

The more things change, the more they stay the same: Alberta revamps carbon pricing regime for large emitters

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**Editor's Note: This Update was originally published on November 6, 2019. It was updated on November 26, 2019, to reflect the fact that Bill 19 received royal assent on November 22. The legislation comes into force on January 1, 2020.*

In this Update

- On October 29, 2019, the Alberta government proposed new legislation for a revamped Alberta carbon pricing scheme, called the Technology Innovation and Emissions Reduction (TIER) system. Bill 19 received royal assent on November 22, 2019, and will come into force on January 1, 2020.
- The TIER system will leave the regulatory landscape relatively unchanged, but makes a few key changes to the carbon pricing regime in Alberta.
- Notably, emitters that are governed by the TIER system (other than electricity generators) can apply for a facility-specific benchmark, which will result in a facility's emissions intensity being measured against the facility's own past emissions, rather than against a common industry standard.
- Facilities that produce more than 100,000 tonnes of annual direct carbon emissions will be expected to reduce emissions by 10% in 2020 and a further 1% per year thereafter.
- Certain emitters can now apply to aggregate their facilities in order to gain admission into the TIER system as an "aggregate facility."

Changes to Alberta's emissions management regime

On October 29, 2019, the Alberta government introduced Bill 19, the *Technology Innovation and Emissions Reduction Implementation Act, 2019* as well as the *Technology Innovation and Emission Reduction Regulation* (TIER Regulations), which will replace the *Carbon Competitiveness Incentive Regulation* (CCIR). Bill 19 rebrands the *Climate Change and Emissions Management Act* as the *Emissions Management and Climate Resilience Act*, and revamps the province's greenhouse gas emissions policy into the Technology Innovation and Emissions Reduction (TIER) system. Bill 19 received royal assent on November 22, 2019, and will come into force on January 1, 2020.

TIER represents the latest in several revisions to Alberta's carbon pricing regime, which was first instituted under the *Specified Gas Emitters Regulation* (SGER) in 2007. The SGER initially put a \$15 per tonne price on carbon emissions from large industrial facilities, which was later

increased by the Alberta NDP Government to \$20 per tonne in 2016 and \$30 per tonne in 2017. A major shift in the provincial carbon pricing policy occurred in 2018 when the SGER was replaced by the CCIR. Although the CCIR did not raise the price on carbon emissions, it imposed more stringent emissions targets, common industry-wide restrictions on emissions, and annual tightening of allowable emissions, all with significant implications for large industrial carbon emitters (see our earlier update on CCIR [here](#)).

The TIER Regulations are currently in place under the existing legislation and, assuming Bill 19 is proclaimed in force, the recently announced TIER system will replace the CCIR regime on January 1, 2020. Like the CCIR, the TIER Regulations are intended to meet the federally mandated carbon standards of the *Federal Greenhouse Gas Pollution Pricing Act* for large emitters (as opposed to the consumer fuel charge, or "carbon tax," which is applied in parallel). Canada previously indicated that it will monitor proposed changes to Alberta's large industrial emitter system and undertake a benchmark assessment once sufficient details about the new system for large emitters are available. Households and smaller industrial emitters not governed by the TIER system are anticipated to be subject to the federal carbon pricing regime beginning January 1, 2020.

What changes?

The TIER framework is in many ways a rebranding, and will retain many of the features of CCIR. However, the new legislation will depart from CCIR in some key respects:

1. Different benchmarking standards

Under the CCIR, emissions targets for an individual facility were based on industry-wide benchmarks, whereby each facility in a specific industry shared a common emission target, with limited exceptions. Under the TIER framework, emitters other than electricity generators will be able to apply for a facility-specific benchmark. If approved, each facility's allowable emissions threshold will be based on the average past performance of that facility between 2016-2018, a move back to the historical performance standard employed by the SGER. The TIER framework also employs an industry-wide benchmark for certain products, however, the regulations stipulate that if both a facility-specific benchmark and an industry benchmark exist for a given facility, the least onerous of the two will apply.

This shift is criticized for disincentivizing both competition among existing facilities and the onboarding of newer, more efficient facilities within an industry. Notably, electricity generation, which represents approximately 17% of Alberta's carbon emissions, continues to be subject to a common industry emissions standard, benchmarking all electrical power production against a good-as-best-gas standard.

