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THE ELECTRICITY INDUSTRY IN CANADA Gowling WLG Release No. 1, April 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in July 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the July 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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Electricity has been central to the development and maintenance of the economic and social fabric of Canada for over a century. Every corporation is affected by energy in Canada and those representing the corporation must have an adequate knowledge of the energy industry and why it works. This unique work is a comprehensive review of the electricity industry in every province and territory of Canada. Specific topics covered include: Constitutional Jurisdiction; Nuclear Regulation; Environmental Regulation; Taxation; Real Estate; Import and Export of Electricity; Sale of Electricity; and Conservation — Demand Management. In addition to the commentary and analysis, this important work also provides the full text of all relevant provincial and territorial statutes and regulations as well as an index to selected legal literature and a collection of Words and Phrases that are relevant to energy law and regulation. This release contains updates to the case law annotations to the *Alberta Utilities Commission Act*, the Alberta *Electric Utilities Act*, the Alberta *Public Utilities Act*, and the Saskatchewan *Power Corporation Act* as well as legislative updates to the Newfoundland & Labrador *Energy Corporation Act*, and the Quebec *Hydro-Quebec Act*, as well as the Selected Legal Literature.

Commentary Highlights

Alberta Utilities Commission Act — Section 17: Public Interest — In this case, the Court of Appeal ruled that the AUC erred considering “the social and legal impact of its decisions on Indigenous peoples, including doing what is necessary to uphold the honour of the Crown and achieve reconciliation between the Crown and Indigenous peoples.” The AUC approved electrical transmission asset transfers from AltaLink to the limited partnership controlled by the Piikani Nation and the Blood Tribe. The transferees would each incur additional annual audit fees payable to external auditors and Commission hearing costs, estimated to be \$60,000. The Commission refused to allow the transferees to pass these costs on to the ratepayers. The Alberta Court of Appeal overturned the AUC’s decision. The Commission committed a legal error by failing to take into account all relevant factors that determine whether a sale is in the public interest: *AltaLink Management Ltd. v. Alberta (Utilities Commission)*, 2021 CarswellAlta 2557 (Alta. C.A.).

Alberta Utilities Commission Act — Section 29: Appeals from Commission — In this case, the applicants asked for leave to appeal an AUC decision on many grounds, one of which was that the AUC made its decision without adequate evidence. On this ground, the Court of Appeal confirmed that the rule in section 20 allows for AUC to not follow the normal rules of evidence and to allow for hearsay evidence in some circumstances: *Western Export Group v. Alberta (Utilities Commission)*, 2021 ABCA 349, 2021 CarswellAlta 2579 (Alta. C.A.).

Saskatchewan Power Corporation Act — Section 3: Capacity to Contract — The plaintiffs brought a small claims action against the Saskatchewan Power Corporation for damages sustained when the electricity was turned off at buildings that he owned. The Court summarized the requirements under section 3(2.1) and stated that for the plaintiffs to succeed they must convince the Court that SaskPower was negligent or in breach of contract. In this case, although the plaintiffs suffered loss, the power company had a multi-step protocol for

alerting customers to delinquent accounts prior to disconnecting power. The claim of negligence was dismissed. In relation to the claim for breach of contract, the plaintiffs did not comply with the power company's terms and conditions of service which were easily accessible on its website or from a customer service representative. The plaintiffs did not adduce evidence showing that they were unaware of the terms and conditions. The claim for breach of contract was also dismissed: *Vogel v. Saskatchewan Power Corp.*, 2019 SKPC 49, 2019 Carswell-Sask 408 (Sask. Prov. Ct.).

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