

**Public Accounts June 15, 2021
Energy's Written Responses**

Ms Pancholi:

[PA-530]

1. **Question:** Who first broached the idea of the GOA holding an equity stake in KXL? Was that something that TC Energy came to the GOA with, or did the GOA reach out to TC Energy? In those early days of negotiations on this deal, who was the point of contact on behalf of the government for the early discussions on this deal?

Who was on the negotiating team for the GOA, and was it all being conducted out of the Ministry of Energy? Were other ministries involved? Was Executive Council involved in the negotiations for this deal?

Answer:

This information is protected under Section 16(1) of the Freedom of Information and Protection of Privacy Act, which prohibits the Government of Alberta from releasing information that would harm the business interests of a third party. This information is further protected under Section 22(1) of the FOIPP Act as Cabinet and Treasury Board confidences, as well as under Section 24(1), as advice from officials.

[PA-533]

2. **Question:** Would you table for this committee which third-party agents were retained by APMC as well as what their recommendations were on the (KXL) deal?

Answer:

The third parties involved were McKinsey, TD Securities, Burnet, Duckworth & Palmer LLP and Bryan Cave Leighton Paisner LLP.

Recommendations are protected under Section 16(1) of the Freedom of Information and Protection of Privacy Act, which prohibits the Government of Alberta from releasing information that would harm the business interests of a third party. This information is further protected under Section 22(1) of the FOIPP Act as Cabinet and Treasury Board confidences, as well as under Section 24(1), as advice from officials.

Any legal analysis would be protected by solicitor-client privilege.

Mr. Schmidt:

[PA-534-535]

3. **Question:** We know that several members of Executive Council have met with coal companies in advance of the 1976 coal policy being rescinded during fiscal year 2019-2020. Can the Ministry of Energy tell us who from the coal industry they met with, on what dates, and with whom?

All engagement that the department had with coal companies as well as, I mean, any departmental meetings or any ministerial meetings that the department was made aware of. I know that deputy ministers often provide briefing notes for ministers when they're meeting with coal companies, interested industry folks. If you could provide any list of meetings that the department knew about that the minister had with coal-related companies and proponents, I would be interested in tabling that as well.

Answer:

It is common for the department to meet with stakeholders (for example, companies, environmental non-government organizations and interest groups) as a normal course of business. The following are a list of meetings with – and by the request of – representatives of the coal sector:

- On July 19, 2019, Martin Chamberlain, Assistant Deputy Minister of Energy, met with Atrum Coal.
- On June 21, 2019, Grant Sprague, Deputy Minister of Energy, met with Robin Campbell, President of the Coal Association of Canada.
- On January 24, 2020, Doug Lammie, Assistant Deputy Minister of Energy, along with department staff, met with Max Wang, Managing Director and CEO, Atrum Coal.
- On April 30, 2020, Sonya Savage, Minister of Energy, met with Robin Campbell, President of the Coal Association of Canada.

Staff from the Energy Operations Division met with several companies – Atrum Coal, Cvicus, Riversdale Resources, and Apollo Group – that have coal leases or other interest in coal in Alberta. These discussions were regarding the process to acquire coal leases or questions about the coal policy and are routine to Energy business.

[PA-535]

4. **Question:** I would still like to know what commitments the minister or the department may have made to Montem Resources with respect to advancing their project.

Answer:

We have no records of the Minister or department staff meeting with Montem Resources. No commitments were made to the company.

[PA-535-536]

5. **Question:** Now, we know that the decision to rescind the coal policy wasn't made in the 2019-2020 fiscal year, but the process leading up to it was. Can the deputy please table all records and correspondence on the rescission of the 1976 coal policy with respect to the fiscal year that's under consideration here?

Answer:

The decision package related to the rescission of the coal policy is contained in Attachment 1-Blades et al. v. Alberta.

[PA-536]

6. **Question:** We know that there was no First Nations consultation with respect to the rescission of the 1976 coal policy. What analysis did the department do on the government's duty to consult on this matter?