1. Lower emissions targets

For those facilities that receive an industry-specific benchmark, the TIER system will require facilities that have direct emissions of more than 100,000 tonnes of carbon dioxide or equivalent to reduce their emissions by 10% in the year 2020. Facilities will then be required to reduce emissions by a further 1% per year, starting in 2021. Since the required emissions reduction is based on a standard created by an individual facility's average emissions (generally based on 2013-2015 emissions), the practical impact of the 10% reduction on an individual facility will vary based on how efficiently that facility was operating already. As with CCIR, the TIER system regulates emissions on an intensity basis and does not impose an absolute cap on total emissions.

1. Lower opt-in threshold

Both the CCIR and the proposed TIER system allow certain emitters to opt-in to the program. The TIER system will allow emitters in certain high-emitting sectors to opt-in to the regulation if the facility competes directly against a facility that is covered by the regulation or if the facility has greater than 10,000 tonnes of annual CO₂e direct emissions. Previously, the CCIR framework permitted opt-in at a higher 50,000 tonnes of annual total regulated emissions. Whether a facility is more or less likely to opt-in under TIER relative to the CCIR depends on that facility's ability to earn credits or save costs under TIER relative to costs that would otherwise be payable under the federal regime (assuming that participation in TIER will in fact exempt facilities from the federal carbon price).

For electricity generators, the lower standard for opting in may encourage greater participation relative to the status quo, as the industry-wide emissions threshold (0.37 tonnes of CO₂e per MWh) will remain the same. This means that generators that were previously unable to qualify under the CCIR may now choose to participate if it is financially beneficial to do so. Presumably, electricity generators that previously opted in will continue to benefit under the TIER regulations. For other facilities, it remains to be seen whether the level of opt-in will increase or decrease. This is because, although more facilities will be eligible to opt in, emissions performance will now be compared against a given facility's past performance rather than an industry-wide benchmark. This change could cause some facilities that have opted in under the CCIR to opt-out under TIER. Under the regulations, the deadline to opt-out for 2020 is December 1, 2019.

1. Aggregate facilities

TIER will allow certain emitters to aggregate their facilities in order to gain admission into the system. Under TIER, emitters that have two or more facilities that meet the definition of a "conventional oil and gas facility", have direct emissions of less than 100,000 tonnes of CO₂e per year, and that share a common "person responsible" for the facilities, may apply to combine the facilities into an "aggregate facility", and thereby become subject to the TIER framework. A "conventional oil and gas facility" includes, but is not limited to (i) facilities for gas processing; (ii) facilities for extracting gas, oil or primary bitumen; and (iii) certain facilities used for transporting, in a pipeline, gas, oil or primary bitumen. Emitters that apply to aggregate facilities, and that meet the requirements, will be subject to the emissions reduction obligations under the TIER framework and, therefore, may be exempt from the federal regime. The government is currently accepting applications from responsible persons (typically the licensees) to have their facilities qualify as an "aggregate facility" for the 2020 calendar year.

1. Other changes

- Under the TIER system, the reporting and compliance period is now based on the calendar year, whereas the CCIR established quarterly reporting and compliance obligations. Facilities that have annual fluctuations in emissions intensity will be able to "level-out" before the compliance and reporting obligations take effect. This development should also reduce the administrative burden on facility owners and the government.
- Discretion under the TIER Regulations has been passed from the Minister of Environment and Parks to the Director in several respects. This is likely to facilitate

administration of the scheme.

- Under the TIER system, the Director is given the discretion to issue one or more emission performance credits if the total regulated emissions of a regulated facility in a year are less than the allowable annual emissions for that facility for the year. Under the CCIR, emissions performance credits were required to be issued as long as the requirements of the regulations were met.
- The Director under the TIER system may cancel an emission offset or an emission performance credit in certain circumstances, and the regulations provide details regarding the process and effects of cancellation. This power was not provided for under the CCIR.
- The TIER Regulations require persons responsible for regulated facilities to notify the director “as soon as practicable” of a change of ownership in a facility, which imposes an additional administrative requirement on emitters.

What stays the same?

