Amendment.*[102] The AUC has developed a checklist for use in relation to an expedited process available where a municipality has an unchanged, existing natural gas franchise agreement previously approved by the AUC.[103] Bulletin 2024-12 states the expedited process is not available for natural gas franchise agreements that are being changed, new agreements, agreements that are in effect for more than 20 years, or any agreement that continues under section 47(1) of the MGA.[104] In addition to the expedited process, Bulletin 2024-12 provides a streamlined process where a municipality has an electric or natural gas franchise agreement based on an AUC-approved template with a specific utility provider[105]. The AUC set a filing deadline of December 4, 2024, for all other agreements to ensure enough time for the AUC to review and approve these agreements prior to the March 17, 2025 deadline.

g. Restructured Energy Market Recommendations

[101] *GUA*, *supra* note 9090, s. 49(5); and *Utilities Affordability Statutes Amendment Act, supra* note 87, s. 3(2).

[102] AUC Bulletin 2024-12, "*Process for franchise agreement and franchise fee approvals under new legislation*", issued July 10, 2024 [Bulletin 2024-12].

[103] *Ibid,* PDF pg. 2.

[104] Section 47(1) of *MGA* allows for the continuation of agreements that are not renewed by parties.

[105] Specific utility providers are Apex Utilities Inc., ATCO Electric Ltd., ATCO Gas and Pipelines Ltd. and FortisAlberta Inc.

Over the past few years the Government of Alberta has considered several policy options to modernize the electricity framework in Alberta (e.g., October 2023 Green Paper discussing potential changes in respect of transmission policy[106]). In March 2024, the Minister of Affordability and Utilities (**"Minister"**) announced interim market measures to address concerns with generators engaging in economic and physical withholding practices that increase consumer energy costs and signaled future market reforms that would promote grid reliability and affordability.[107] At the same time, the Minister announced the public release of Alberta Electric System Operator ("**AESO**") and Market Surveillance Administrator ("**MSA**") reports[108] which, among other things, recommended that the government implement a Restructured Energy Market ("**REM**") to achieve "stronger incentives for dispatchable generation, lessen the impacts of market power, and provide long-term signals for investment to promote grid reliability within the province."[109] Most recently, the Minister of Affordability and Utilities tabled Bill 52, *Energy and Utilities Statutes Amendment Act, 2025* (**Bill 52**), the first legislative tool proposed to implement the REM.[110] Below, a brief history leading up to Bill 52 is discussed, followed by a brief summary of some of the key amendments proposed by Bill 52.

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106 Government of Alberta, *Transmission Policy Review: Delivering the Electricity of Tomorrow*, (October 23, 2023).

107 On March 11, 2024, the Minister announced the interim *Market Power Mitigation Regulation,* Alta Reg 43/2024 and the *Supply Cushion Regulation,* Alta Reg 42/2024.

108 MSA Report—*Confidential advice to support more effective competition in the electricity market: Interim action and an Enhanced Energy Market for Alberta* (December 21, 2023); and AESO Report, *Alberta's Restructured Energy Market: AESO Recommendation to the Minister of Affordability and Utilities* (January 31, 2024).

109 Ibid, AESO Report, PDF pg. 8.

110 Bill 52, *Energy and Utilities Statutes Amendment Act, 2025*, 1st Sess, 31st Leg, Alberta (first reading April 10, 2025) ["Bill 52"].

In July 2024, the Government provided direction to the AESO in respect of key details regarding REM design elements and forthcoming changes to transmission policy.[111] Specifically, the July direction letter required the AESO to advance the REM design to include: a mandatory day-ahead market, market-based pricing with market power mitigation measures, a province-wide uniform price, shorter settlement intervals, a review of the price floor and ceiling, and "Security Constrained Economic Dispatch" with co-optimization of energy and ancillary services.

On December 10, 2024, the Minister of Affordability and Utilities (Minister) issued a direction letter[112] to the AESO outlining the Government of Alberta's decisions regarding certain key electricity market and transmission policy and regulatory changes. While the directions largely align with industry expectations and provided further clarity in respect of previous announcements, they also introduced several important new elements. Notably, the government indicated it intends to remove regulatory oversight on the initial ISO Rules for the REM, allowing the REM to be implemented by the AESO without oversight of the AUC. Similarly, the AESO was directed to consult and implement the transmission policy changes, with a view to "expeditious implementation".

[111] Alberta, Minister of Affordability and Utilities, Direction Letter to AESO dated July 3, 2024.

[112] Alberta, Minister of Affordability and Utilities, Direction Letter to AESO dated December 10, 2024.

On December 13, 2024, the AESO released a High-Level Design document that provides more details on the current status of the REM design.[113] The deadline to provide feedback on the high-level design document was January 17, 2025. Detailed consultation on the REM design commenced in February 2025, with ISO rule development scheduled to occur June to September, 2025. The AESO has indicated that a September completion for the REM ISO Rules will allow the rules to be "in effect" under yet-to-be enacted legislation by January 1, 2026.

