

John Bozzo

From: John Bozzo
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Alberta considers retroactive legislation as it fights electricity providers

Geoffrey Morgan, Financial Post

<http://business.financialpost.com/news/energy/alberta-considers-retroactive-legislation-as-it-fights-electricity-providers>

CALGARY — Electricity companies in Alberta fear Premier Rachel Notley's government is preparing legislation to retroactively change power contracts signed 15 years ago, a move critics say would create an investment chill in the province.

Calgary's city-owned electric utility company Enmax Corp. said Monday it's concerned the NDP government is planning to take the unprecedented step of passing a law that would nullify certain clauses within contracts utilities companies signed back in 2001.

Asked Monday whether rumours spreading through the electric sector of imminent retroactive legislation were true, Notley said the province is "looking at all of our options."

"At this point, it is not our view that we shouldn't do everything we can to stand up for Alberta consumers to make sure that we keep their electricity prices as low as we reasonably can," she said.

Her government is currently engaged in a lawsuit with Enmax, Capital Power Corp., TransCanada Corp. and Atco Ltd. because those companies used an opt-out clause in their "power purchase agreements," or PPAs, last year to terminate their contracts when the province introduced new carbon pricing legislation. The clause allows those companies to opt-out when legislation makes the contracts unprofitable or more unprofitable.

"It would be highly unusual and troubling for a government to use its legislative power to avoid the consequences of its own lawsuit — a suit the government initiated," Enmax spokesperson Doris Kaufmann Woodcock said in an email.

"We continue to contend this lawsuit is without merit and have filed a summary dismissal application to bring that issue before the courts," she said.

TransCanada spokesperson Tim Duboyce said in an email that the contracts contained "clear provisions" that allowed companies to opt out "if there is a change in law that makes the arrangement unprofitable or more unprofitable."

“We relied on that provision as fundamental to the commercial decision to participate in the (power purchase agreement) auction and would not have participated without it. We properly exercised our termination rights under the arrangements,” Duboyce said. “We will take whatever steps are necessary to protect our rights.”

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Mount Royal University political science professor Duane Bratt said the move would create “a huge investor chill in the province” just as the government is accepting bids from renewable power producers to generate more electricity here.

Bratt said he couldn’t remember an Alberta government ever introducing retroactive legislation to change a contract signed 15 years ago and any such move “puts the competency of the government at play.”

“I’m not even sure it would be legal, and I’m no lawyer, but you’re doing it in the atmosphere where you’ve already launched a multi-billion-dollar lawsuit with the companies,” he said.

Similarly, Kaufmann Woodcock said, “We would be concerned that imposing legislation would have a further chilling effect on the investment climate in Alberta, and that’s just not in the best interests of Albertans or the developing renewable electricity market.”

The opposition Wildrose Party blasted the NDP in the Legislature last week when rumours of retroactive lawmaking surfaced. Wildrose leader Brian Jean said it would turn the province into a “banana republic.”

Wildrose electricity critic Don MacIntyre said the potential for the province to rip-up longstanding contracts “is completely shaking the confidence in doing business in this province.”

MacIntyre said he didn’t think there was a precedent for a government in Alberta using legislation to change an existing contract with the private sector.