Answer:

The determination of the duty to consult, along with the scope of consultation, is a legal question. Any such analyses would constitute privileged information prepared for the purposes of seeking or providing legal advice to government. Government departments follow the Government of Alberta's Policy on Consultation with First Nations on Land and Natural Resource Management, 2013 and guidelines, as well as the Government of Alberta's Policy on Consultation with Metis Settlements on Land and Natural Resource Management, 2015 and guidelines. When the Crown contemplates a decision on land and natural resource management that has the potential to adversely impact First Nations' Treaty rights or traditional uses, or the potential to adversely impact Metis settlement members' harvesting or traditional use activities, the policies are applied.

[PA-537-538]

7. **Question:** Was any legal analysis done on how the South Saskatchewan regional plan interacts with the coal policy?
Did the department consult with Environment and Parks on how the interaction works with the South Saskatchewan regional plan and the coal policy?
What work did the department do to determine whether the rescission of the coal policy was consistent with the requirements set out in the Livingstone-Porcupine Hills land footprint management plan?
I hope that you can commit to undertake to provide all written correspondence between your department and Environment and Parks in discussion of this matter of the coal policy in the Livingstone-Porcupine Hills management plan as well as confirm whether or not a legal analysis was done with respect to how the coal policy interacts with this plan, and if that exists, please table that for the committee.

Answer:

Any legal analysis would be protected by solicitor-client privilege.

Neither the South Saskatchewan Regional Plan nor the Livingstone Porcupine Hills Land Footprint Management Plan (LFMP) contain binding provisions which constrain or prevent the Government of Alberta from making policy decisions about the management of coal.

As part of integrated resource management, Alberta Energy and Alberta Environment and Parks routinely share information and collaborate on policy. This included discussions prior to the rescission of the 1976 Coal Policy.

[PA-538]

8. **Question:** Can you advise this committee as to which law firm was retained to provide advice (on the KXL deal)?

Answer:

The following law firms were retained to provide advice on KXL:

- Burnet, Duckworth & Palmer LLP
- Bryan Cave Leighton Paisner LLP

Ms Renaud:

[PA-539]

9. **Question:** Please table all analysis on whether freedom of information covers the war room, or the CEC.

Answer:

The CEC is not subject to FOIP because it is not designated as a “public body” under the Schedule of the Freedom of Information and Protection of Privacy Regulation (the “FOIP Regulation”) or the Freedom of Information and Protection of Privacy (Ministerial) Regulation (the “FOIP (Ministerial) Regulation”).

[PA-539]

10. **Question:** Please table all analysis that led to the war room being set up with three ministers as directors.

Answer:

This information is protected under Section 22(1) of the Freedom of Information and Protection of Privacy Act as Cabinet and Treasury Board confidences, as well as under Section 24(1), as advice from officials.

[PA-539]

11. **Question:** We'd also like you to table all contracts or procurement for any data-harvesting software such as NationBuilder or other such software for the CEC.

Answer:

The Canadian Energy Centre does not have any contracts pertaining to "data harvesting". NationBuilder is a content management and database management platform that hosts the Support Canadian Energy website and database. We understand that this software is similar to that used by other organizations such as Greenpeace, 350.org, and Energy Citizens. Contracts for the use of this platform are of a confidential and commercial nature. The CEC respectfully declines their disclosure.

[PA-539]

12. **Question:** Please provide all analysis of data management at the CEC, including how contact information harvested from public campaigns will be used, who it will be shared with, and other processes.

Answer:

The Canadian Energy Centre does not "harvest" contact information from public campaigns. Individuals who are interested in subscribing for newsletters from the CEC can do so by consenting and voluntarily providing their name, email address, phone number, and postal code. Subscribers can choose to receive email updates or text messages. The CEC only uses the personal information it collects for the purposes for which it was provided. The vendor who manages the website has access to the personal information provided by newsletter subscribers for the sole purpose of disseminating such newsletter to the subscribers. The vendor is under a contractual confidentiality obligation to protect this personal information from being used for any other purpose.