On April 10, 2025, Bill 52 was introduced in the legislature. Bill 52 proposes a series of amendments to Alberta's *EUA, Gas Distribution Act, GUA, Hydrogen and Electric Energy Act,* and *Petroleum Marketing Act.* The proposed amendments reflect the legislative changes proposed by the AESO in its original recommendation report to the Minister in early 2024[114] and include provisions to enable the implementation of the REM and modified electricity transmission planning and management in Alberta, and to permit hydrogen-blended consumer natural gas[115]. If passed, Bill 52, would replace the current real-time power pool with both a day-ahead market[116] and a real-time market[117], expand the definition and

[113] AESO, "*Restructured Energy Market High-Level Design*" (December 13, 2024).

[114] AESO Report, *supra* note 108, PDF pg. 38-39.

[115] Proposed amendments to the *Gas Distribution Act* and *GUA.* See Bill 52, *supra* note 110, s. 2 and 3, which amongst others, propose amendments to sections 48.2, 48.3 and 48.4 of the *GUA.*

[116] The AESO announced during consultation on the REM in April 2025, a move away from a day-ahead energy market (see AESO REM DFS – Week 3 Presentation (posted April 10, 2025)). However, the amendments proposed by Bill 52 will facilitate enhancements to the day-ahead reliability market and the development of other day-ahead products.

[117] Bill 52, *supra* note 110, s. 1(2)(b)(f) and (h).

procurement of ancillary services,[118] impose new duties on the AESO to prioritize cost and manage transmission constraints through the dispatch and price of electricity[119], and create new powers for the Minister to enact regulations and to legislate ISO rules to implement the REM[120]. Further, the amendments provide the statutory authority required to implement the REM through new or amended regulations and ISO rules on an expedited timeline.[121] At the time of writing this paper, Bill 52 awaits second and third reading.

h. Amendments to *Rural Utilities Regulation*

Amendments to the *Rural Utilities Regulation*[122]came into force December 10, 2024. The *Rural Utilities Regulation,* under the *Rural Utilities Act,*[123] sets out operation requirements for a rural utility association, including reserve requirements, stand by-laws for all associations, requirements for associations pursuing secondary objects, rules for associations intending to amalgamate, and the provisions around one rural electrification association purchasing another. Among the amendments is the addition of section 14.1 "Sale of works to another rural electrification association". This new section provides that a selling association may sell its works to the purchasing association if they enter into a written agreement that complies

118 *Ibid,* s. 1(6).

119 *Ibid,* s. 1(5), (7), (13) and 1(15).

120 *Ibid,*, s. 1(17), (18) and (19).

121 *Ibid*, s. 1(10).

122 *Rural Utilities Regulation*, Alta Reg 151/2000.

123 *Rural Utilities Act,* RSA 2000, c R-21.

with the section, the agreement is approved in accordance with the provision, and the selling association makes the disclosures required by the provision.[124] The section also includes provisions in relation to money being transferred and that members of the selling association can remain or become members of the purchasing association.[125]

i. *Cryptocurrency Power Regulation*

On June 28, 2024, the *Cryptocurrency Power Regulation*[126] was enacted under newly granted regulation-making power in section 21.1 of British Columbia's *Utilities Commission Act*.[127] Under this Regulation, the British Columbia Hydro and Power Authority (the "**Authority**") is prohibited from supplying electricity to new high-voltage cryptocurrency projects (requiring 60 kV or higher) and new low-voltage projects (requesting at least 2.5 megawatts of power through a 12.5 kV connection or at least 5 megawatts through a 25 kV connection) for a period of 18 months. This prohibition applies to projects that had not entered into facilities study agreements or made design deposits to the Authority before December 28, 2022.

This Regulation represents the resolution of questions dating back to December 2022 surrounding the extent to which the Province could regulate new electricity connections for cryptocurrency mining projects.[128] It is expected that other jurisdictions across Canada will

[124] *Ibid* at s. 14.1(2).

[125] *Ibid* at s. 14.1(4) and (9).

[126] BC Reg 163/2024.

[127] RSBC 1996, c 473.

[128] See *Conifex Timber Inc v British Columbia (Lieutenant Governor in Council)*, 2024 BCSC 177.

continue to address these questions in the near future, as provinces and territories move forward in balancing energy transition goals and against cryptocurrency mining initiatives.[129] It is further expected that similar issues may need to be addressed in other rapidly developing energy-intensive industries, such as the recent expansion of the artificial intelligence market and the corresponding growth in data centre operations.

IV. Oil and Gas

a. Alberta – Liability Management Framework (AER)

The implementation of the Alberta Energy Regulator's ("**AER**") Liability Management Framework ("**LMF**") marks a significant evolution in Alberta's approach to managing the financial and environmental responsibilities of oil and gas operators. The LMF's implementation replaces previous liability rating mechanisms, including both the liability management rating ("**LMR**") and licensee liability rating ("**LLR**") programs.

Revised *Directives 001*, *011*, *068*, and *088* are now in effect as of February 7, 2025,[130] and with these new Directives, the Regulator has rescinded *Directive 006: Licensee Liability Rating Program*, *Directive 024: Large Facility Liability Management Program (LFP)*, and *Directive 075:*

[129] See also Ministry of Energy, Mines and Low Carbon Innovation, News Release, "New legislation ensures B.C. benefits from clean, affordable electricity" (11 April 2024).

