Cassels

Regulatory Affairs - Focus on Electricity

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Regulatory Affairs – a quarterly round-up of recent items of interest along with new and timely updates – is brought to you by our Regulatory Group.

In this edition: This edition of Regulatory Affairs looks at key developments related to electricity including environmental assessments, commercial agreements, electric vehicles, and more.

Electrification Across Canada

Canada has committed to reducing emissions to net-zero by 2050, and electricity plays a key role on the path to decarbonization. The use of electric heat pumps and electric vehicles are amongst the available, promising electrification technologies to assist Canada in meeting its net-zero goals. In addition to electrifying the commercial, industrial and transportation sectors, the Government of Canada has committed to an electricity grid that will produce net-zero greenhouse gas emissions by 2035. Canada's ambitious emission reductions targets, however, pose a risk to the reliability and affordability of the electricity grid.

Although Canada has one of the cleanest power grids in the world, more needs to be done to achieve the Government of Canada's commitment to a net-zero grid by 2035. The phasing out of carbon emitting sources of energy in favour of non-emitting power generation, coupled with the anticipated growth in electricity demand, places significant operational challenges on the electricity grid.

Canadian provinces are increasingly seeking ways to support the growth in procurement of new, clean power generation. At the end of 2023, Ontario's Independent Electricity System Operator announced its first major renewables procurement since 2016, targeting a total of 5,000 MW of new non-emitting electricity generation. In addition to solar, wind, geothermal, and hydrogen, both federal and provincial governments have taken concrete steps to expedite the deployment of small modular reactors. Major electricity projects and associated energy infrastructure across Canada involve increasingly complex regulatory approvals, creative corporate structures, tax solutions, significant capital investment, and evolving financial instruments such as virtual power purchase agreements. Consequently, Canada's electricity-related initiatives to rapidly reduce carbon emissions require multidisciplinary legal advice.

The Regulatory Group at Cassels brings expertise in connection with a variety of regulated industries in Canada, acting as a trusted advisor to ensure timely project approvals

Commercial Agreements

Power Purchase Agreements

The provincial regulatory regimes affecting power purchase agreements are constantly evolving. For example, on March 11, 2024, the Government of Alberta released new regulations under the *Electric Utilities Act* (Alberta) and directed the Alberta Electric System Operator to implement the Restructured Energy Market (REM). We anticipate that there will be provisions in power purchase agreements going forward to address these new regulations. The new regulations are intended to protect agricultural lands and pristine viewscapes from renewable energy project development, provide for reclamation security for renewables projects, provide for day-ahead electricity marketing, and enhance municipalities' rights in regulatory approval processes.

While both cost reimbursement and reclamation security amounts are potentially unknown and will not necessarily fall under a change of law provision once in effect, we anticipate that such costs will either be factored into pricing or risk allocated contractually as between the parties.

Business Renewables Centre

Cassels is proud to be a founding member of the Business Renewables Centre – Canada (BRC-Canada). BRC-Canada is a non-profit initiative with the goal to accelerate large scale renewable energy use across Canada by bringing together renewable energy buyers, sellers, and intermediaries to execute large-scale wind and solar energy transactions. Since its creation in 2019, BRC-Canada has attracted more than $4 billion in deals across the country.

We are excited to be co-hosting a Stampede Mixer with BRC-Canada on Wednesday, July 3 in Calgary.

Gibson Energy, Capstone Infrastructure and Sawridge First Nation Enter into Renewable Energy Power Purchase Agreement

On September 14, 2023, Gibson Energy Inc. announced its 15-year renewable power purchase agreement with Capstone Infrastructure Corporation and Sawridge First Nation's Buffalo Atlee 2 and 4 wind farms. The Buffalo Atlee projects are being built and operated by Capstone in partnership with the Sawridge First

Nation, who have an equity interest in the projects. Cassels advised Gibson Energy Inc. on this agreement.