Ms Renaud: [PA-539]

13. **Question:** Can the ministry please follow up in writing and provide for the committee any analysis on the centre's effectiveness, any indication that it's hitting its targets, and any information on value-for-money analysis?

Mr. Turton: [PA-540]

Question: What metrics were used to measure the success of the Canadian Energy Centre during 2019 to 2020?

Answer:

- The CEC is accountable to their board of directors for operations and financial approvals. The CEC is not under the direct day-to-day operational responsibility of the Department of Energy.

- The CEC was established to raise awareness and understanding of Canada's long-term position as a safe, clean, and responsible energy supplier.
- Since inception, the CEC has:
 - Built over 125 articles telling stories about Canadian energy.
 - Grown their social network, surpassing 50,000 users sharing campaigns. Content reaches more than 1 million Canadians every month on Facebook and our other social media channels.
 - Published 69 research items consisting of 40 studies and 29 columns by end of fiscal 2020-2021.
 - Completed 30 fact sheets (short 4- to 6-page analyses with data and charts) including 29 English fact sheets and 1 French fact sheet.
 - Completed 10 research briefs (longer analyses of issues with data and charts and ranging from 10 to 30 pages).
 - Wrote 29 columns, including columns reproduced in Canadian newspapers and online.
 - Identified over 25,000 Canadians who will send emails, sign pledges, and advocate on behalf of energy when necessary. They have set a goal of reaching 50,000 by end of fiscal 2021-2022. Currently they sit at 30,000.

Ms Renaud:

[PA-539]

14. **Question:** Every ministry did an in-year savings exercise in 2019-20. Can the ministry please table with the committee its overall target, what savings it found in order to meet that target, with specifics about associated dollar amounts?

Answer:

- See page 89 of Energy's 2019-20 annual report for a breakdown of the Ministry operating expenditure target of \$2.25 billion.
- The Ministry reported an operating surplus of \$706 million on pages 90-91 of the 2019-20 Energy annual report, primarily related to:
 - Market Access, \$634 million surplus due to timing of divestment of the Crude by Rail program, which was delayed primarily due to a downturn in the economy and adverse market conditions.
 - Carbon Capture and Storage, \$76 million surplus due to timing of payments related to milestone achievements driven by construction delays.
 - Other, \$11 million surplus due primarily to savings as a result of timing of when the Canadian Energy Centre was brought to full operations, and a reduction in ministry operating costs.

Ms Pancholi:

[PA-539]

15. **Question:** Can the ministry table with this committee what clauses were put into the deal for KXL that addressed the legal risk of the permit being rescinded for the KXL pipeline?

Answer:

The Investment Agreement and Loan Guarantee contemplate the need to adapt to challenges to KXL construction progressing including the ability to change the construction execution plan, slowing or suspending construction and, if needed, abandonment of the project.

[PA-539]

16. **Question:** What legal provisions were in that agreement that would allow the Government of Alberta to recoup some of its funding in the event that the project was cancelled or rescinded?

Answer:

The agreement allows for the government to pursue legal remedies to recovery any losses. In addition, the agreement allows for the government to benefit in the value gained from disposition of assets purchased to build the final phase of KXL.

[PA-539]

17. **Question:** With the KXL deal, what portion was equity, what portion was loan guarantees. How did that change over time from when the initial deal was struck, in 2019-20?

Answer:

The equity portion was for construction in 2020. The loan guarantee was for construction in 2021 to completion of the project. In addition, the loan guarantee was used to acquire the government's U.S. equity contributed in 2020. This was in the original agreement and did not change. The total equity from the government was approximately \$396 million and the loan guarantee was \$1,035 million.

[PA-539]

18. **Question:** In terms of triggering the loan guarantees, how did that work? What were the triggers for that equity to turn into loan guarantees, or when did the loan guarantee funding kick in?