[130] Alberta Energy Regulator, *Directive 001: Requirements for Site-Specific Liability Assessments* (AER, 7 February 2025); Alberta Energy Regulator, *Directive 011: Estimated Liability* (AER, 7 February, 2025); Alberta Energy Regulator, *Directive 068: Security Deposits* (AER, 7 February 2025); Alberta Energy Regulator, *Directive 088: Licensee Life-Cycle Management* (AER, 7 February 2025).

Oilfield Waste Liability (OWL) Program. Further information can be found in AER Bulletin 2025-04.[131]

Three of the Directives have been revised to include new sections specifically outlining information that will be made publicly available through liability management reporting, including particulars related to licensees' estimated liability, security held, and certain financial and reserves information.[132] These changes suggest more transparent AER reporting under the revised LMF and mark a departure from the broad confidentiality clauses in former versions of the *Oil and Gas Conservation Rules* ('***OGCR***") [133] and the *Pipeline Rules*[134] dealing with the release of licensees' financial and reserves information.

Directive 001 establishes detailed requirements for conducting and submitting Site-Specific Liability Assessments ("**SSLAs**") to the AER. SSLAs are used to estimate the costs associated with suspending, abandoning, remediating, and reclaiming an oil and gas site. While *Directive 001* continues to outline the requirements and procedure for submitting SSLAs, it no longer includes methods for calculating estimated liability, nor does it prescribe criteria for determining when SSLAs are required.

131 Alberta Energy Regulator, *Bulletin 2025-04: Directive Updates Related to Liability Management Framework* (AER, 7 February 2025).

132 *Directive 011*, *supra* note 130, s 10; *Directive 068*, *supra* note 130, s 9; and *Directive 088*, *supra* note 130, s 6.

133 *Oil and Gas Conservation Rules*, Alta Reg 151/1971.

134 *Pipeline Rules*, Alta Reg 125/2023.

The revised *Directive 011* now includes the definition of "estimated liability", methods for estimating regional costs versus costs determined by SSLA, when an SSLA is required, the means of reducing estimated liability through reporting, a description of the Conditional Adjustment of Reclamation Liability Program (relocated from *Directive 088* and *Manual 023*), and the means of calculating orphan fund levies using licensee estimated liability.[135] With the consolidation under this Directive of provisions for calculating liabilities that previously came from a number of different directives, it is anticipated that *Directive 011* will assume increased importance under the new LMF.

Directive 068 updates security deposit requirements under the LMF. This Directive remains focused on security requirements for oil and gas operations, and now incorporates many provisions that were previously outlined in *Directives 075*, *088*, and the *OGCR* so that all security requirements are consolidated into one directive.[136]

Directive 088 received very minor changes, principally related to removing calculations now set out in the revised *Directive 011*.[137] However, one noteworthy change includes the ability to combine oilfield waste management approvals with well and facility transfer applications, which may reduce the need for multiple applications by licensees.[138]

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[135] *Directive 011*, *supra* note 130, ss 3, 5, 6, 6.1, 7, 7.2, and 9; see also *Directive 011*, *supra* note 130, s 1.3 for a description of the changes to this Directive.

[136] See *Directive 068*, *supra* note 130, s 1.3 for a description of the changes to this Directive.

[137] See *Directive 088*, *supra* note 130, s 1.2 for a description of the changes to this Directive.

[138] *Ibid*, s 5.

b. Repeal and Replacement of *National Energy Board Act Regulations*

On December 14, 2024, the Canadian Energy Regulator ("**CER**") proposed a broad overhaul of regulatory instruments governing energy exports, imports, and infrastructure approvals.[139] The Government of Canada has proposed the replacement of National Energy Board regulations with five new *Canadian Energy Regulator Act* ("***CER Act***") [140] regulations covering export applications, import and export orders, international power lines, reporting obligations, and toll information. These reforms largely consolidate and streamline existing rules and align them under the relatively recent CER Act, which in August 2019 replaced the previous *National Energy Board Act* ("***NEB Act***").[141]

The proposed *Export Applications (Licences and Permits) Regulations*[142] consolidate and replace provisions from multiple NEB Act regulations governing the export of oil, gas, and electricity. The proposed *Export and Import (Orders, Licences and Permits) Regulations*[143] combine sections of the former NEB regulations related to export and import reporting as well as toll information. By integrating these provisions, the CER seeks to simplify regulatory requirements for companies engaging in cross-border energy trade. The proposed

[139] Canada Energy Regulator, *Export and Import Regulatory Framework – Comment Period for Proposed Regulations* (Ottawa: CER, 14 December 2024).

[140] SC 2019, c 28.

[141] RSC 1985, c N-7.

[142] *Export Applications (Licences and Permits) Regulations*, (2024) C Gaz Part I, Vol 158, No 50, 3662.

[143] *Export and Import (Orders, Licences and Permits) Regulations*, (2024) C Gaz Part I, Vol 158, No 50, 3682.

International Power Lines (Permits) Regulations[144] repeal the *NEB Electricity Regulations* while updating the permitting framework for international power line projects under the *CER Act*. The proposed *Export and Import Reporting Regulations*[145] are intended to standardize reporting requirements across different energy commodities, improving data collected by the CER. Finally, the proposed *Toll Information Reporting Regulations*[146] replace those under the *NEB Act* and require that toll information is provided to the CER.

