



MCLENNAN ROSS

Recent Legislative & Regulatory Developments of Interest to Energy Lawyers

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Introductory Remarks - Mark
Watton, Lead Commissioner
Canada Energy Regulator

Overview of Presentation

- Paper provided a high-level overview of regulatory and legislative developments between June 2024 and April 2025;
- Presentation will focus on highlights in relation to each of :
 - Power
 - Environmental Law
 - Coal
- Questions/Discussion

Power

• Conservation and Reclamation 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.” Notable amendments to the *Conservation and Reclamation Regulation* include:

- adoption of the Code of Practice for Solar and Wind Renewable Energy Operations into the regulation;
- the creation of consistent reclamation requirements across all forms of renewable energy operations, including a mandatory reclamation security requirement; 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.

Power

• Electric Energy Land Use and Visual Assessment Regulation

The new *Electric Energy Land Use and Visual Assessment Regulation*, ("**EELUVA Regulation**") made under the *Alberta Utilities Commission Act*, came into force on December 6, 2024, pursuant to Order in Council 368/2024. The *EELUVA Regulation* is consistent with the Alberta government's "agricultural first" approach to renewable power generation and 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 viewsapes." These requirements fall within three main categories:

- i. agricultural lands and productivity;
- ii. irrigation potential; and
- iii. valued viewsapes.

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, 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.

Power

- Restructured energy market

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). 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. At the same time, the Minister announced the public release of Alberta Electric System Operator (“**AESO**”) and Market Surveillance Administrator (“**MSA**”) reports 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.” 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. 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.

Environmental Law

- Bill C-69 Amendments to the Impact Assessment Act of Canada

Drafted in response to the Supreme Court's ruling in *Reference re Impact Assessment Act*, amendments to the *Impact Assessment Act* ("**IAA**") were enacted through Bill C-69, on June 20, 2024. 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.

The amendments have not satisfied Government of Alberta, which referred the constitutionality of the amended IAA to the Court of Appeal on November 20, 2024.

