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Climate change law moves into high gear

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Climate change regulation has moved to the forefront of policy and regulatory issues facing governments as pressure mounts for global leaders to meet the commitments made at the UN Climate Change Conference in Paris in December 2015. Canada's provincial governments have adopted a range of different policies to reduce greenhouse gas emissions, while the federal government began taking steps to position Canada as a global leader on climate change by signing the Paris Agreement and introducing a national carbon pricing floor in late 2016. At the provincial level, Ontario unveiled its new cap-and-trade program. The Alberta government made significant policy changes in 2016 to implement its aggressive Climate Change Leadership Plan to clean up the province's carbon reputation. Québec put forth its new 2030 Energy Policy, Nova Scotia announced it would implement a cap-and-trade system by 2018, and British Columbia continued with its carbon tax initiative.

As there are a variety of approaches to carbon management in Canada, including cap-and-trade, carbon taxes and direct regulatory measures, large greenhouse gas emitters will be challenged to find the most efficient and cost-effective ways to comply with the diverse and still-evolving regulations. For some, these regulations also present significant opportunities – for example, in the form of market- or government-supported development of renewable power facilities, cogeneration facilities and operational efficiency measures.

National carbon pricing

One of the main challenges of the implementation of a national climate change policy is that the provincially led climate change initiatives implemented to date represent differing solutions to this issue. For example, British Columbia has adopted and Alberta is about to implement a carbon tax to curb greenhouse gas emissions, while Ontario, Québec, and eventually Nova Scotia, are or will be operating under a cap-and-trade model.

In late 2016, the federal government signed the Paris Agreement, committing to reducing Canada's greenhouse gas emissions by 30% below 2005 levels by 2030, and announced its national carbon price program, which will require all Canadian jurisdictions to have carbon pricing in effect by 2018. The provinces and territories will remain free to choose whether to implement a carbon tax or a cap-and-trade system, as long as they meet the minimum federal pricing and emissions reduction targets. For jurisdictions that do not implement a carbon tax or cap-and-trade system by 2018, or that do not meet the federal pricing and emission reduction minimums, the federal government will impose a mandatory pricing system. Current proposed guidelines require carbon pricing to start at a minimum of $10 per tonne in 2018 and rise by $10 a year to reach $50 per tonne in 2022.

No details have yet been released with regard to how the national carbon price will be implemented and how the program will account for the fundamentally different nature of cap-and-trade and carbon tax models. In addition, the program may have to withstand

judicial scrutiny, as Saskatchewan has announced that it is considering a constitutional challenge on the basis that the federal legislation is really a tax that cannot be imposed on Saskatchewan's Crown corporations (such as SaskPower and SaskEnergy) because governments cannot tax one another.

Further details regarding the national program are expected to be released in the new year.

The Ontario cap-and-trade regime

In February 2016, the Ontario government unveiled the *Climate Change Mitigation and Low-carbon Economy Act*. The Act establishes the foundations for a cap-and-trade system in Ontario.

The cap-and-trade program introduces a limit (i.e., "cap") on how many tonnes of greenhouse gas pollution are allowed to be emitted in the province. This limit is lowered annually in order to achieve the greenhouse gas reduction targets set out in the Act. Certain entities, particularly those that are in trade-exposed, emissions-intensive industries, are issued an allotment of free allowances. If any participant's greenhouse gas emissions exceed its free allowance, or if a participant does not have a free allowance, it must procure allowances to cover all its emissions. To that end, entities can buy or sell allowances (i.e., "trade"). If an entity has reduced its emissions below its free allowances, it can trade its excess allowances to an entity that requires further credits. Emissions credits can also be purchased during quarterly government auctions – with proceeds being invested by the government in projects that reduce greenhouse gas pollution.

Facilities that generate greenhouse gas emissions of 25,000 tonnes or more, fuel suppliers that sell more than 200 litres of fuel per year and electricity importers or electricity generators that are directly connected to a gas transmission system are required to register under the program by November 30, 2016. Facilities generating more than 10,000 but less than 25,000 tonnes of greenhouse gas emissions may opt to participate.

Entities that do not have emissions to report can choose to participate in the allowance auctioning system. These market participants will typically be individuals, not-for-profit organizations and companies without compliance obligations.

The Ontario government anticipates that 82% of Ontario's current greenhouse gas emissions will be captured by the cap-and-trade program. The government also estimates that the auction process will generate $1.9 billion annually which will be reinvested into initiatives to reduce Ontario's overall greenhouse gas emissions and facilitate the transition to a low-carbon economy. The cap-and-trade regime is slated to come into effect on January 1, 2017.

Alberta Climate Change Leadership Plan

In 2016, the Alberta government introduced significant policy changes to implement the Climate Change Leadership Plan announced by Premier Rachel Notley in November 2015, including (1) a legislated phase-out of coal electricity production, to be replaced by renewable electricity production; (2) an economy-wide price on carbon emissions; (3) a cap on the annual carbon emissions from oil sands production; and (4) a methane reduction strategy. The Alberta government also endorsed the Alberta Electric System Operator's (AESO) recommendations for the Renewable Electricity Program (the REP), a competitive procurement process to select certain renewable energy projects to qualify for limited government incentives.

1. Replacement of coal with renewable energy production

The phase-out of coal as a power source and the increase in electricity production from renewable sources present both significant opportunities and challenges for the power industry.