V. Pipelines

The Canada Energy Regulator introduced revised Event Reporting Guidelines ("**ER Guidelines**") effective March 12, 2025.[147] The ER Guidelines provide federally regulated companies with information and instructions that clarify the CER's expectations following an incident, such as a pipeline leak. Specifically, the ER Guidelines set out what needs to be reported, when and how to notify the CER, and the information that companies must submit via the CER's Online Event Reporting System. [148]

The revisions follow a CER-initiated a 90-day comment period in early 2024 to obtain feedback on the Draft 2024 Revised Guidelines. Among other things, the revised ER Guidelines update the definition and provides examples of incidents that have a "significant

144 *International Power Lines (Permits) Regulations*, (2024) C Gaz Part I, Vol 158, No 50, 3703.

145 *Export and Import Reporting Regulations*, (2024) C Gaz Part I, Vol 158, No 50, 3712.

146 *Toll Information Reporting Regulations*, (2024) C Gaz Part I, Vol 158, No 50, 3731.

147 Canada Energy Regulator, *Event Reporting Guidelines*, (Calgary: CER, December 2024).

148 Canada Energy Regulator, *Revisions to Canada Energy Regulator Event Reporting Guidelines*, (Calgary: CER, 5 December 2024).

adverse effect on the environment".[149] The updated examples are intended to highlight the CER's continued emphasis on regulated companies to employ the precautionary approach to event reporting. The ER Guidelines may undergo further revisions following the results of the *Onshore Pipeline Regulations* and Filing Manuals Review Project.

VI. Indigenous Law

Below we discuss two important pieces of legislation that – owing to the prorogation of Parliament on January 6, 2025 – did not become law. We discuss them given their importance and for the possibility that they will be re-introduced[150] in the new Parliament. Additionally, we discuss amendments tabled under Bill 25, the *Haida Nation Recognition Amendment Act, 2024*.[151]

a. Bill C-61: *First Nations Clean Water Act*

Bill C-61, the *First Nations Clean Water Act*,[152] recognizes and affirms the inherent right of First Nations to self-government in relation to water, drinking water, wastewater and related infrastructure on, in and under First Nation lands. Grounded in section 35 of the *Constitution Act, 1982*, the Bill establishes minimum standards for drinking water and wastewater services

[149] *Supra* note 147, 5.2.2.

[150] Or, in the case of Bill C-61, the prospect of a motion being passed that would allow debate to resume where it ended in January 2025.

[151] Bill 25, *Haida Nation Recognition Amendment Act, 2024*, 5th Sess, 42nd Parl, British Columbia, 2024 (assented to 15 May, 2024).

[152] Bill C-61, *An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands*, 1st Sess, 44th Parl, 2024 (as amended by committee 2 December 2024).

on First Nation lands, while respecting the principle of First Nations' jurisdiction over their water resources and related infrastructure.[153] Bill C-61 also sets out principles to inform the provision of clean and safe drinking water as well as the effective treatment and disposal of wastewater on First Nations lands.

Bill C-61 was first introduced on December 11, 2023, to address longstanding concerns regarding water quality and infrastructure in Indigenous communities. Having passed second reading in the House of Commons on June 5, 2024, the Bill is currently under legislative consideration with the Standing Committee on Indigenous and Northern Affairs, which submitted its report and proposed amendments to the House of Commons on December 2, 2024.[154]

b. Bill C-77: *Commissioner for Modern Treaty Implementation Act*

Bill C-77, tabled in the House of Commons on December 10, 2024, would have established a Commissioner for Modern Treaty Implementation charged with auditing and reviewing the conduct of federal institutions in fulfilling obligations under modern treaties with Indigenous peoples.[155]

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153 Appearance before the Standing Committee on Indigenous and Northern Affairs (INAN), *Bill C-61, First Nations Clean Water Act* (Ottawa: INAN Committee, 10 October 2024).

154 House of Commons, Standing Committee on Indigenous and Northern Affairs, *Report 19: Bill C-61, An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands* (2 December 2024).

155 Bill C-77, *An Act respecting the Commissioner for Modern Treaty Implementation*, 1st Sess, 44th Parl, 2024 (first reading 10 October 2024).

The Bill would have institutionalized oversight through the creation of the Office of the Commissioner.[156] This role appears intended as a means of enhancing transparency and accountability in treaty implementation. Notably, the Office of the Commissioner would not have any statutory authority to issue binding decisions. Instead, Final Reports authored by the Commissioner would be tabled in Parliament in order to improve public visibility and institutional scrutiny.

Bill C-77 also would have introduced certain amendments to several federal statutes, including the *Access to Information Act*, *Privacy Act*, and *Financial Administration Act*, among others.[157] These amendments were designed to integrate the new oversight role into existing administrative and legal frameworks.

c. Bill 25: *Haida Nation Recognition Amendment Act, 2024*

Amendments tabled under Bill 25, the *Haida Nation Recognition Amendment Act, 2024*,[158] came into force on July 5, 2024. As amended, the *Haida Nation Recognition Act*[159] confirms the historic *Gaayhllxid • Gíhlagalgang "Rising Tide" Haida Title Lands Agreement*[160] entered into by the Government of British Columbia and the Haida Nation in April 2024 and affirms the Province's recognition that the Haida Nation holds Aboriginal title within the meaning of

156 *Ibid*.

