Potential Impact of the Alberta 2019 Election on the Carbon Leadership Plan

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On April 16, 2019, Albertans will head to the polls to elect its government for the next four years. This election will reveal the perspective of Albertans on the future of Alberta's oil and gas industry. The 2015 election of the NDP government ushered in a new era of oil and gas policy-making. In the years since, the oil and gas industry has experienced significant policy and legislative changes. As the pipeline bottleneck persists and oil prices remain depressed, the outcome of this provincial election will play a role in shaping the future years for the oil and gas industry. This blog article considers some potential impacts that the provincial election may have on one of the most important policies affecting Alberta's oil and gas industry: the Climate Leadership Plan ("**CLP**").

What is the Carbon Leadership Plan?

When the NDP government introduced the CLP in November 2015, it was clear to industry and consumers alike that changes were afoot, though perhaps few could have anticipated the speed at which the new climate change policy would be implemented and its economy-wide effects felt. Described as "Alberta's plan to take action on climate change and protect the province's health, environment and economy", key aspects of the CLP include putting a price on greenhouse gas emissions, ending pollution from coal-generated electricity by 2030, developing more renewable energy, capping oil sands emissions to 100 megatonnes per year and reducing methane emissions by 45% by 2025.

In the past four years, the CLP has changed the broader energy industry in some significant ways. Among others things, we have seen:

- the power purchase arrangement litigation as the province moved ahead with its coal phase-out plan;
- the introduction of the Renewable Electricity Program ("**REP**") to encourage the development of renewable electricity generation capacity;
- the development of the capacity market in Alberta's electricity market;
- the enactment of legislation aimed at regulating oil sands emissions, though regulation to implement the long-proposed cap remains forthcoming; and
- the introduction of carbon levies imposed on both large industrial emitters and consumers.

Our colleague, Kent Howie, has recently written about the potential impact of the Alberta election on the electricity sector in his article entitled, "ALBERTA ELECTION 2019: How the Repeal of Alberta's Carbon Levy would affect the Electricity Sector".

Potential Repeal of the Carbon Leadership Plan

Irrespective of the outcome of the provincial election, a repeal of the CLP in its entirety is unlikely. Significant changes have already been made under the CLP and a complete reversal, at least on an immediate or short-term basis, may create more problems for an industry that has just slowly begun to adapt to the new paradigm. Further, the CLP has already become part of the provincial treasury: according to the recent Alberta budget, the provincial government is already relying on the revenues from the CLP to fund a significant portion of its spending in the following year.

If the NDP government is re-elected, we expect that the CLP will likely stay on course, though implementation of regulations to enforce an emissions cap, among others, may be affected by the development of pipeline projects. However, if the UCP is elected in the upcoming election, there is potential that portions of the CLP are repealed, including the REP and the carbon levy.

Repealing the Renewable Electricity Program

Round 1 of the REP closed in 2017 and resulted in the Alberta government solidifying nearly 600 megawatts (MW) of utility scale wind projects at a price of 3.7 cents per kilowatt. Round 2 closed in 2018 and would add another 363 MW of renewable electricity to the grid at a price of 3.9 cents per kilowatt. In addition, Round 2 included a focus on developing projects that are at least 25% owned by Indigenous groups for the first three years following commercial operation of the facility. Round 3 closed on the same day as Round 2 and resulted in 400 MW of wind generation at an average price of 4.0 cents per kilowatt. To date, the REP has resulted in twelve new projects generating roughly 1,363 MW of renewable power at an average price of 3.85 cents per kilowatt. The NDP government's target is for the province to produce 30% of its energy through renewable energy by 2030.

The UCP has stated that it considers the REP to amount to "costly subsidies" and compared it to Ontario's former FIT program. If elected, the UCP will end any future rounds of the REP and welcome "market-driven green power" to Alberta. However, the UCP has indicated that it would not seek to rescind existing contracts under the REP. In any event, it is difficult to assess the future of the REP at this juncture as much of its continuation also depends upon the proposed creation of a capacity market, the continuation of the carbon levy, and the priority and available of funding.

Repealing the Coal Phase-Out Settlement Agreements

The provincial parties have said little about any potential action respecting the PPA litigation settlement agreements. Given the UCP's stance on negotiated contracts under the REP, it is unlikely that it would seek to reverse the settlement agreements unless such agreements provide for unilateral termination. Further, it is far from certain that a reversal of the coal phase-out plan or the subject settlement agreements would compel the industry to make investments in coal-fired power plants as many have taken action to effect the coal phase-out with some compensation having been provided to some participants in that industry.

Repealing the Carbon Levy

The UCP has made clear that, if elected, it will repeal the carbon levy introduced by the NDP government. Such repeal would immediately reduce funding for those programs that are currently being financed by the carbon levy. Of further relevance to the oil and gas industry is the effect that the repeal of the carbon levy may have on proposed pipeline projects. The support of the federal government for Alberta's pipeline projects had been justified by the province's apparent commitment to meeting Canada's climate change objectives. In the absence of a carbon levy, the federal Liberal government may be reluctant to continue its support for these pipeline projects, which could have an impact on the TransMountain Pipeline project.

From a practical perspective, the repeal of the provincial carbon levy may have little effect on Alberta's power sector. The federal government's tax on greenhouse gas emissions came into effect on April 1, 2019. For now, the federal carbon tax does not impose any change in Alberta since the province already has a carbon levy regime that is deemed acceptable by the federal government. Following a repeal of the provincial carbon levy, however, Alberta may join the list of provinces that are subject to the federal carbon tax at $20 per tonne of greenhouse gas emissions.

On the Horizon

Although a different political leadership in Alberta could certainly depart from the existing NDP government's policies, how changes may be implemented remain uncertain. As of now, four Canadian provinces are subject to the federal carbon tax: Ontario, Saskatchewan, Manitoba and New Brunswick. It is likely that, for instance, a UCP government would join the calls of Saskatchewan and Ontario, which are leading the charge against the federal carbon tax. To date, Ontario, Saskatchewan, and Manitoba have all filed constitutional challenges against the federal government's imposition of carbon tax. The Saskatchewan case has already been heard and judgment from the Saskatchewan Court of Appeal is pending. Ontario's case will be heard in mid-April. Manitoba's case remains ongoing. The outcomes of these constitutional challenges will undoubtedly inform Alberta's approach should the upcoming provincial election result in a government that will repeal the carbon levy under the CLP. Results of the federal election scheduled for this October will also be a significant factor affecting the future of the oil and gas industry.

BLG will continue to monitor these developments and provide updates accordingly.

By

Matti Lemmens, Tiffany Bennett, Alex Kucey

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749