

The Efficiency Plank in Alberta's Climate Leadership Plan

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As reported in previous [posts](#), Alberta's [Climate Leadership Plan](#) (CLP) released in November 2015 following receipt of the [Leach Report](#) has four key planks: (1) phasing out emissions from coal-generated electricity and developing more renewable energy, (2) implementing a new carbon price on greenhouse gas emissions, (3) a legislated oil sands emission limit, and (4) employing a new methane emission reduction plan.

The government introduced legislation to implement an economy-wide carbon price in June 2016 (the [Climate Leadership Implementation Act](#)) with the results of that in the form of the carbon levy coming into force on January 1 of this year (2017). The fall session of the legislature (2016) saw the introduction and passage of [Bill 25](#), *The Oil Sands Emission Limit Act* to implement the third objective, a legislated oil sands emission limit (I commented on Bill 25 [here](#)) and followed this up with [Bill 27](#), the *Renewable Electricity Act* to implement the second half of the first plank - developing more renewable energy. I commented on Bill 27 [here](#). Then there were subsequent developments with respect to transforming Alberta's "energy only" market which I commented on [here](#). This last post also commented on the *first half* of the first plank of the CLP, i.e. the agreement between the province and the owners on the phase-out of coal generating facilities and the level of compensation payable.

As part of the plan to replace coal generation the province has also been looking at energy efficiency policies and micro or distributed generation. Although energy efficiency measures do not result in more generation they do suppress load and avoid (or at least postpone) the need to build or run new generation. While energy efficiency has a lower public profile than new generation, most commentators suggest that energy efficiency and demand side management policies are usually among the most cost effective measures for meeting load and for reducing greenhouse gas emissions – especially where the current energy mix, as in Alberta, is carbon intensive. For a recent review see Julia-Maria Becker and Sara Hastings-Simon, [Kick-Starting Energy Efficiency in Alberta: Best practices in the use of efficiency as an energy resource](#), Pembina Foundation (January 2017) and for a paper that looks at energy efficiency from a legal perspective see Barry Barton, "The Law of Energy Efficiency" in Donald N Zillman et al (eds), *Beyond the Carbon Economy: Energy Law in Transition*, Oxford, OUP, 61 – 81.

While most if not all Canadian jurisdictions already have comprehensive policies to address energy efficiency, Alberta has none. This is one more example of how a succession of Conservative governments in Alberta failed to adopt even the most obvious and cost-effective policies for reducing greenhouse gas emissions. It is true that the goal of efficiency lies at the heart of the *Specified Gas Emitters Regulation*, [Alta Reg 139/2007](#) which required covered entities to reduce emissions measured against their units of production (not energy), but the province failed to generalize this approach to energy consumption across the economy. For a

listing of sector specific programs see Appendix F of the current report. Hence, as in so much else, the current New Democrat administration has had to play catch-up.

One of the government's first steps in developing energy efficiency programs was to create [Energy Efficiency Alberta](#) under the terms of the *Energy Efficiency Alberta Act*, [SA 2016, c. E-9.7](#). This Act establishes Energy Efficiency Alberta as a corporation with the mandate: (a) to raise awareness among energy consumers of energy use and the associated economic and environmental consequences, (b) to promote, design and deliver programs and carry out other activities related to energy efficiency, energy conservation and the development of micro-generation and small scale energy systems in Alberta, and (c) to promote the development of an energy efficiency services industry. (at subsection 2(2)) It is important to observe that despite the title, the agency's mandate under clause (b) extends beyond energy efficiency and conservation to include "the development of micro-generation and small scale energy systems". The province has committed to invest \$645 million in these programs over five years from the economy wide carbon levy. In addition, Minister Phillips, the Minister of Environment and Parks and the Minister Responsible for the Climate Change Office, established the Energy Efficiency Advisory Panel in June 2016 with an aggressive timeline of reporting out by the fall of 2016. The Panel was asked to advise on:

- A long-term vision for the goals and outcomes for Energy Efficiency Alberta;
- First-stage energy efficiency and community energy programs; and
- Initial education and outreach initiatives.

The Panel's report is now available. The report includes 13 recommendations as well as some reference to other policies and initiatives. In this post I will provide a short summary of the recommendations and then highlight some issues which may be of more interest to the legal community insofar as they reference the need for regulatory changes.

Recommendation 1 dealt with the Panel's responsibility to advise on a *vision* for the agency, and to that end the panel recommended that "Energy Efficiency Alberta is a catalyst for saving money, creating jobs and reducing emissions – all at the same time". Recommendation 2 addressed the topic of *agency oversight* and recommended that the government provide for clear reporting and that the agency should track outcomes against performance targets. *Funding* (Recommendation 3) should be provided on the basis of a minimum rolling five year budget "to enable effective planning cycles". The Agency should (Recommendation 4) devote a portion of its budget to *education and outreach* and benchmark itself against other jurisdictions. As for "initial programs" (Recommendation 5), the Panel recommended *four programs* that would be "low risk, and have immediate, measurable gains to generate public interest and uptake." The four programs are:

- A Direct Install (DI) Program which would provide for low-cost energy efficiency products to be installed in single and multi-family dwellings at all income levels at no cost to consumers. Examples might include LED lighting, LED night lights, smart power bars, and low-flow showerheads (reduced water heating)
- Consumer Products Program which would offers incentives at point-of-sale for purchase of energy efficient appliances and electronics that are independently certified to save energy without sacrificing features or functionality. Examples of eligible consumer products might include: appliances and electronics, insulation and draft-proofing products, water heaters and products included in the Direct Install program.