157 *Ibid*, ss 36-41.

158 Bill 25, *supra* note 151.

159 SBC 2023, c 24.

160 *Gaayhllxid • Gíhlagalgang "Rising Tide" Haida Title Lands Agreement*, 14 April 2024.

section 35 of the *Constitution Act, 1982* over Haida Gwaii and its surrounding waters. However, the Act also states that existing fee simple rights to land in Haida Gwaii "are confirmed and continued".[161]

In *Tsilhqot'in Nation v British Columbia*,[162] the Supreme Court of Canada described Aboriginal title as conferring ownership rights "similar to those associated with fee simple, including: the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to pro-actively use and manage the land."[163] Therefore, the Act appears to contemplate that two different but similar sets of rights could apply to the same land. How this will work is not clear, and the Act seems to acknowledge this, as it states "British Columbia acknowledges that the measures set out in this section are interim measures and that changes to the laws of the Haida Nation and the laws of British Columbia are necessary to reconcile systems of law and governance on Haida Gwaii."[164] The Agreement's effect on other land-related interests—such as mineral or forestry tenures, permits, leases, and rights-of-way—is also unclear. Although the Act provides that existing laws related to Crown land "continue to apply in relation to land that is held by the Haida Nation,"[165] as noted these

[161] *Supra* note 159, s 4.3.

[162] 2014 SCC 44.

[163] *Ibid* at para 73.

[164] *Supra* note 159, s 4.4(1).

[165] *Ibid*, s 4.4(2).

provisions are "interim measures" pending legal reconciliation between Haida and provincial legal systems. Taken together, this landmark Agreement and its recent implementation has introduced operational uncertainty for entities and individuals holding rights or licenses on Haida Gwaii.

VII. Environmental Law

a. *Single Use Plastics Prohibition Regulations* Litigation

Litigation related to the *Single-use Plastics Prohibition Regulations*[166] continued to wind its way through the Federal Courts in 2024, extending questions regarding the validity of the Government of Canada's attempt to regulate single-use plastics under the *Canadian Environmental Protection Act, 1999*. The decision in *Responsible Plastic Use Coalition v Canada (Environment and Climate Change)*[167] stemmed from the April 23, 2021 Governor in Council *Order Adding a Toxic Substance to Schedule 1 to the Canadian Environmental Protection Act, 1999*, which classified plastic manufactured items (PMIs) as toxic. This classification enabled the adoption of the Regulations, which banned the manufacture, import, and sale of various single-use plastic products in Canada. The Responsible Plastic Use Coalition and several other major industry players successfully challenged the Order in the Federal Court, which

166 SOR/2022-138.

167 *Responsible Plastic Use Coalition v Canada (Environment and Climate Change)*, 2023 FC 1511.

held that the classification of all PMIs as toxic was unreasonable and unconstitutional, rendering the Order invalid.

In response, the Attorney General of Canada appealed the decision to the Federal Court of Appeal and sought a stay of the lower court's ruling. On January 25, 2024,[168] the Federal Court of Appeal granted an interim stay, maintaining the legal effect of the Order and the subsequent Regulations pending the resolution of the appeal. The court found that the government had raised serious legal questions about the Federal Court's ruling, particularly regarding the constitutionality of Governor in Council's authority to regulate plastics under *CEPA*.[169] The Federal Court of Appeal also emphasized the potential for public harm and regulatory uncertainty if the Regulations were suspended, noting that businesses had already adapted to compliance requirements.[170]

A key consideration in the appeal is the impact of Bill S-5, the *Strengthening Environmental Protection for a Healthier Canada Act*,[171] which separately added PMIs to Schedule 1 of CEPA after the Federal Court's ruling. In its decision, the Federal Court of Appeal appeared to

168 *Canada (Attorney General) v Responsible Plastic Use Coalition*, 2024 FCA 18.

169 *Ibid* at para 16.

170 *Ibid* at para 28.

171 Bill S-5, *An Act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act*, 1st Sess, 44th Parl, 2023 (assented to 13 June 2023). SC 2023, c 12.

acknowledge that its judgment may clarify the effect of Bill S-5 on the validity of the Regulations and their enforceability moving forward.[172]

b. *Notice with respect to reporting of plastic resins and certain plastic products for the Federal Plastics Registry for 2024, 2025 and 2026*

The Government of Canada has implemented the Federal Plastics Registry through the issuance of a Notice under section 46 of CEPA, published in the Canada Gazette on April 20, 2024.[173]

The Registry is a key component of the federal government's broader Zero Plastic Waste agenda and is intended to enhance the monitoring and traceability of plastic throughout its lifecycle, from manufacture and importation to end-of-life management.[174] The section 46 Notice legally compels producers of plastic resins and products and other specified entities[175] to collect and report data on plastic-related activities with a view to informing policy development, supporting the reduction of plastic pollution, and increasing circularity in the plastics economy.

The Notice describes a product reporting process that will be phased in in stages: "for the purpose of conducting research, creating an inventory of data, formulating objectives and

[172] *Supra* note 168 at para 27.

