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Publisher's Note

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Hunt and Lucas

Canada Energy Law Service (Federal)

This release features updates to the commentary throughout the service.

Commentary Highlights

Oil and Gas — Pipeline Construction — Acquisition of Lands — General — Decision by Commission — Although compensation is a private matter between a pipeline company and a landowner, for pipelines regulated by the Canada Energy Regulator (“CER”), if a landowner and a company cannot agree on compensation, the CER must decide the matter. The *CER Act* transfers the Minister’s former mediation and arbitration roles for land acquisition disagreements to the Commission of the CER. Where a company and a landowner have not agreed on the compensation payment under Part 6 of the *CER Act*, section 327(1) states that the Commission, on application by the company or the owner, must determine the matter. Section 327(2) sets out the factors the Commission must consider in making its decision. These include: the market value of the land taken by the company; the adverse effects to the remaining lands of the owner of the taking of the lands; any loss of or damage to livestock or other personal property affected by the operations of the company; and the nuisance, inconvenience and noise that may

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reasonably be expected to be caused by or arise from the operations of the company. Section 329(1) of the Act outlines specific requirements for awards of compensation by the Commission, including the payment of interest and costs.

Oil and Gas — Pipeline Construction — Acquisition of Lands — Damage — Liability — Pursuant to section 137(1) of the *Canada Energy Regulator Act*, if an unintended or uncontrolled release from a pipeline occurs, all persons to whose fault or negligence the release is attributable (or who are by law responsible for others to whose fault or negligence the release is attributable) are “jointly and severally, or solidarily liable” for three types of loss and damage. These are: (a) all actual loss or damage incurred by any person as a result of the release or as a result of any action or measure taken in relation to the release; (b) the costs and expenses reasonably incurred by the federal or a provincial government, any Indigenous governing body or any other person in taking any action or measure in relation to the release; and (c) all loss of non-use value relating to a public resource that is affected by the release or by any action or measure taken in relation to the release. Subsections (2) and (3) set out provisions regarding the indemnification by those at fault or negligent to each other as well as vicarious liability for the company authorized under the *CER Act* to construct or operate the affected pipeline.

Oil and Gas — Administrative Monetary Penalties — AMP Process Guide — The CER has published an Administrative Monetary Penalties (AMP) Process Guide, which explains that the purpose of an AMP is to allow the “Regulator to impose financial penalties on companies or individuals for non-compliance with the legislation, regulations, decisions, permits, orders, licenses, or certificate conditions.” The Process Guide lists four criteria that guide the use of AMPs, including when compliance is not obtained by other means, when harm results or is likely to result due to the non-compliance, or when the use of an AMP is simply the best method to ensure compliance or deter future non-compliance. The Guide also contains a flowchart that describes the AMP process. First, a notice of violation is served, followed by a publication of basic information, and then review, payment, and finally, the full notice of the violation is published on the CER website.