On November 3, 2016, the Alberta government introduced the *Renewable Electricity Act*, which sets a goal of producing 30% of the total electricity generated annually in Alberta from renewable energy resources by 2030, and announced the first competition under the REP. The Alberta government intends to add 5,000 megawatts of renewable electricity capacity by 2030 through the REP, a competitive procurement process to be administered by the AESO, with the first 400 megawatts of renewable electricity capacity to be procured through a competitive RFP in 2017 and subsequent tranches of capacity to be contracted to coincide with the retirement of coal power plants.

On November 10, 2016, the AESO released a summary of the proposed key provisions of the Renewable Energy Support Agreement (RESA) to be entered into by the AESO and each successful bidder. RESAs will take the form of a "contract for difference" for a 20-year period starting from the commercial operation of the relevant facility – if the bid price exceeds the Alberta power pool price, the AESO pays the successful bidder the difference, and if the bid price is less than the Alberta power pool price, then the bidder pays the difference to the AESO.

On November 24, 2016, the Alberta government announced that it reached an agreement with Capital Power Corp., TransAlta Corp. and ATCO Ltd. to pay them a total of $1.36 billion, as annual payments of $97 million per year from 2017 to 2030. These payments represent compensation for the early shut down of six of the 18 coal-fired plants in the province which were expected to operate past 2030. The other 12 coal-fired plants in Alberta are scheduled to close or convert to natural gas before 2030.

2. Carbon levy

On May 24, 2016, Bill 20: the *Climate Leadership Implementation Act* was introduced, which proposed two new statutes: the *Climate Leadership Act*, which establishes the carbon levy on Albertans and Alberta businesses, and the *Energy Efficiency Alberta Act*, which establishes a Crown corporation with the mandate to design and deliver renewable energy and energy conservation systems.

The *Climate Leadership Act* imposes a carbon levy on consumers of all carbon-emitting fuels throughout the fuel supply chain of $20 per tonne beginning in January 2017, with an increase to $30 per tonne in January 2018. The carbon price is expected to affect 78-90% of all emissions in the province, the largest proportion in all of Canada. Under the Act, revenues generated through the carbon levy may only be used to (a) fund initiatives to reduce greenhouse gas emissions; (b) support Alberta's ability to adapt to climate change; and (c) provide carbon levy rebates or adjustments to consumers, businesses and communities.

3. Cap on oil sands emissions

On November 1, 2016, the Alberta government introduced the *Oil Sands Emissions Limits Act*, which imposes a limit on oil sands greenhouse gas emissions to an annual maximum of 100 megatonnes, with allowances for new upgrading and cogeneration. This limit will apply to in-situ sites, mine sites, processing plants, and primary production, enhanced recovery and experimental schemes as well as buildings, equipment, structures and vehicles associated

with those sites. The Act will take effect when passed in the legislature and proclaimed in force but will not obligate oil sands producers until a regulatory system is designed and implemented.

4. Methane reduction program

The methane reduction strategy seeks to reduce methane emissions from oil and gas operations by 45% by 2025 through (1) applying new emissions design standards to new Alberta facilities; (2) improving measurement and reporting of methane emissions as well as leak detection and repair requirements; and (3) developing a joint initiative on methane reduction and verification for existing facilities, and backstopping this with regulated standards that take effect in 2020, to ensure the 2025 target is met. The Alberta government has committed more than $70 million to pursue its methane reduction target and to fund methane emission reduction technology development. Proposed methane reduction projects will be selected through a competitive process and be eligible for funding up to a maximum of $5 million.

The Québec 2030 Energy Policy

In April 2016, the Québec government announced its 2030 Energy Policy, which sets very ambitious targets – elimination of the use of thermal coal, reduction of the amount of petroleum products consumed by 40% and a reduction of greenhouse gas levels by 37.5% over 1990 levels.

The 2030 Energy Policy has four primary objectives: (1) the decarbonization of Québec, (2) the reduction of energy consumption and improvement of production efficiency, (3) the continued responsible use of Québec's natural resources, and (4) the innovation and development of Québec's green economy.

Details on how these objectives and the ensuing targets will be achieved are still being debated. However, it is clear that Québec's existing cap-and-trade program will play a large role. Unlike prior policy initiatives, the 2030 Energy Policy's impact will not be limited to Québec's energy sector.

Nova Scotia's proposed cap-and-trade regime

On November 21, 2016 the government of Nova Scotia and the federal government jointly announced that Nova Scotia will implement a cap-and-trade regime, which will come into force in 2018. Nova Scotia will set a province-wide target that meets or exceeds Canada's target of reducing emissions by 30%, from 2005 levels, by 2030. The government of Nova Scotia and the federal government have also come to an agreement in principle that will allow the province to keep its coal-fired electricity plants open beyond the 2030 federal deadline. Part of the agreement stipulates that Nova Scotia will be required to achieve deeper emission reduction targets elsewhere in order to meet the equivalent of closing all coal plants by 2030. There is no current deadline establishing when Nova Scotia's remaining coal plants will be required to shut down.

Conclusion

There are both significant opportunities and challenges presented by the various climate change regulations being introduced across Canada. The unprecedented level of investment by government in carbon emissions-reducing solutions, including renewable energy,

reduced dependence on coal and increased energy efficiency, will provide new development and investment opportunities. On the other side of the ledger, new taxes and levies associated with carbon regulation will require carbon or energy intensive businesses to devise strategies to minimize overall compliance costs while remaining competitive. As the carbon regulation landscape continues to evolve across the country, businesses will need to remain apprised of new developments in order to capitalize on the opportunities and mitigate the potential costs.