Answer:

The loan guarantee became available in early January, 2021. The government's US equity was converted to debt that was covered by the loan guarantee after the loan guarantee became available. The loan guarantee was triggered by a mandatory prepayment at the end of March 2021 but did not become due until early June per an agreement with TC Energy and the lenders.

[PA-539]

19. **Question:** Table a list of all individuals, either through APMC, the Ministry of Energy or any ministry within the GOA as well as any third party, who were directly involved in the negotiations of the KXL deal, table that information with the committee.

Answer:

The following is a list of the negotiating parties involved in the KXL deal:

- APMC - Adrian Begley
- Third Parties – Mckinsey, TD Securities, Burnet, Duckworth & Palmer LLP and Bryan Cave Leighton Paisner LLP.

[PA-540]

20. **Question:** Please table with this committee the political risk assessment that was done on the KXL deal with details as to what risks were assessed and what the outcome of that assessment was.

Answer:

This information is protected under Section 16(1) of the Freedom of Information and Protection of Privacy Act, which prohibits the Government of Alberta from releasing information that would harm the business interests of a third party. This information is further protected under Section 22(1) of the FOIPP Act as Cabinet and Treasury Board confidences, as well as under Section 24(1), as advice from officials.

[PA-540]

21. **Question:** What sort of oversight does the ministry have over the CEC's operations, and how do they utilize funds from the ministry?

Answer:

The CEC is a private corporation and is accountable to their board of directors regarding their operations and financial approvals.

The CEC is not under the direct day-to-day operational responsibility of the Ministry of Energy, outside of ensuring grants are spent according to existing agreements.

[PA-540]

22. On page 36 of the annual report it outlines the significant steps the Ministry of Energy has taken to reduce red tape and ensure that Alberta's economy is one of the most efficient and freest economies globally.

a. **Question:** What processes does the ministry have in place to identify and evaluate regulatory burden?

Answer:

- The Ministry has an internal red tape reduction project team and working group that meets regularly to identify new projects and track the progress on the department's efforts to reduce regulatory burden for the energy industry.
 - Energy agencies are engaged in achieving red tape reduction goals and provide monthly reports to the Minister on their red tape reduction efforts.
 - The department supports and attends industry red tape panel discussions, as well as assess industry and public submissions for incorporation into our plans for red tape reduction.
 - A significant number of red tape projects are being pursued by the department and industry were flagged by industry groups such as CAPP or the Red Tape Panels.
 - The ministry continues to receive submissions and meeting requests from individual stakeholders on red tape reduction.
 - The department continues to exceed the interim targets set by Treasury Board and Finance, with the Ministry of Energy on track to exceed the 20 per cent target for 2021-22.
- b. **Question:** As some action taken in 2019 to '20 to reduce red tape included repealing outdated and unnecessary legislation such as the Small Power Research and Development Act and its regulation, can the ministry please explain what the Small Power Research and Development

Act and its regulation were and how repealing it achieved the goal of reducing red tape?

Answer:

- This legislation enacted the legal framework governing the operation of the small power producer program.
- It established the maximum program capacity of 125 MW, and certain program standards, and some terms of small power production contracts.
- The legislation was developed as a seed for wind and other renewable power. Wind power is now market-sustainable.
 - All contracts established under the Small Power Program, governed by the *Small Power Research and Development Act*; are no longer in force.
 - The last contract governed by this Act expired on February 15, 2019.
 - The two regulations under the Act also became ineffective once the Act was repealed: the Small Power Research and Development Regulation and the Revenue Adjustment Regulation.
- Eliminating this legislation and the associated regulations demonstrates government's commitment to reducing red tape by removing legislation and regulations which are no longer relevant.
- New projects of this nature are captured under the Small-scale Generation Regulation.

