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### *Responsible Energy Development Act – A Sea Change in Energy Project Regulation? Stay Tuned*

By Shauna Finlay and Bernard Roth

#### Introduction

On October 24, 2012, the Alberta Minister of Energy introduced Bill 2 – the *Responsible Energy Development Act* (“*Responsible Energy Act*”) in the Alberta Legislature. On November 21, 2012, Bill 2 passed third reading and was given Royal Assent on December 10, 2012.

This legislation represents a major step in the Alberta Government’s implementation of its 2010 *Enhancing Assurance* initiative.<sup>1</sup> This initiative, designed to make the regulatory system for energy development more streamlined and efficient, includes the establishment of a single energy regulator for licences and approvals required for energy development. The *Responsible Energy Act* establishes this single regulator.

This article will summarize some of the key changes to the current regime regulating energy development in Alberta.

#### Summary of Changes under the *Responsible Energy Act*

The newly-created Alberta Energy Regulator (the “Regulator”) will regulate oil, gas, coal and oil sands operations with respect to the use of public lands and the granting of permits, licences and approvals under energy conservation legislation, the *Environmental Protection and Enhancement Act*, and the *Water Act*. All regulatory and enforcement functions relating to these matters

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<sup>1</sup> *Enhancing Assurance: Report and Recommendations of the Regulatory Enhancement Task Force to the Minister of Energy* (2010) Alberta Energy, click [here](#).

will now be carried out by the Regulator instead of the Energy Resources Conservation Board (“ERCB”) or the Alberta Crown (Alberta Environment and Sustainable Resource Development).

Another significant change is that the Regulator will not set policy regarding energy development. Whereas the ERCB had both a policy-setting and administrative role, the *Responsible Energy Act* makes it clear that the “Minister’s” role is to set policy and objectives regarding energy development with the Regulator implementing that policy. For instance, under s. 67 of the *Responsible Energy Act*, when he or she considers it appropriate to do so, the Minister is permitted to issue an order giving directions to the Regulator for the purposes of “providing priorities and guidelines for the Regulator to follow in the carrying out of its powers, duties and functions and ensuring the work of the Regulator is consistent with the programs, policies and work of the Government with respect to energy resource development, public land management, environmental management and water management.” There are no restrictions in the legislation circumscribing the circumstances in which this power can be used.

Hearing and appeal processes have been streamlined. Regulatory appeals to appointed hearing commissioners are only permitted where the original decision of the Regulator was made without a hearing. Hearings are to be held where required by statute, where required by the rules made by the Regulator and in circumstances prescribed by the regulations.

Similar to ERCB decisions, but in contrast to appeals before the Environmental Appeals Board, further appeals to the Alberta Court of Appeal are only to be with leave on matters of law and jurisdiction. As previously applied to ERCB decisions, the Court of Appeal is (i) prohibited from allowing new evidence, (ii) drawing any inferences that are inconsistent with the facts as found by the Regulator, and (iii) if vacating or

varying the decision of the Regulator, must send the decision back to the Regulator for further consideration or redetermination.

The Regulator will have no jurisdiction with respect to assessing the adequacy of Crown consultation associated with aboriginal rights.

Parties will have the option of registering their private surface land agreements with the Regulator and applying to the Regulator to enforce these agreements. The Surface Rights Board will maintain jurisdiction to set compensation.

Standing to participate in hearings has not been substantially altered. Where hearings are conducted by the Regulator, parties who *may* be directly and adversely affected are entitled to be heard at the hearing. Appeals may be filed by persons who *are* directly and adversely affected. The determination of whether to hold a hearing will be affected by the rules established by the Regulator, any statutory requirement in legislation that is administered by the Regulator and any requirement to hold a hearing set out in the regulations to the *Responsible Energy Act*.

With respect to costs, the change in the *Responsible Energy Act* may be a distinction without a difference. The *Energy Resources Conservation Act* in s. 28 provided the ERCB with discretion to award costs to a local intervener upon application. This section has not been included in the *Responsible Energy Act*, however, the Regulator has jurisdiction to establish rules relating to intervener funding. Depending on what rules are established, access to intervener funding may not be significantly altered from the previous regime and, with respect to appeals relating to environmental approvals, may be improved.

## Conclusion

While the foregoing summarizes some of the changes in the *Responsible Energy Act*, there are significant matters that will be dealt with in the regulations or rules passed under the *Responsible*

*Energy Act.* The content of these rules and regulations will determine whether the creation of the Regulator ultimately results in efficiency without sacrificing the maintenance of Alberta's regulatory standards.

The Alberta Government has indicated it intends to have the Regulator operating by June of 2013.

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