Bill C-69 Amendments to the Impact Assessment Act of Canada

AMENDMENTS TO THE IMPACT ASSESSMENT ACT			
	PREVIOUS	COURT'S DIRECTION	CHANGE
PROJECT DESIGNATION (S. 9, S. 109(b))	Designated projects are subject to the IAA either by: 1. Inclusion on the Project List (<i>Physical Activities Regulations</i>); or 2. Discretionary designation by Minister if there are potential adverse federal effects OR public concerns about effects. Intended for exceptional circumstances only.	Project designation must be based on the potential for adverse federal effects.	1. The Project List remains in effect, but regulation-making provisions ensure only projects with potential non-negligible adverse effects in federal jurisdiction will be included; 2. The Minister cannot designate unless there is potential for non-negligible adverse federal effects. If so, other factors can be considered in whether designation is warranted: <ul style="list-style-type: none"> other existing federal or provincial processes that could address the potential adverse federal effects impacts on Indigenous rights, etc.
SCREENING DECISION (S. 16)	The Agency decides whether an impact assessment is required based on a list of equally weighted factors: <ul style="list-style-type: none"> potential for adverse federal effects information provided by proponents, Indigenous groups and the public in the planning stage 	Potential for adverse federal effects is a precondition, with consideration of other factors informing whether to proceed with a full impact assessment.	The Agency cannot require an impact assessment unless it is satisfied that the carrying out of the designated project may cause non-negligible adverse federal effects. If so, other factors can be considered to determine whether an assessment is warranted, e.g.: <ul style="list-style-type: none"> other existing federal or provincial processes that could address the potential adverse federal effects impacts on Indigenous rights, etc.
	The timing of the screening decision can only occur after the Detailed Project Description is complete.		The timing of the screening decision can happen after the proponent has responded to the Summary of Issues; a Detailed Project Description is requested only if more information is needed for a decision.
PUBLIC INTEREST DECISION (S. 60-63)	Minister or Governor in Council must decide whether adverse effects within federal jurisdiction are in the public interest. The decision requires consideration of numerous equally weighted factors that are outside federal jurisdiction. Time limit extensions for the Governor in Council to issue a decision statement can be made multiple times for any reason.	The final decision, including conditions or a permanent prohibition, must be based on significant adverse federal effects. Other non-federal factors cannot be used to exacerbate the federal effects but may inform the positive side of the ledger in determining whether to allow effects. Governor in Council time limit extensions must not allow for indefinite prohibitions.	Decision-making is clearly focused on prevention of adverse effects in federal jurisdiction. The Minister or Governor in Council must first determine whether there are likely significant adverse federal effects, and the extent to which those effects are significant after taking into account mitigation measures. Then they determine whether any significant adverse federal effects are justified in the public interest considering, e.g.: impacts on Indigenous rights and positive and negative effects on Indigenous Peoples; the positive contribution of the project to sustainability, including economic benefits; and the contribution of the project to meeting Canada's climate change objectives. Time limit extension by the Governor in Council can be done once for a definite period, with reasons posted on the Canadian Impact Assessment Registry.
DEFINITION OF FEDERAL EFFECTS (S. 2)	"Effects within federal jurisdiction" includes any change to components of the environment, including any transboundary change to the environment, and any change to the conditions of Indigenous Peoples.	Effects must be linked clearly to federal matters under the constitution, including only those transboundary effects where federal jurisdiction has been established. Appropriate thresholds must apply to ensure prohibitions do not apply to trivial effects or positive changes.	"Adverse effects within federal jurisdiction" include "non-negligible adverse changes" to federal aspects: <ul style="list-style-type: none"> for provincial activities (mines, provincial roads, electricity), this includes fish and fish habitat, aquatic species at risk, migratory birds, transboundary water and marine pollution, and impacts on Indigenous Peoples for federal activities (interprovincial, nuclear, certain ports, rail), effects include broader environmental and socio-economic effects
COOPERATIVE FEDERALISM (S. 31-35, S. 43.1)	Substitution: The Minister can substitute the whole of a process to another jurisdiction, save the final decision, when all requirements of the IAA are met by that jurisdiction's process. Assessment by Integrated Panels: Lack of clarity regarding mechanisms for other jurisdictions to participate in the integrated assessment of nuclear or pipeline projects.	The federal and provincial governments have a role in project impact assessments, underscoring the importance of exercising respective powers in the spirit of cooperative federalism. While promoting "one project, one assessment," the current substitution provisions practically ensure that the "one assessment" will be federal.	Substitution: The Minister can substitute a process, in whole or in part, to another jurisdiction when requirements would be met between the jurisdictions , allowing for a harmonized process for the best placed jurisdiction to undertake aspects of the assessment. Final decision-making remains with each jurisdiction. Assessment by Integrated Panels: Clarity that jurisdictions may participate in integrated review panels to assess nuclear or pipeline projects.

¹ The public consultation process to review and amend the Project List (*Physical Activities Regulations*) will continue now that legislative amendments are in force.

Coal

- 1976 Coal Development Policy “zoned” the Eastern Slopes for coal exploration and development
 - Exploration allowed in Category 2 but surface mining generally prohibited
- Coal Policy rescinded in June 2020, permitting mine development in Category 2, but reinstated in February 2021 after significant public backlash
- 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:
 - Ministerial Order 054/2021 issued 8 February 2021, directed the AER not to issue any new coal exploration approvals in Category 2 lands.
 - Ministerial Order 093/2021 issued 10 November 2021, directed the AER to pause coal exploration activities in Category 2 lands.
 - 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.
- On January 20, 2025, the 3 MOs were rescinded as part of the GOA’s “Coal Industry Modernization Initiative” (MO 003-2025)
 - Coal Policy land use categories re-confirmed
 - But prohibition on new open pit mines (?)
 - Exception for existing (“advanced”) projects, including Grassy Mountain

Thank You

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Questions?