Mr. Singh:

[PA-540]

23. Question: On page 47 the annual report mentions the work the ministry had done with ESG during 2019-20. It states that the ministry is leading the development of a provincial ESG strategy aimed at strengthening and promoting Alberta's position as a responsible energy producer and attracting investment to its energy sector. Can the development department provide an update on the work done in 2019-20 to develop this ESG strategy, and how does the minister's work with ESG interact with the product policy objectives of the ministry?

Answer:

- In early 2019, the Department of Energy, in conjunction with Premier's office, established an ESG Working Group with over 60 stakeholders representing government, industry, banks, think tanks, and other organizations to help inform department and government direction on ESG.
- Since its inaugural meeting in September 2019, the working group discussed ESG issues and began to evaluate how these will affect Alberta moving forward.

- The Premier announced the creation of the ESG cross-department secretariat headquartered in Executive Council in March 2020. The purpose of the ESG secretariat is to coordinate the strategic and operational engagement activities of the GoA in support of Alberta's energy industry and other industries that are being assessed using ESG criteria.
- Through Budget 2021, government announced the creation of an ESG Secretariat, led by Executive Council.
- Alberta has a great and deep-rooted story to tell global energy investors who are looking for real actions that support responsible development.
- Canadian energy is produced under the world's highest environmental, human rights and labour standards, making Alberta the logical choice to meet post-pandemic energy demands.
- Our long tradition of taking action on climate issues is backed by more than two decades of climate related programs and policies that paved the way for other jurisdictions. We are the first jurisdiction to place a price on carbon for all large emitters across all sectors.
- We have invested billions of dollars in technologies that reduce – or even eliminate – emissions, such as carbon capture and storage.
- We have a regulatory framework that balances both the environment and the economy.
- The department continues to monitor developments on ESG and assess potential impacts on department policy and the energy sector. We also continue to work with stakeholders representing government, industry, banks, think tanks, and other organizations to help inform department and government direction on ESG.

Clerk's Stamp

COURT FILE NUMBER 2001-08938

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANTS E. MACLEAY BLADES, ROCKING P RANCH LTD., JOHN SMITH and PLATEAU CATTLE CO. LTD.

RESPONDENTS HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA and THE MINISTER OF ENERGY FOR THE PROVINCE OF ALBERTA

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Alberta Justice and Solicitor General Legal Services Division**
Suite 1710, 639 – 5th Avenue SW
Calgary, Alberta T2P 0M9

**Attention: Melissa N. Burkett /
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File No. LIT-11521

AFFIDAVIT OF MICHEAL MOROSKAT

Sworn on November 30, 2020

I, Micheal Moroskat, of the City of Edmonton, in the Province of Alberta, MAKE OATH AND SWEAR THAT:

1. I am Director, Coal and Mineral Development, with Alberta Energy. I have personal knowledge of the facts and matters in this Affidavit, except where stated to be based on information and believe, in which case I believe them to be true.
2. Attached are the following exhibits:
 - (a) **Exhibit "A"** – copy of AR35437 (redacted to remove privileged communications); and
 - (b) **Exhibit "B"** – copy of Information Letter 2020-23.
3. I make this Affidavit in support of the Respondents' application for an Order:

- (a) Striking the Amended Originating Application for Judicial Review (the "Amended Application"); and
- (b) In the alternative, summarily dismissing the Amended Application.

SWORN BEFORE ME at the City of
Edmonton, in the Province of Alberta,
this 30th day of November, 2020.



A Commissioner of Oaths in and for
the Province of Alberta

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) 

) Micheal Moroskat

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta

This is Exhibit "A"
referred to in the Affidavit of Micheal Moroskat
Sworn before me this 30th day of November, 2020



A Commissioner of Oaths
in and for the Province of Alberta

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta

**ADVICE TO MINISTER
 For Decision about Alberta's Coal Policy**

ISSUE

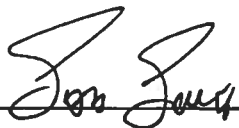
Options to rescind the 1976 Coal Policy for Alberta.

