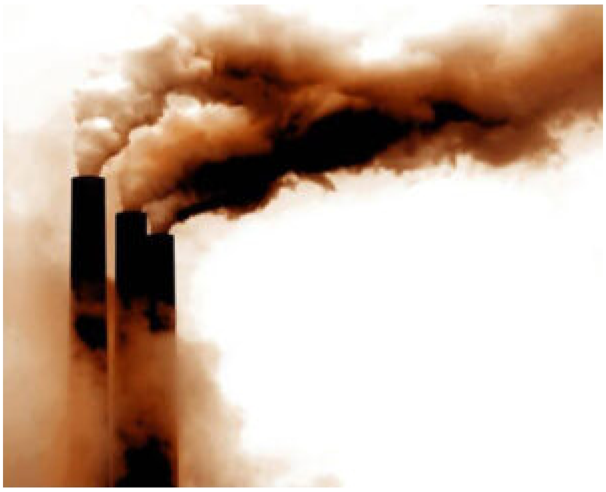
Bill 19: Alberta’s Proposed TIER System For Addressing Greenhouse Gas Emissions



On October 29, 2019, the Government of Alberta introduced Bill 19, the *Technology Innovation and Emissions Reduction Implementation Act*, and Order in Council 213/2019, establishing the *Technology Innovation and Emissions Reduction Implementation Regulation* (“**Regulation**“). Bill 19 and the Regulation are aimed to facilitate implementation of the new Technology Innovation and Emissions Reduction (“**TIER**“) system. The Government’s stated intent for the TIER system is to reduce greenhouse gas emissions while protecting Alberta’s regulatory autonomy from federal intervention.

Bill 19 and the Regulation are proposed to come into force on January 1, 2020, except for certain sections.

Overview of Bill 19 and the Regulation

Bill 19 sets out the framework for the TIER system and the Regulation provides the processes and further detail on how the new scheme will be implemented.

In general terms, TIER will apply to facilities that emitted 100,000 tonnes or more of CO_2 in 2016 or onward. These facilities will receive a specific benchmark to meet based on their past emissions. They must then reduce their emissions by 10% in their first compliance year, plus an additional one percent each year thereafter. The Government will apply a $30/tonne carbon price on emissions.

Electricity generators have a different requirement: if they emit more than 100,000 tonnes of CO_2 per year, they must comply with the benchmark of 0.37 tonnes of CO_2 per megawatt-hour.

Facilities that will be subject to the TIER program can meet their obligations by:

- reducing emissions to the prescribed level;
- using credits from facilities that exceeded their reduction targets;
- using emission offsets from organizations which, although not regulated by

TIER, have voluntarily reduced their emissions; or
- paying into the Technology Innovation and Emissions Reduction Fund ("**TIER Fund**"), which is essentially the Climate Change and Emissions Management Fund with a new name.

Further, facilities subject to the TIER program will have the following reporting requirements:

- Yearly compliance reports that must, among other things, confirm the facility has not exceeded its allowable emissions per year, and be verified by a third party assurance provider;
- Forecasting reports in the case of facilities that emitted one million tonnes or more of CO_2 per year. Forecasting reports must include a forecast of the facility's total regulated emissions for the following year;
- Emissions reduction plan reports are required where a facility has received cost containment designation under the Compliance Cost Containment Program. This program is intended to provide transitional support to facilities experiencing economic hardship as a result of compliance costs. Where a facility has applied for and received cost containment designation, it must submit an emissions reduction plan report that includes financial statements and any benefits received under a government initiative. Facilities with a cost containment designation will be reviewed annually to assess if the economic hardship remains pursuant to the defined criteria.

It is advisable for facilities captured under the TIER system to assess their potential new reporting obligations.

Opt In and Aggregate Provisions

Conventional oil and gas facilities that emit less than 100,000 tonnes of CO_2 may apply to opt into the TIER program in the manner provided for under the Regulation.

A party that owns two or more facilities will be able to apply to have the facilities regulated together under TIER as an aggregate. Under this arrangement, the facilities are treated as one unit to streamline the regulatory process.

Emission Offsets, Emission Performance Credits and Fund Credits

As mentioned above, operators will have opportunities to offset their emissions to comply under the TIER system. This includes receiving emission offsets when they reduce, capture, or sequester greenhouse gases. In order to take advantage of emission offsets, operators must ensure that a third party assurance provider verifies offset projects. Operators should be mindful of deadlines that apply to the offset program. For example, operators must use:

- offsets from 2014 or earlier for 2020 at the latest;
- offsets from 2015 or 2016 for 2021 at the latest; and
- offsets from 2017 or later within eight years.

In addition to offsets, TIER also provides for two types of credits:

- Performance credits, for producing less emissions than the facility's target; and

- Fund credits, for contributing to the TIER fund.

If a facility produces less emissions than the amount it is permitted, it may be eligible for performance credits where one credit represents one CO2 tonne. The facility can then apply its performance credits when determining its net emissions in a subsequent year. Performance credits could also be sold to other facilities that have failed to meet their reduction requirements. The same deadlines that apply to emission offsets apply to performance credits.

Fund credits can be purchased for a facility at a price that may be set by the Minister. However, only the facility which obtained the fund credits may use them and they can only be used once. If the facility obtained the fund credit on or before June 30th of a year, it can only use the credit for the previous year, unless it receives written authorization otherwise. If the facility obtained the fund credit after June 30th, it may only use the credit for that year, unless it receives written authorization otherwise.

Of note, facilities can only use offsets and credits to cover a certain percentage of their “true-up obligations” ‘ the quantity by which their emissions exceed the facility’s allowable emissions for the year. Specifically, when determining its net emissions for a year, a facility cannot use emission offsets and performance credits to cover more than 60% of its true-up obligations. The facility also cannot use offset or credits from before 2017 to cover more than a combined maximum of 40% of its true-up obligations.

The TIER Fund

One of the notable changes under the proposed new framework is how the Government may apply the TIER Fund. Under the current scheme, the Climate Change and Emissions Management Fund “may be used only for purposes related to reducing emissions of specified gases or supporting Alberta’s ability to adapt to climate change” (*Climate Change and Emissions Management Act*, section 10(3)). However, under Bill 19, the Minister may, subject to certain exceptions, transfer money from the TIER Fund to the General Revenue Fund. The significance of this change is that, under the new legislation, the TIER Fund could potentially be used for a broad array of purposes other than reducing greenhouse gas emissions or adapting to climate change, as mandated under the current legislation.

Takeaways

The TIER system is expected to come into force in approximately two months. Facilities that will be captured under TIER should assess potential new reporting and other obligations to ensure that they are in compliance, and to identify previous regulatory requirements that may no longer apply.

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