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Published by Financier Worldwide Ltd

SPECIAL REPORT ARTICLE January 2023

Regulatory framework for CCUS in Alberta

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As Canada's pursuit of net-zero carbon emissions by 2050 continues to gain support from the public and private sectors, the governments of Canada and Alberta have placed an increased emphasis on developing a robust carbon capture, utilisation and storage (CCUS) industry. The International Energy Agency (IEA) stated in 2020 that "reaching net zero will be virtually impossible without CCUS". In the IEA's 'Sustainable Development Scenario', the agency predicts that CCUS will account for nearly 15 percent of the cumulative reduction in emissions in order to reach a global net-zero economy. An efficient CCUS regulatory scheme is critical to attract investment in the industry and promote the technological advancement necessary to achieve net zero.

As Canada's most geologically suitable province for carbon sequestration, Alberta has developed a regulatory framework over the past decade to maximise this technology's potential. This framework addresses many challenges faced in the regulation of CCUS, including pore space tenure, storage and disposal of captured carbon, licence eligibility, surface rights, and long-term liability. Alberta's CCUS regulatory framework has been established through amendments to existing oil & gas legislation, including the Mines and Minerals Act (MMA) and the Oil and Gas Conservation Act (OGCA). These amendments specifically address CCUS and establish a regulatory scheme in the province that is supported by directives issued by the Alberta Energy Regulator (AER).

Pore space tenure

In Alberta, pore space (the sub-surface space in which carbon can be sequestered over the long term) is owned by the Crown. The Alberta government's regulatory regime provides for both the evaluation of pore space to assess its suitability for sequestration and the subsequent sequestration of carbon.

Section 115 of the MMA establishes the ability of the government to enter into agreements which grant the right to drill evaluation wells for the purpose of evaluating an area's geological suitability for carbon sequestration. The Carbon

Sequestration Tenure Regulations (CSTR) permit the government to issue an evaluation permit if the required application fees and annual rentals have been paid, and a monitoring, measurement and verification (MMV) plan has been submitted – provided that no activities under the evaluation permit can be undertaken until the MMV has been approved by the minister. While the section 115 evaluation permit grants the right to drill wells and conduct testing within subsurface reservoirs, the permit does not grant any mineral rights within the location of the permit. Evaluation permits under section 115 are valid for five years.

In addition, section 9(b) of the MMA allows the government to issue an agreement that varies or makes inapplicable any provision of the MMA that would otherwise apply to the agreement. In practice, the government has been issuing evaluation agreements under both sections 9(b) and 115 of the MMA, which has resulted in some variation from the requirements of section 115. For example, proponents have been required to provide an MMV plan within one year of issuance of the evaluation agreement, which is not a requirement under section 115 of the MMA or the CSTR.

Section 116(1) of the MMA allows the government to enter into agreements with proponents granting the right to inject captured carbon dioxide into a subsurface reservoir for sequestration. The government can only enter into section 116 agreements subject to similar criteria as set out in section 115 (application fee, annual rental, MMV plan) along with certain additional requirements. The requirements here are twofold. First, the applicant must show satisfactory evidence that the location specified in the application is suitable to store carbon dioxide. Second, the applicant must disclose a closure plan that meets the requirements set out in section 18 of the CSTR. An agreement under section 116 does not grant the right to win or recover any minerals found within the location of the permit. Carbon sequestration leases under section 116 are valid for 15 years and are subject to renewal for further terms of 15 years. As with evaluation agreements, we anticipate that carbon sequestration leases will be issued under both section 9(b) and section 116 of the MMA. For example, the Alberta government has indicated that it intends to place requirements on holders of carbon sequestration leases that include "ensuring open access to affordable use of the hub, where appropriate" and "providing just and reasonable cost recovery to the Agreement holder". As these requirements are not currently contemplated under section 116 of the MMA or the CSTR, they can only be incorporated if the lease is also issued under section 9(b) of the MMA.

Interestingly, project proponents can also secure the right to store carbon in provincial pore space through section 9(a)(iii) of the MMA. Unlike section 116, this section is uniquely drafted to provide the minister of energy broader discretion to administer the right to use pore space notwithstanding any requirements of the MMA or the CSTR.