RECOMMENDATION

Option A: The Minister directs Alberta Energy to rescind the 1976 coal policy immediately, and undertake a 120 day process to resolve existing held coal lease applications before issuing newly available coal rights.

DECISION

- Option A
- Option B
- Option C
- Other

AGREE: 

DATE: March 31, 2020

RATIONALE

- The coal categories, and the associated leasing rules, are the only policy mechanism of the 1976 coal policy that remain in effect today. Other mechanisms, such as provisions pertaining to royalties, labour requirements, environmental protection, and Crown equity participation, have been superseded or become irrelevant.
- Coal is the only mineral commodity in Alberta that has its own land classification system that guides not only exploration and development, but also the leasing of Crown rights. Rescinding the 1976 coal policy will therefore increase equity among all industrial users who compete for access to Alberta's working landscape.
- Rescinding the 1976 coal policy and its land classification system is expected to increase the province's attractiveness as an investment destination for coal by expanding and unifying the land base that is available for coal leasing, exploration, and development. It will also make it clear that all proposed Alberta coal projects will be reviewed based on merit through a modern regulatory process. This outcome has been uncertain historically because of the ambiguous wording that exists for coal categories 2 and 3.
 - Whether projects are pursued with resulting economic and job benefits will remain largely driven by global coal price expectations and other factors affecting project viability, such as royalty and tax rates, and production and transportation costs.

IMPACTS

- Converting all existing coal lease applications to leases (those that are currently active in coal categories 2 and 3, would result in annual rental payments of approximately C\$2.3 million (\$3.50 per hectare)).
 - As of February 28, 2020, there were 1,026 coal leases (419,000 hectares) and 506 coal lease applications (652,000 hectares) province-wide. Some coal lease applications may be held as applications for reasons other than the coal categories and would be unaffected by the rescission of the 1976 coal policy.
- The potential revenue that could be realized from issuing coal leases within coal category 1 areas (where coal rights are currently reserved from disposition) cannot be estimated.
- The policy shift will be viewed positively by the coal industry, as rescission is something the industry has been advocating for years.

- However, it will draw criticism from environmental groups and other user groups active within Alberta's Eastern slopes, particularly if the decision is made without prior public consultation.
- Rescinding the 1976 coal policy creates possible expectations that coal exploration and development will be permitted where it has been historically limited. The risk that important land use values will be compromised as a result of rescission is mitigated by the suite of land use policies and plans active within the Eastern Slopes region and by Alberta's modern regulatory process. The latter includes a potential Joint Review Panel review and Environmental Impact Assessment for major coal projects.
 - The majority of the coal category 1 area along the Eastern Slopes, with the exception of a significant area within the Upper Athabasca Region, is protected from industrial development by statutory conservation area restrictions (existing or proposed), or is an area where the coal rights have been reserved for other reasons (e.g., caribou range, prime protection zone). See Attachment 1 for a region-by-region analysis.
- Despite existing land use policies, there is a risk that rescission could result in policy gaps because several Integrated Resource Plans that remain active within the Eastern Slopes rely on the coal categories to establish baseline conditions (mostly in the South Saskatchewan Region, but also a portion of the Upper Athabasca Region).
 - The full extent of the policy gap risk will not be quantified until Alberta Energy completes its review of the coal categories with input from Environment and Parks. This work is expected to be complete in summer 2020.