[173] *Notice with respect to reporting of plastic resins and certain plastic products for the Federal Plastics Registry for 2024, 2025 and 2026*, (2024) C Gaz Part I, Vol 158, No 16, 848.

[174] Environment and Climate Change Canada, *Federal Plastics Registry* (Gatineau: ECCC, 3 March 2025).

[175] *Supra* note 173, Schedule 3.

codes of practice, issuing guidelines or assessing or reporting on the state of the environment, any person described in Schedule 3 of this Notice and who possesses or who may reasonably be expected to have access to information described in Schedules 4 through 5 of this Notice shall provide the Minister with this information" no later than September 29, 2025 for the 2024 calendar year. Data for the 2025 calendar year is requested by September 29, 2026, and for the 2026 calendar year by September 29, 2027.[176]

Entities subject to the reporting requirements must submit detailed annual reports on the quantity and types of plastic they manufacture, import, or supply (whether for payment or for free) to the market. These reports must include data on plastic used in packaging and how they are managed at end-of-life (e.g., recycled, landfilled, incinerated). Reporting entities must also disclose information on the geographic scope of their operations and the sectors in which the plastic is used. Notably, the reporting obligations apply to both primary producers and entities further down the supply chain, depending on their involvement in the lifecycle of plastics as defined in the Registry framework.[177]

These developments signal a significant regulatory shift in the federal management of plastic waste and represent an early step toward harmonizing data collection frameworks across jurisdictions. Energy and resource-sector stakeholders, particularly those involved in the manufacturing, distribution, or end-of-life management of plastic materials or packaging, will

[176] *Ibid*.

[177] *Ibid*, Schedule 4.

need to assess their compliance obligations under the new regime and adapt their internal reporting systems accordingly.

c. Bill C-226: *National Strategy Respecting Environmental Racism and Environmental Justice Act*

On June 20, 2024, the *National Strategy Respecting Environmental Racism and Environmental Justice Act* was proclaimed.[178] The preamble to the Act recognizes that "a disproportionate number of people who live in environmentally hazardous areas are members of an Indigenous, racialized or other marginalized community" and that this "could be considered a form of racial discrimination."[179] Pursuant to section 4 of the Act, the Minister of the Environment must within the next two years prepare a report setting out a national strategy to address environmental racism.[180] The strategy must be developed in cooperation with Indigenous peoples and incorporate periodic progress reports every five years thereafter.[181]

According to the Government of Canada, the Act "reflects the Government's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples" ("**UNDRIP"**) and aligns with broader reconciliation objectives.[182] While the Act does not itself refer to UNDRIP, this legislation arguably signals a shift toward recognizing and mitigating the

[178] Bill C-226, *An Act respecting the development of a national strategy to assess, prevent and address environmental racism and to advance environmental justice*, 1st Sess, 44th Parl, 2024 (assented to 20 June 2024).

[179] *Ibid*, Preamble.

[180] *Ibid*, s 4.

[181] *Ibid*, ss 3(2), 5.

[182] Environment and Climate Change Canada, *Environmental Justice and Environmental Racism* (Gatineau: ECCC, January 24, 2025).

disproportionate environmental burdens faced by marginalized communities and particularly Indigenous populations.

d. Bill C-69: Amendments to the *Impact Assessment Act*

Drafted in response to the Supreme Court's ruling in *Reference re Impact Assessment Act*,[183] amendments to the *Impact Assessment Act* ("**IAA**")[184] were enacted through Bill C-69, on June 20, 2024.[185] According to the Government of Canada, these amendments respond to the Supreme Court's decision by reinforcing the principle of cooperative federalism and enhancing procedural clarity for stakeholders while ensuring federal oversight remains targeted and constitutionally sound.[186]

Some key amendments include: (i) changing the definition of "adverse effects *within federal jurisdiction*" in order to focus on "non-negligible adverse change" related to a federal subject matter;[187] (ii) directly related to the previous amendments, limiting the Minister's power to designate physical activities which "may cause adverse effects *within federal jurisdiction* or incidental or direct adverse effects";[188] (iii) authorizing the Minister to make substitutions of

183 2023 SCC 23.

184 SC 2019, c 28, s 1.

185 Bill C-69, *An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024*, 1st Sess, 44th Parl, 2024, cls 269-319 (assented to 20 June 2024).

186 Impact Assessment Agency of Canada, Public Notice, "Amended *Impact Assessment Act* now in force" (21 June 2024).

187 See e.g. IAA, *supra* note 184, s 2 [emphasis added].

188 *Ibid*, s 9 [emphasis added].

non-federal procedures for impact assessment where appropriate;[189] and (iv) restructuring approval decisions (including by the Minister or Governor in Council) on designated projects such that they first consider "whether the adverse effects on matters under federal jurisdiction" will be significant,[190] and if so, whether these effects are justified in the public interest[191] having reference to an enumerated list of public interest factors, including s 35 Aboriginal and treaty rights, commitments in respect of climate change, and contribution to sustainability.[192]

e. Proposed Qikiqtait and Sarvarjuaq Orders Designating Marine Protection

On December 21, 2024, two Ministerial Orders were proposed under section 35(3) of the *Oceans Act*[193] to designate the Qikiqtait area in Hudson Bay[194] and the Sarvarjuaq region in the high Arctic[195] as Marine Protected Areas. As currently drafted, the Orders would prohibit all disruptive activities for five years post-designation, excluding those permitted under the *Nunavut* or *Nunavik Land Claims Agreements*. These initiatives are stated to demonstrate the Government of Canada's commitment to Indigenous-led conservation and the integration of environmental protection with the recognition of Inuit rights and stewardship.