These projects are expected to meet over 50% of Gibson's annual electricity needs offsetting approximately 300,000 tonnes of carbon emissions over the term of the agreement. This is a critical step towards achieving Gibson's 2025 target to reduce Scope 2 emissions by 50% and 2030 target to completely eliminate its Scope 2 footprint. This agreement will also support Gibson's low-carbon transition goal to become Net Zero by 2050. Learn more.

Cassels Acts for McLeod Lake Indian Band on Agreement for $7 Billion Clean Energy Project

On October 25, 2023, the McLeod Lake Indian Band and the Province of British Columbia signed a memorandum of understanding (MOU) that lays the foundation for a proposed Tse'khene energy transition hub, including power-related projects. The MOU creates the framework for the development of multiple, Indigenous-owned, on-reserve, low-carbon energy projects including a hydrogen production facility and straddle plant capable of skimming high-value liquids such as ethylene from natural gas in four pipelines running across McLeod Lake traditional lands. Collectively, the projects are worth approximately $7 billion and could create as many as 2,000 construction jobs and 500 permanent, full-time jobs. Learn more.

Electra Completes $21.5 Million Private Placement

On August 11, 2023, Electra Battery Materials Corp. completed a brokered private placement of 15,000,000 units at a price of $1.10 per unit for gross proceeds of $16.5 million. Cassels acted for Electra Battery Materials Corp. on this transaction. Learn more.

Westbridge Secures US$30 Million Financing for Solar Projects

On May 30, 2023, Westbridge Renewable Energy Corporation completed two separate financings with Leyline Renewable Capital, LLC., in an aggregate amount of approximately US$30 million. Cassels acted for Westbridge Renewable Energy Corporation on this transaction.

The loan facilities will be used to continue development of Westbridge's solar and battery energy storage projects in Alberta and Texas. Learn more.

Recent Cassels Comments

Environmental, Assessments, Permitting & Finance

The Supreme Court of Canada's recent decision in *Reference re Impact Assessment Act* found that aspects of the federal impact assessment legislation were unconstitutional. In response, the federal government has passed amendments through the *Budget Implementation Act, 2024*. The Supreme Court's decision, and the recent amendments, are important to the electricity sector because large-scale electricity infrastructure projects are subject to federal impact assessments, such as specified transmission lines and generation facilities including certain nuclear, hydroelectric, and tidal projects. Under the amended legislation, assessment of these projects will be limited in scope to the effects of the projects that are in areas of federal jurisdiction. Cooperation with provincial and Indigenous governments will be encouraged. However, it is unclear how the goals of the amendments will be manifested on the ground. Further, the Supreme Court's decision raises uncertainty about other federal legislation such as the proposed *Clean Electricity Regulations.*

Federal Government Narrows the Application of the *Impact Assessment Act*

Several months ago, a Supreme Court of Canada (SCC) majority concluded that the federal *Impact Assessment Act* was largely unconstitutional in its Reference re *Impact Assessment Act*. The Government of Canada has since published its highly anticipated proposed amendments to the *Impact Assessment Act* to address the SCC decision. In the proposed amendments, the Government of Canada re-focused the *Impact Assessment Act* on adverse effects within federal jurisdiction. Parliament, and potentially courts, will consider whether the amendments went far enough to address the SCC's constitutionality concerns. Read More>

Court Orders Province to Pay $10.125 Million for Blocking Project Opposed by First Nation

On October 10, 2023, a British Columbia court ordered that the BC government pay a developer $10.125 million as compensation for unlawfully deciding not to issue permits for a hydro-electric project that had been opposed by the Squamish Nation. *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)* appears to be the first case of a proponent successfully establishing the tort of "misfeasance in public office" for a project that was rejected due to Indigenous opposition. Read More>

Sustainability-Linked Loans: Growth of the Sustainable Financing Market and Considerations for Borrowers

The sustainable financing market has seen considerable growth in recent years as environmental, social, and governance (ESG) concerns continue to be a focus for businesses and financial stakeholders. This growth has been driven, in part, by the use of general-purpose sustainability-linked loans (SLLs). Read More>

Electric Vehicles

The Cassels team explores how the rapid transition to EVs will involve a number of legal issues that auto-manufacturers, companies, and consumers will need to navigate…