IMPLEMENTATION

- The 1976 coal policy was not enacted using a legislative tool, so it can be rescinded unilaterally by Alberta Energy at any time.
 - [REDACTED]
- Alberta Energy Regulator (AER) Directive 61: How to Apply for Government Approval of Coal Projects in Alberta (1983) includes several key references to the 1976 coal policy including how to apply for a coal category reclassification and description of the leasing rules for the various coal categories. It also references the preliminary project disclosure obligations and the coal royalty structure introduced by the 1976 coal policy.
 - [REDACTED]
- An information letter and corresponding information bulletin are most appropriate tools to communicate rescission as there is no coal tenure regulation and coal leasing has relied on this mechanism historically. See Attachments 3 and 4.
 - Public announcement of the rescission could be referenced in and coordinated with the release of the new coal and minerals strategy.
- Given the number of coal lease applications currently being held by the department, once the coal policy is rescinded, and if Alberta Energy continues to post land sales, there will be an operational transition period.
 - The department will place a 120 day moratorium on new applications while all existing coal lease applications are resolved. After the 120 day moratorium, new coal leases will be accepted and will be considered requests for public sale. New rights will be issued through public offering and will be granted to the highest bidder as has been the process for coal rights in the previous coal category 4 lands.
- Alberta Energy will also need to inform the province's land managers (Environment and Parks and the AER) about the rescission and position them to be able to effectively respond to questions.

BACKGROUND

- A Coal Development Policy for Alberta was published in 1976. It was an early attempt at a land use plan for resource development in Alberta before modern regulatory processes existed.
- Among other things, the 1976 coal policy set out a land classification system, the four coal categories, to provide direction regarding where and under what conditions coal leasing, exploration and development would occur.
 - Leasing rules are further described in the Alberta Energy information letters 2014-07, 1995-26, and 1980-07.
- The Minister of Energy issued a letter to the AER on February 18, 2020, which clarified that all project applications in coal category 2 are to be reviewed in accordance with normal regulatory processes (AR34868).
 - This direction did not change Alberta Energy's leasing rules.
 - An information letter was being drafted along with key messages to inform the public. However, work on an information letter specific to coal category 2 is on hold pending decision on rescission of the Coal Policy in its entirety.

ALTERNATIVE OPTIONS

Option B: The Minister of Energy directs Alberta Energy to rescind the 1976 coal policy but continues to reserve coal rights in coal category 1 until the overlapping regional plans are completed.

IMPACTS

- The known revenue impacts will be the same as Option A.
- Government will likely receive less criticism from environmental groups and other land users as this option will maintain the status quo (i.e., no coal in areas where alternative land uses have been the historic priorities) until regional plans are complete.
- It provides an opportunity for government to confirm what its management intent is for lands that have historically not allowed coal leasing, exploration or development with public input and based on site-specific analysis (currently being undertaken by Alberta Energy and Environment and Parks).
- The coal industry will be supportive since its primary concern is having clear policy direction for pursuing surface mining projects in coal category 2.
 - The ability to acquire leases in category 2 lands prior to receiving regulatory approval increases certainty for the industry and is an improvement on the status quo (Option C).
- This option also provides assurance to the coal industry that government is intent on providing clear policy direction for coal, but in a manner that is aligned with the purpose and objectives of regional planning, including those related to engagement and transparency.

IMPLEMENTATION

- Implementation will occur as set out in Option A, with the exception that final decisions regarding coal category 1 will occur through the applicable regional plans.
 - The regional plans that overlap coal category 1 (North Saskatchewan, Upper Athabasca, and Upper Peace, along with the already complete South Saskatchewan Regional Plan) are the priority regional plans to be completed.
 - The Land Use Secretariat is in the process of developing a timeline for this work, but the expectation is that these plans would be in effect before 2022.
- Alberta Energy will continue its work with Environment and Parks to identify site-specific implications of rescinding coal category 1. The results of this work will inform the

development of the three remaining regional plans, which overlap the coal categories, and final implementation of the South Saskatchewan Regional Plan.

- If for some reason regional planning is delayed, at that point, Alberta Energy would be able to remove the reservation and begin selling rights in the coal category 1 area.

ALTERNATIVE OPTIONS

Option C: the Minister of Energy directs Alberta Energy to rescind the coal categories concurrently with the completion of the applicable regional plans. The 1976 coal policy would be rescinded once all four regional plans, which overlap the coal categories, are in effect.