- Business, Non-Profit, Institutions (BNI) Incentives which would assist non-residential buildings (including businesses, non-profits, institutions, and cooperatives) to reduce emissions and energy use by offering incentives on products and installation. Examples of eligible products might include lighting, heating, ventilation, air conditioning systems and water heating.
- Small Solar Photovoltaic (PV) Program which would provide financial incentives to support the installation of solar photovoltaic systems on buildings, including homes, businesses, and community structures, under Alberta's Micro-Generation Regulation.

Future programming ([Recommendation 6](#)) in the short run should draw on the experience of other jurisdictions pending the results of Alberta-specific market research. In addition, and as early as possible, the government ([Recommendation 7](#)) should identify targets for *community owned energy systems*. *Transportation* ([Recommendation 8](#)) should also be the target of early outreach and awareness activities including information on no-cost and low-cost ways to save fuel. [Recommendation 9](#) stressed the importance of working with *Indigenous communities* (First Nation and Metis) while [Recommendation 10](#) pointed to the importance of *access to relevant data* while recognizing privacy concerns. *Access to innovative financing* forms the core of [Recommendation 11](#). [Recommendation 12](#) addresses what is surely a crucial issue insofar as it deals with the need to think about how to *integrate the relevant utilities* within both efficiency and community energy initiatives. The final recommendation, [Recommendation 13](#), stresses the need to develop “governance and operational links” between Energy Efficiency Alberta and other agencies and task forces of government engaging with *innovation, research and development* within these fields.

It is evident that the implementation of many of these recommendations will not require any changes in law or regulation but others may. The balance of this post refers to areas where the Panel identified the potential need for regulatory change or regulatory harmonization.

Community energy owned systems. The Panel suggested that regulatory changes might be required both to incent community-owned energy systems and to simplify and reduce the regulatory burden. The panel's text suggests that it considers that most of the difficulties lie (at 50) with the “relatively complex approval and grid connection process” and therefore suggests engagement with the Alberta Electric System Operator (AESO) (at 49) and (at 50) that efforts continue “to enable community-owned renewable energy system either through updates to the existing *Micro-Generation Regulation*, [Alta Reg 27/2008](#) or through new regulations.”

Access to data. Recommendation 10 on access to data also occasioned some comment on regulatory issues from the Panel. Here the issue seems to be access to user-specific energy consumption data to assist in the design and delivery of effective programs, to enhance outreach and increase program participation, and in order to measure the impact of programs. However, it is clear that such access will raise privacy concerns, and this issue, especially in the context of smart meters (a term used in the main report on only one occasion!), has been contentious in other jurisdictions [notably in British Columbia](#). On this issue therefore the Panel simply recommends (at 54) that “the Government of Alberta develop mechanisms, including the development of a regulation, to enable Energy Efficiency Alberta to employ user-specific energy consumption data to enhance program design and delivery while maintaining appropriate privacy controls.”

Integration with the utility system. Recommendation 10 (at 57) notes that in most jurisdictions energy efficiency and community energy systems are dealt with (at 57) “holistically within the oversight of the utility system”. This is generally achieved “by including demand-side management within the mandate of regulators and electric system operators. This enables those entities to give full consideration to energy efficiency and community energy system benefits and opportunities, and make available tools used in other jurisdictions to support their uptake in a way that is in the interests of consumers.” This is certainly the case with respect to vertically integrated systems. It may be more challenging in unbundled systems in which there is competition with respect to both generation and retail functions. Evidently these issues will require careful thought and leadership. The Panel recommended that government consider according both the AESO and the Utilities Consumer Advocate a mandate with respect to energy efficiency and community energy systems but it is also possible that the Alberta Utilities Commission will need to play a role in working these issues through.

Finally, and going beyond its formal recommendations, the Panel offered comments (at 61 – 62) with respect to what it referred to as “Complementary Policies and Initiatives”. First, the Panel noted that while its mandate did not include large industry it was clearly of the view that there is untapped potential for efficiency gains within large industry. Second, the Panel referred again to the ongoing review of the *Micro-Generation Regulation*. Third, the Panel emphasized the importance of building codes in ensuring a minimum level of efficiency in new construction. The fourth matter, the allocation of system costs as between fixed and variable charges, will likely be of most interest to the regulatory bar. Here the Panel noted (at 62) that

... many stakeholders suggested authorities investigate the potential for greater adoption of energy efficiency and community energy systems by reducing the ratio of fixed versus variable charges on utility bills. Increasing the amount of variable charges associated with electricity transmission costs, for example, can help reduce electricity consumption and the demand for transmission infrastructure thus creating system-wide cost savings. It is recognized, however, that the cost of utility infrastructure must be spread among the consumers that are benefiting from it and without overly burdening vulnerable Albertans. The continued evolution of this conversation will be important for both consumers and Energy Efficiency Alberta as the structure of utility charges has significant bearing on how the utility system is used and its associated economic impacts.

The fifth and sixth “complementary” matters addressed by the panel were energy performance reporting and disclosure for buildings, and the need for the Agency to ensure its alignment with other government programs and agencies.

In sum, while this report and the related announcements may be of less interest to corporate energy lawyers in the city than the announcements with respect to renewable energy procurements, they are likely of widespread interest to the general public. This is because, by and large, these announcements and recommendations are directed at individuals and community groups. They are designed to galvanize the energy and interest of individual citizens and encourage them to participate in meeting Alberta’s emission reductions targets. I’m in.

This post may be cited as: Nigel Bankes “The Efficiency Plank in Alberta’s Climate Leadership Plan” (30 January, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/01/Blog_NB_Efficiency_Plank_Climate.pdf

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