While the name and some other key components of the legislation will change, many of the features of the CCIR will remain unchanged:

1. Who TIER applies to

Provincial carbon pricing continues to apply only to facilities which emit more than 100,000 tonnes per year of specified gases. However, as discussed, a greater proportion of smaller industrial emitters in Alberta may opt-in to the regulation.

1. The cost of exceeding allowed emissions intensity will remain the same

Facilities subject to the provincial legislation will continue to be subject to costs of \$30/tonne of emissions, which carbon price has applied since January 1, 2017. The current UCP provincial government has not indicated that the carbon price will be escalated over time. However, the cost of compliance under the provincial program could rise in the future to the extent that Alberta is compelled to keep its carbon pricing in line with the federal carbon pricing legislation.

1. Electricity generators (good-as-best-gas)

The benchmarks for most facilities will no longer be based on an industry standard, however, electricity generators are expected to maintain the current standard under CCIR: electricity generators with direct emissions of more than 100,000 tonnes of CO₂e per year will be expected to comply with a “good-as-best-gas” benchmark set at 0.37 tonnes of CO₂e per megawatt-hour.

1. Facilities’ options for compliance

Emitters will have the same alternatives to remain compliant with the regulations under TIER as they had under CCIR, namely:

1. reducing their emissions through year-over-year operating efficiencies;
2. using emission performance credits generated by facilities which exceeded their emission reduction targets in the current or previous compliance year;
3. using emissions offsets generated by facilities that are not regulated by TIER in accordance with an approved emission offset protocol; or
4. paying the requisite \$30 for each tonne of excess emissions emitted by the subject facility into the TIER Fund.

1. How the TIER Fund will be distributed

Proceeds from the TIER Fund are expected to be used, in part, for similar initiatives as under the CCIR fund. Currently the CCIR fund supports oil sands innovation, innovation across sectors (including Emissions Reduction Alberta and the Climate Change Innovation and Technology Framework), industrial energy efficiency, bioenergy and green loan guarantees. The TIER framework will be used, in part, for new and cleaner Alberta-based technologies that reduce carbon emissions.

However, the government also intends to use some of the funds for debt reduction and to support a new energy “war room.” This represents a policy shift, as the previous NDP government was permitted to, but publicly announced that it was choosing not to, apply fund revenues to provincial debt reduction. This shift is reflected in Bill 19, which, if enacted, enables the Minister to transfer money paid into the TIER Fund after January 1, 2021 from the TIER Fund to the General Revenue Fund, and to use said moneys for any purpose.

Both the CCIR and TIER frameworks provide the government with flexibility in how funds from each system are used. While the nature of the initiatives which are funded from TIER fund credit proceeds will likely remain much the same, the total funds available may be reduced over time as a portion of proceeds are reallocated to the general provincial revenue account.

Analysis

The introduction of the TIER system will not be transformational to Alberta’s carbon pricing scheme. Most large emitters can expect little change in the price they pay for CO₂e emissions, although they can expect a change in how much the new regulations will allow them to emit and a reversion to the method of calculation of allowable emissions closer to what was in place between 2007 and 2017 under SGER. Emitters will see a shift in the benchmarks used to set emissions targets, which will affect the aggregate amount some emitters pay for their carbon emissions (or, conversely, the amount of credits they receive for improved emissions performance).

Altering emissions benchmarks from an industry-wide standard to an individual facility standard may have the effect of (i) benefiting the largest emitters, as large emitters will have greater capacity to improve as against their own past emissions, whereas under the CCIR system, large emitters are required to reduce emissions down to the industry standard (or pay the difference); and (ii) making it less advantageous for certain emitters to go beyond the industry standard emission benchmarks, as emitters know that in future years they will be required to reduce emissions as against an already improved facility. Electricity generators, however, can expect the regulatory landscape, as it applies to them, to remain similar to the current scheme under the CCIR.

The TIER Regulations, which have been enacted under the *Climate Change and Emissions*

Management Act, effect most of the expected changes to the framework and thus the legal requirements that will apply in 2020 are generally clear. However, some uncertainty will remain until the federal government completes its benchmark assessment and until the TIER system takes effect and is implemented. Further, as the federal carbon pricing legislation places an increasing price on carbon emissions in the years ahead, it remains to be seen whether provincial governments will adapt or push-back.