IMPACTS

- This is the status quo option.
 - It is consistent with the commitment that was made in the South Saskatchewan Regional Plan.
- This option provides an opportunity for government to confirm what its management intent is for the province's coal-bearing areas, including those that have not allowed coal leasing, exploration or development historically, in the context of balancing regional goals and inclusive of site-specific analysis and public input.
 - Because it upholds the 1976 coal policy's current restrictions on leasing over the short term, it is the most risk-averse option.
 - This risk comes at the expense of providing less certainty to industry than the other options and temporarily giving up new coal leasing revenues.
- Government will likely face the least amount of criticism overall if it pursues this option.
 - The policy clarification regarding coal category 2 provided to the AER should address the coal industry's current concerns about access to the regulatory system.
 - Other Eastern Slopes land users will have the assurance that any concerns they raise about rescission will be considered by government before long term decisions are implemented by the regional plans.

IMPLEMENTATION

- No immediate action is required as Alberta Energy is in the process of developing the coal category 2 information letter and associated key messages.
 - ADM approval to post the information letter will be requested.
- Alberta Energy and Environment and Parks are actively reviewing the coal categories to identify site-specific locations where coal category direction remains relevant for achieving desired land management outcomes.
 - The results of this review will inform the drafting of regional plans (e.g., conservation area considerations).
- Changes to Alberta Energy's coal leasing policies will be implemented as the regional plans become effective.

ATTACHMENT

- Attachment 1 – Coal Category 1 Analysis by Land Use Region
- Attachment 2 – Letter to Alberta Energy Regulator
- Attachment 3 – Information Letter
- Attachment 4 – Information Bulletin

Drafted by: Brock Ellis
 Senior ADM: Martin Chamberlain, Q.C.

Resource Stewardship Policy Branch
 Energy Policy Division

This is Exhibit "B"
referred to in the Affidavit of Micheal Moroskat
Sworn before me this 30th day of November, 2020



A Commissioner of Oaths
in and for the Province of Alberta

Karen Cheuk
Barrister and Solicitor, Notary Public and
A Commissioner for Oaths in and for Alberta



Petroleum Plaza - North Tower
9945 - 108 Street
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May 15, 2020

INFORMATION LETTER 2020-23

Subject: Rescission of *A Coal Development Policy for Alberta* and new leasing rules for Crown coal leases

A Coal Development Policy for Alberta, more commonly known as the 1976 Coal Policy (Coal Policy), has been rescinded effective June 1, 2020.

The only mechanism left in effect from the Coal Policy before rescission was the land use classification system comprising four coal categories. Other mechanisms, such as provisions pertaining to royalties, labor requirements, environmental protection, and Crown equity participation, were superseded or not enforced.

The coal categories are no longer required for Alberta to effectively manage Crown coal leases, or the location of exploration and development activities, because of decades of improved policy, planning, and regulatory processes.

Those interested in acquiring Crown coal leases and pursuing exploration and development opportunities will now face the same restrictions as other industrial users. These restrictions include but are not limited to: the South Saskatchewan Regional Plan, including the subregional Livingstone-Porcupine Hills Land Footprint Management Plan; the Integrated Resource Plan zoning that remains in effect throughout much of Alberta's Eastern Slopes; and regulatory instruments (e.g., reservations and notations) applied under the *Public Lands Act*. Regulatory approval requirements to conduct coal exploration and development activities remain in effect.

Coal leases

With the rescission of the Coal Policy, all restrictions on issuing coal leases within the former coal categories 2 and 3 have been removed. Alberta will continue to restrict coal leasing, exploration and development within public lands formerly designated as coal category 1. This prohibition on coal activities is being continued to maintain watershed, biodiversity, recreation and tourism values along the Eastern Slopes of Alberta's Rocky Mountains.

Alberta Energy will be offering the right of first refusal to the holders of active coal lease applications. While Alberta Energy works through the coal lease applications, no new coal lease applications will be accepted for a 120-day period beginning May 15, 2020. Coal Information Bulletin 2020-02 provides details on this process.

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