Plugged In: An Overview of Legal Issues with Respect to Canada's Transition to Electric Vehicles

The federal government has announced plans to introduce electric-vehicle (EV) sales mandate regulations, requiring auto-manufacturers to gradually increase the proportion of EVs they produce. Read More>

Energy: Transition Series

Our Cassels lawyers provide strategic insights into the major issues affecting the electricity sector in the energy transition including the changing legal and industry trends behind the emergence of the new renewable energy market. Find articles from our Energy Transition Series here:

- What Is Energy Transition?>
- Going Green: Finance Companies See the Green Light>
- Energy Transition for the Canadian Energy Industry>

Past Editions

Regulatory Affairs is a quarterly round-up of recent items of interest along with new and timely updates brought to you by the Cassels Regulatory Group.

Regulatory Affairs: Focus on Mining>

This edition of Regulatory Affairs looks at key regulatory developments for the Canadian mining industry.

Regulatory Affairs: Focus on Food, Drug & Health Products>

This edition of Regulatory Affairs looks at key developments in regulated product industries such as food,

pharmaceuticals, other health products, alcohol, and cannabis among others.

Regulatory Affairs: Focus on Energy>

This edition of Regulatory Affairs looks at key regulatory developments for the Canadian energy industry, including liability management, renewable energy, and environmental assessment.

Regulatory Affairs: Focus on Infrastructure>

This edition of Regulatory Affairs looks at key developments related to infrastructure including, sustainable financing, interest rates, environmental assessments, and more.

Regulatory Affairs: Haida at 20>

This edition of Regulatory Affairs looks at the key developments in Aboriginal law and Crown consultation since *Haida* and explores the new reality of Crown decision making and project regulatory pathways in Canada today.

Team News

Spotlight On: Christopher McLelland

Chris McLelland is a partner in the Business Law Group at Cassels. Chris' practice focuses on general corporate and commercial law and transactions with an emphasis on oil & gas and renewable energy. He has experience in domestic and cross-border asset and share transactions; commercial agreements, including upstream, midstream, and downstream contracts in the oil and gas industry; and issues affecting the renewable energy industry, including solar, geothermal, hydrogen, and renewable natural gas.

Where We've Been

- On June 6, 2024, Chris McLelland looked at "Working with Counsel" at the 2024 Business Renewables Centre-Canada Buyers' Bootcamp
- On June 5, 2024, Cassels moderated a panel titled "Arbitraging the Market: Energy Storage Market Opportunities in Alberta" at CanREA's first annual Energy Storage Alberta summit in Calgary, Alberta
- On April 19, 2024, Cassels moderated the panel "11.1 NEERLS Case Law Hot Topics" at the CBA

Forthcoming Books

The Cassels Aboriginal and Regulatory Law Groups are excited to announce the upcoming publication of two texts which will provide important insights and commentary on changing areas of law.

The Law of Indigenous-Owned Projects by Thomas Isaac

The law of Indigenous-owned projects is multidisciplinary and includes Aboriginal law, land, corporate, tax, regulatory and other legal considerations. This comprehensive resource considers fresh perspectives on how legal matters are typically addressed. This resource will assist practitioners who advise Indigenous communities, governments, and industry on the further development of Indigenous-owned projects and will provide a thorough overview of the key legal issues, which can accelerate and support the development of these projects in the decades to come.

Aboriginal Law, 6th Edition by Thomas Isaac

Aboriginal law has evolved substantially since the release of the 5th edition of this authoritative text. Cassels is thrilled to announce the upcoming publication of the 6th edition of this important resource with key updates regarding, among other things:

- Aboriginal rights and title, self-government, and UNDRIP;
- The Crown's duty to consult;
- ?Federal, provincial, and territorial authority;
- Métis rights

Stay tuned for more information regarding the release dates for these important texts.

The Cassels Regulatory Group brings expertise in connection with a variety of regulated industries in Canada. Cassels' Regulatory Group advises and advocates for clients in the in these industries acting as a trusted advisor to ensure timely project approvals.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.