189 *Ibid*, s 31; see generally ss 31-35.

190 *Ibid*, ss 60(1)(a), 62(a).

191 *Ibid*, ss 60(1)(b), 62(b).

192 *Ibid*, s 63.

193 SC 1996, c 31.

194 *Order Designating the Qikiqtait Marine Protected Area*, (2024) C Gaz Part I, Vol 158, No 51, 4150.

195 *Order Designating the Sarvarjuaq Marine Protected Area*, (2024) C Gaz Part I, Vol 158, No 51, 4172.

f. Alberta's *Extended Producer Responsibility Regulation*

Alberta's Extended Producer Responsibility ("**EPR**") framework is established under the *Extended Producer Responsibility Regulation*[196] pursuant to its enabling statute, the *Environmental Protection and Enhancement Act*. In essence, the EPR system shifts the burden of waste management (including single-use products, packaging, paper products, and hazardous and special products) from municipalities to producers. The Alberta Recycling Management Authority (ARMA) remains the governing body overseeing producer registration, reporting, and collection requirements. Pursuant to the collection timelines stated in the Regulation, producers were required to complete verification of their capacity to meet mandated collection obligations by April 1, 2024.[197] On June 20, 2024, the Regulation was amended to add a section for newspaper and magazine exemptions.[198]

By April 1, 2025, producers were required to establish a common collection system for single-use packaging, paper products, and hazardous materials in all registered communities currently serviced by municipal recycling programs.[199] Service standards mandate biweekly curbside collection for single-family dwellings and equivalent collection accessibility for multi-family dwellings.[200] The Regulation also sets incremental targets for material recovery,

[196] Alta Reg 194/2022.

[197] *Ibid*, s 16(4).

[198] *Ibid*, s 15.1.

[199] *Ibid*, s 25.

[200] *Ibid*, ss 17-18.

and by 2027 producers must achieve an 80% recycling rate for paper products, 50% for rigid plastics, 25% for flexible plastics, 67% for metal, 75% for glass, and 40% for batteries.[201]

g. Updated Environmental Site Assessment Standard

Alberta's environmental site assessment ("**ESA**") framework operates according to the provisions of EPEA and the *Remediation Regulation*,[202] which together prescribe the provincial requirements for contaminated site management. Under this regime, the Environmental Site Assessment Standard[203] establishes the technical and procedural requirements for conducting ESAs, which are essential in assessing site conditions, determining remediation obligations, and ensuring regulatory compliance. On December 17, 2024, the Standard was revised to introduce several changes aimed at improving consistency, enhancing risk-based decision-making, and aligning with evolving best practices in site assessment. The 2024 Standard aligns with recent legislative developments, including the 2022 amendments to the *Remediation Regulation*.[204] The Standard also integrates recent updates from the 2023 Contaminated Sites Policy Framework and explicitly incorporates reference to the 2024 versions of the Alberta Tier 1 and Tier 2 Guidelines.[205] Most significantly, the 2024 revision also includes a Phase 2 ESA Checklist which forms the basis for reporting submitted to

[201] *Ibid*, ss 19, 26.

[202] Alta Reg 154/2009.

[203] Alberta Environment and Protected Areas, *Environmental Site Assessment Standard* (AEPA, 17 December 2024).

[204] *Ibid*, ss 1.2, 1.4, 1.4.1.

[205] *Ibid*, s 1.2.

Alberta Environment and Protected Area (EPA) or the Alberta Energy Regulator (AER) under EPEA, thus clarifying ESA requirements in the province.[206]

VIII. Coal

In 1976, the Government of Alberta adopted the Coal Development Policy for Alberta (***"Coal Policy"***).[207] The *Coal Policy* established four categories of land, each with differing restrictions on coal exploration and development.[208] No exploration or commercial development is permitted on Category 1 lands, which include national and provincial parks and designated wilderness areas. Category 2 lands are described as those "in which limited exploration is desirable and may be permitted under strict control but in which commercial development by surface mining will not normally be considered at the present time." Category 2 lands includes lands in the Rocky Mountains and foothills. Exploration and development is permitted on Category 3 and Category 4 lands, subject to environmental assessment.[209]

In 2020, the Government of Alberta rescinded the Coal Policy[210]. Following significant public criticism the policy was reinstated in February 2021[211] and a Coal Policy Committee was

206 *Ibid*, Appendix A.

207 Alberta, Department of Energy and Natural Resources, *A Coal Development Policy for Alberta* (June 15, 1976).

208 Although the *Coal Policy* applies throughout Alberta, as shown in the map identifying the location of the four categories of land, in practice the Policy is aimed at coal exploration and development in the Eastern Slopes of the Rocky Mountains.

209 *Coal Policy*, *supra note 207,* section 3.13.

210 Government of Alberta, Information Letter 2020-23, *Rescission of A Coal Development Policy for Alberta and New Leasing Rules for Crown Coal Leases* (May 15, 2020) [IL 2020-23]; and Government of Alberta, Coal Informational Bulletin 2020-02, *New leasing rules for Crown coal rights* (May 15, 2020).

