

# WHAT TO EXPECT: THE FEDERAL CLEAN ENERGY REGULATIONS

Posted on January 31, 2024

**Categories:** [Insights](#), [Publications](#)

The Government of Canada recently announced plans to implement new federal legislation to implement and regulate a net-zero electricity system, as part of its broader initiatives to meet its climate commitments in the Paris Agreement. The proposed legislation will likely have significant implications for the power industry and for all Canadians. It is important to note that these proposals are in the drafting stage, and details are subject to change.

## Clean Electricity Regulations

The Clean Electricity Regulations (CER) are proposed as part of a suite of new federal measures that aim to compel Canada's electricity sectors to achieve net zero targets on greenhouse gas emissions by 2050. The CER will be an integral part of the Clean Electricity Strategy, which is expected to be released later this year. The CER is outlined in the [Powering Forward Canada: Building a Clean, Affordable and Reliable Electricity System for Every Region of Canada](#).

Overall, the intention of the CER is to encourage energy efficiency, dynamic pricing, and the use of non-carbon emitting generating technologies, including carbon capture and storage, solar, wind, geothermal, small modular nuclear reactors, hydro, distributed energy systems, interties, and energy storage. These technologies would be needed to supplement Canada's electricity systems, which primarily rely on the combustion of fossil fuels for electricity generation.

## What Are The Proposed Key Components of the CER?

The CER will regulate emissions of carbon dioxide (CO<sub>2</sub>) from electricity generating units that meet the following criteria:

- combust any amount of fossil fuel for the purpose of generating electricity;
- have a capacity above a small megawatt (MW) threshold (TBD); and
- offer electricity for sale into a regulated electricity system.

While there are some exceptions, this regulation would work by establishing an emissions performance standard (the "Standard"), which would be a near-zero value. Any regulated units that exceed the Standard

over a period of time, would be prohibited from operating. In addition, any residual emissions emitted below the Standard would be subject to financial compliance requirements.

### **How will it be implemented**

The Government of Canada has proposed that this regulation may be implemented in stages.

First, for new units commissioned in 2025 or after, current electricity sector policies would apply until January 1, 2035. Following that date, the CER and its related standards and compliance measures would replace any current electricity sector policies.

Following this initial implementation, the regulation would then apply to existing units that were commissioned before 2025. Here, the CER standards would not begin to apply until the end of its prescribed life, or, until January 1, 2035.<sup>[1]</sup>

Beginning in 2035, the financial compliance requirements for a producer to pay for all emissions below the Standard will become effective for both new and existing units.

### **Challenges to the Implementation of the CER**

Not surprisingly, there is already significant push back from various provincial governments<sup>[2]</sup> to the announcement of the Clean Electricity Strategy and the CER. The proposed regulations are perceived to be an end run by the federal government around provincial jurisdiction over the regulation of electricity generation. The Government of Canada stated that while it recognizes that electricity is clearly an area of provincial jurisdiction, the Government of Canada is justified in its plans to implement the CER based on the “critical role [the Government of Canada has] to play with its regulatory powers over interprovincial power lines, nuclear power, and electricity exports,” not to mention the shared jurisdiction on environmental regulations.<sup>[3]</sup>

There will no doubt be a number of legal challenges to the proposed legislation prior to the CER being implemented. Some provinces, such as the Government of Saskatchewan and the Government of Alberta are already taking action. The Government of Saskatchewan recently announced the implementation of their “autonomy legislation,” which is to be used for the first time to review the proposed CER and the economic effects of the rules.<sup>[4]</sup> The reported purpose of this “autonomy legislation” is to reassert that Saskatchewan has jurisdiction over natural resources and electricity generation. Meanwhile, the Government of Alberta has invoked its *Sovereignty Act* by introducing a resolution to resist the CER.<sup>[5]</sup>

### **Effect on Power Projects in Alberta**

Importantly, within Alberta, the CER would apply to facilities that may meet the Standards but via the addition and implementation of carbon capture, utilization, and storage.<sup>[6]</sup>

Both the provincial governments and the Government of Canada appear to support policies and plans to support the power industry in cutting emissions, however, they differ significantly in their approach and timing. The power industry and stakeholders will require clarity and certainty in order to continue to operate and plan for the future.

The proposed CER and the provincial strategies will have significant implications for the power industry. McMillan is well-equipped to offer assistance in navigating the complex and evolving landscape clean electricity regulations. If you have questions regarding recent developments in the energy industry, please contact Sean Ralph or any member of McMillan's National Energy Group – we would be pleased to speak with you.

[1] Note: Definition of defined life is something that the Government knows requires further consideration.

[2] See: Government of Saskatchewan, "[Saskatchewan Responds to Unaffordable, Unconstitutional and Unattainable Proposed Federal Clean Electricity Regulations](#)" (21 November 2023).

[3] Government of Canada, "[Jurisdiction, duties and authorities](#)" (19 March 2020).

[4] Jeremy Simes, "[Provincial government uses Sask. First Act for 1st time to review federal electricity regulations](#)", CBC News (28 November 2023).

[5] Michelle Bellfonataine, "[Alberta invokes Sovereignty Act over federal clean electricity regulations](#)", CBC News (27 November 2023).

[6] Nia Williams, "[Alberta unveils carbon capture and storage incentive to help decarbonization](#)", Reuters (28 November 2023).

by [Sean Ralph](#) and [Elayna Dushenski](#) (Student-at-Law)

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2024