Alberta has elected to use a competitive process to issue carbon sequestration rights to manage the use of pore space by enabling the development of storage hubs, as stipulated by sections 9-12 of the CSTR. The purpose of the hub model is to ensure open access and prevent a "tragedy of the commons" that would adversely impact the usability of Alberta's pore space resource. Two requests for project proposals have been issued, one covering Alberta's industrial heartland region and the other the remainder of the province. The province has selected a total of 25 projects to begin evaluating geological reservoirs for the subsequent development of carbon sequestration hubs.

Long-term liability

Alberta has created a regime under which it assumes the long-term liability of projects involving the sequestration of captured carbon. The province assumes this liability in hopes of instilling investor confidence in this rapidly growing industry. The Alberta government assumes liability for a licensed carbon sequestration project upon the minister's issuance of a closure certificate to a lessee. Once the liability is assumed, the government becomes the owner of any captured carbon, and assumes all obligations of the lessee.

Additionally, section 122(1) of the MMA creates the Post-Closure Stewardship Fund and section 122(3) makes it mandatory for CCUS operators to contribute to the fund. The MMA stipulates that the government use this fund for ongoing monitoring and fulfilment of Crown obligations as well as any required maintenance and remediation.

The CSTR establish that the minister may approve any closure plan if the plan contains activities the lessee will undertake to close down the sequestration operation and associated facilities. Once the closure process's monitoring and storage requirements are met, the government will assume responsibility for long-term monitoring and will indemnify lessees, pursuant to the lease agreement.

Regulatory requirements for project development

In Alberta, CCUS tenure is limited to the right to use pore space. To meet and satisfy all regulatory requirements, proponents must look beyond CCUS legislation and ensure compliance with the existing regulatory regime regarding the development of wells, facilities and pipelines, and the approval of schemes.

Section 39(1)(d) of the OGCA vests the power to approve a CCUS storage scheme with the AER in Alberta. The AER must be satisfied that injection will not interfere with recovery or conservation of oil and gas or use of existing underground formations for storage. Industry proponents have opted for one of two methods to meet the AER's non-interference requirements: to directly obtain consent from mineral rights holders to inject carbon in the pore space, or to purchase mineral rights to subsurface formations that are suitable for CCUS.

Sections 11 and 12 of the Oil and Gas Conservation Rules (OGCR) prevent the development, construction or operation of a well or facility, respectively, without a licence. A prospective licensee must hold a working interest to be granted a well or facility licence, and for the former, must also hold a right to produce from that well. Similarly, sections 6 and 16 of the Pipeline Act prevent the construction or operation

of a pipeline without a licence. For a lessee to become eligible to hold licences, it must meet the eligibility requirements set out in the AER's Directive 067.

Directive 067 sets out the requirements to apply for, maintain and amend licence eligibility. In the directive, the AER makes clear that holding a licence for energy development in Alberta is a privilege, not a right, which should only be granted to responsible parties. Any party that seeks to apply for and hold AER licences or approvals must first apply for and obtain an identification code, commonly known as a BA Code, through Petrinex, an energy industry operational information service. Directive 067 establishes multiple conditions regarding licence eligibility including eligibility types, residency requirements, insurance requirements and financial information. Under Directive 067, the AER takes a holistic approach, considering many factors in determining whether the applicant poses an unreasonable risk before approving the applicant to hold a licence.

In addition to the legislative scheme outlined in this article, as well as the operation of Directive 067, the AER maintains various other directives that establish more detailed technical requirements respecting the development of oil and gas facilities for CCUS.

Conclusion

Despite creating its CCUS regulatory scheme through a patchwork of amended oil & gas legislation, Alberta was the first – and remains the only – jurisdiction in Canada to have enacted a comprehensive CCUS regulatory regime to support the provincial and federal government's objectives with respect to CCUS. Alberta's CCUS regulatory scheme can provide a blueprint for the development of future provincial and national models and ensure that Canada is well-positioned to lead global CCUS deployment and meet its net-zero targets. ■