211 Government of Alberta, Information Letter 2021-07, *Reinstatement of the 1976 Coal Policy* (February 8, 2021) [IL 2021-07].

established by the Minister of Energy to make recommendations about development of a new coal policy.[212] The Committee issued a report in December 2021[213] with eight principal recommendations, the first being that the pause on coal exploration and development on Category 2 Lands should continue until specific regional and subregional land use plans for the Eastern Slopes are completed.

During the period the Coal Policy was rescinded, all restrictions on coal exploration and development on Category 2 and 3 lands were removed.[214] During this time the Government of Alberta began processing and approving a backlog of previously-filed applications for Crown leases and exploration permits. Following the reinstatement of the *Coal Policy*, the government did not cancel Crown coal leases or coal exploration permits issued during the period the policy was rescinded.[215]

In reinstating the *Coal Policy*, the Government of Alberta issued direction to the AER in the form of three Ministerial Orders that suspended all coal licensing approvals on the Eastern slopes of the Rockies:

[212] The Coal Policy Committee was established by the Government of Alberta on March 29, 2021.

[213] Alberta, Coal Policy Committee, *Final Report: Recommendations for the Management of Coal Resources in Alberta* (December 1, 2021).

[214] IL 2020-23, *supra* note 210 at 1.

[215] See Minister Savage's coal policy update: YourAlberta, "Coal Policy Update – February 8, 2021" (February 8, 2021) at 00h:02m:00s, online (video): www.youtube.com/watch?v=fowhdPSbXxs (the Minister referred to six approved exploration programs on Category 2 lands, but noted four of these began while the *Coal Policy* was in place).

- Ministerial Order 054/2021 issued 8 February 2021, directed the AER not to issue any new coal exploration approvals in Category 2 lands. [216]
- Ministerial Order 093/2021 issued 10 November 2021, directed the AER to pause coal exploration activities in Category 2 lands.[217]
- Ministerial Order 002/2022 issued 2 March 2022, directed the AER to suspend approvals for exploration and development of Category 3 and 4 lands, with the exception of advanced projects or active approvals.[218]

In December 2024, the Government of Alberta announced the Coal Industry Modernization Initiative[219], the stated goal of which is to modernize Alberta's legislative framework on coal resource management through the implementation of the eight recommendations made in the Coal Policy Committee's report. The Coal Industry Modernization Initiative targets late 2025 for the drafting of new coal regulations and legislation for government approval.

On January 15, 2025, the Minister of Energy approved Ministerial Order 003/2025,[220] which rescinded the three previously issued Ministerial Orders (MO 054/2021, 093/2021 and 002/2024) related to coal mining activities in the Eastern Slopes and confirmed the *Coal*

[216] Attached to IL 2021-07, *supra* note 210 at 3.

[217] Government of Alberta, *Ministerial Order 093/2021*, (November 10, 2021).

[218] Alberta, Department of Energy, *Ministerial Order 002/2022* (March 2, 2022). An advanced coal project is a project for which the proponent has submitted a project summary to the AER for the purposes of determining whether an environmental impact assessment is required.

[219] Government of Alberta, News Release: *Protecting the Environment with tougher coal rules* (December 20, 2024); see also: Government of Alberta, *Coal Industry Modernization Initiative*.

[220] Alberta, Department of Energy, *Ministerial Order 003/2025* (January 15, 2025) [MO 003/2025].

Policy.[221] In a letter accompanying the Ministerial Order, the Minister of Energy directed the AER "to lift the suspensions of all approvals that were suspended under Ministerial Orders 054/2021. 093/2021 and 002/2022 and extend the expiry dates of approvals suspended under those orders to account for the period of suspension."[222] The Ministerial Order confirms that when evaluating coal applications, the AER will "continue to apply the restrictions in place in respect of the exploration for and development of coal within categories of lands" as set out in the *Coal Policy* "with consideration of the Coal Industry Modernization Initiative policy guidance."[223]

The Government of Alberta has since reaffirmed that applications for new coal leases on Crown land in Coal Category 2, 3 and 4 within the Eastern Slopes are not being accepted, unless the application is within an active coal mine permit area.[224] In doing so, the Government of Alberta confirmed active coal lease applications accepted by Alberta Energy and Minerals prior to May 2020 will maintain their current status.

[221] Alberta Energy Regulator, *Bulletin 2025-03 – New Direction for Coal Activity in the Eastern Slopes of Alberta's Rocky Mountains*, (January 20, 2025) [Bulletin 2025-03].

[222] *Ibid* at 2.

[223] MO 003/2025, *supra* note 220 at 2.

[224] Government of Alberta, Information Letter 2025-06, *Restrictions to Crown coal leasing* (February 10, 2025).

IX. Conclusions

The past year brought notable legislative and regulatory changes important to the practice of energy law in Canada. Many of these developments, particularly those taking between June and April 2025, have been summarized in this article. In particular, this article has provided an overview of the changes associated with the *Impact Assessment Act*. Several legislative and regulatory developments of interest to energy lawyers have occurred since the article was completed in April 2025 and the authors look forward to following these developments in the year ahead.